

Attachment 1

EXHIBIT 1 FORM OF AGREEMENT

AGREEMENT FOR ENERGY AGGREGATION AND CONSULTING SERVICES

This Agreement for Energy Aggregation and Consulting Services (the "Agreement") is made and entered into by and between TFS Energy Solutions, LLC d/b/a Tradition Energy, a Delaware LLC, limited liability company) Texas Broker Registration Number BR190190 (the "Aggregator"), and Region One Education Service Center, acting as administrative agent of the Texas Energy Center ("TEC"), a purchasing cooperative comprised of participating eligible Texas public school districts (the "ESC").

RECITALS

WHEREAS, Aggregator is currently a Class IIA Aggregator and Broker registered and in good standing with the Public Utility Commission of Texas; and

WHEREAS, the TEC currently offers membership to Texas public school districts through an interlocal purchasing cooperative formed under Texas Government Code, Chapter 791 and Chapter 271 of the Texas Local Government Code, for the purpose of equalizing the purchasing power of school districts within the region by offering aggregated purchasing of electricity, natural gas, demand response, on-site generation, renewable energy credits and/or power factor penalty correction; and

WHEREAS, the TEC desires to engage the services of an Aggregator for purposes of providing aggregation services and consulting services as required by the TEC Members as more particularly set out herein;

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein and for such other and further considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1: SCOPE OF AGREEMENT

1.1 Term. The commencement date of this Agreement shall be April 7th, 2021. The initial term of this Agreement shall be two (2) years, unless earlier terminated, as provided herein. The parties may agree to renew this Agreement at the end of this initial term for two (2) additional two (2) year terms under the same terms and conditions, for a total term of six (6) years.

1.2 Scope of Services. The Aggregator agrees to perform the obligations set forth below for each TEC Member that enters into an advisory agreement with Aggregator, and these obligations remain the Aggregator's responsibility whether performed by the Aggregator or its subcontractors or consultants:

1.2.1 Procurement & Supply Management: Tradition will manage all aspects of electricity and natural gas sourcing including the following:

- A. Data collection, analysis and dissemination of requests
- B. Customized reverse auctions,
- C. Summary of results from each pricing exercise, including key agreement terms,
- D. Procurement recommendations and rationale,
- E. Assistance with negotiation of final energy supplier agreements, and
- F. Documentation of Tradition's procurement process.

1.2.2 **Client Services:** Tradition will manage post procurement activities:

- A. Energy Agreements –Provide Client the fully executed energy supplier agreement,
- B. Contract Monitoring – Monitor the agreement to ensure proper transition between suppliers and confirm enrollment with new supplier, and
- C. Supplier interaction – Prompt assistance to resolve billing or service issues with suppliers or utilities.

1.2.3 **Energy Data Management:** Client will have secure online access to the Tradition Energy Analytics Manager (TEAMView), which will provide the following information:

- A. Account information and market reports:
 - i. Executive summary of all current and pending supply agreements,
 - ii. Copies of all supply agreements,
 - iii. All Tradition market research and regulatory reports,
 - iv. Historical market data and charts, and
 - v. Interactive dashboard to display customized charts and summary account information and location mapping.
- B. Access and training:
 - i. Access provided only to Client authorized users,
 - ii. Client can limit scope of access by user,
 - iii. Password protected, and
 - iv. Training provided to all Client authorized users.

1.2.4 **Communications:** At a minimum, each calendar quarter, Tradition will discuss with Client the following matters:

- A. Current energy market price trends and outlook,
- B. Energy procurement opportunities,
- C. Changes at the site which could impact energy usage or supply agreements, and
- D. Issues or concerns with current energy supply agreements.

1.2.5 **Client Education:** Client can participate in Tradition led programs, including the following:

- A. Energy Price Forecast Seminars and Webinars,
- B. Webinars on energy products and services, and
- C. Energy Risk-Management Seminars.

SECTION 2: AGGREGATOR'S OBLIGATIONS

2.1 The Aggregator shall perform all services under this Agreement with the care and skill ordinarily used by registered Energy Aggregator practicing under the same or similar circumstances, at the same time and in the same or similar locality. Aggregator shall comply with all standards established by the Substantive Rules promulgated by the Public Utility Commission of Texas applicable to Aggregators, and by any other applicable law or regulation. Aggregator shall use its expertise to analyze, educate and inform the contracting TEC Members and ESC regarding energy purchasing and policy, to negotiate the purchase of electricity from retail electric providers on behalf of TEC and/or its members; to advocate for TEC and its Members with Retail Service Providers and the PUC, as necessary related to the services provided. The Aggregator shall be responsible for the technical accuracy of its services and documents resulting there from. The Aggregator recognizes and accepts a client/broker relationship of trust and confidence hereby established between Aggregator, the TEC Board and Administrator, as well as the TEC Members and agrees that it shall at all times in good faith use its best efforts to advance the interests

of the TEC and its members using standards of the energy procurement and management industry and agrees to perform its Aggregation and consulting services in the highest professional manner of such industry.

2.2 The Aggregator acknowledges and understands that all public school districts and publicly funded charter schools in Texas are potential members of ESC's Texas Energy Center cooperative ("Potential TEC Members"). As such, Aggregator shall refrain from appropriating any actual or potential cooperative members for Aggregator's own benefit. Potential TEC Members shall specifically not include Texas cities, counties, or other governmental agencies. It is expressly agreed by all parties that nothing in this Agreement shall prohibit or preclude Aggregator from marketing on behalf of or performing servicing for any other administrative agent, purchasing cooperative or customer.

2.3 Aggregator shall provide ESC with a paper or electronic copy of its annual report required by the Public Utility Commission which reflects a material change to the services which effect ESC within thirty (30) days following its submission each year; as well as, any other report that the Aggregator submits or is required to submit to the Public Utility Commission of Texas that effects ESC as set forth above

SECTION 3: AGGREGATOR'S COMPENSATION

3.1 For the services provided under this Agreement, the Aggregator shall be entitled to receive an amount set forth in the following schedule. The selected Retail Electric Provider will be responsible for the collection and payment of this fee to Aggregator.

ENERGY AGGREGATION & PROCUREMENT:		
Electricity Procurement \$/per MWh	Current load of ~ 52,000 MWh 12-48+ Months <u>\$1.00</u>	Once aggregation exceeds 100,000 MWh 12-48+ Months <u>\$0.90</u>
Natural Gas \$/per MCF	< 24 Months <u>\$0.15</u> Per MCF	24 + Months <u>\$0.15</u> Per MCF

SECTION 4: ESC'S OBLIGATIONS

4.1 ESC hereby agrees to:

4.1.1 Assist Aggregator in soliciting competitive bids or competitive proposals in compliance with Texas Education Code §44.031, et. seq.

4.1.2 Act as liaison between Aggregator and TEC Members that are utilizing the services provided under this Agreement.

4.1.3 Cooperate with Aggregator during the competitive solicitation and negotiation of the Stand-By Agreement with the selected Retail Electric Provider(s), Natural Gas, Demand Response, On-site Generation, Renewable Energy Credit and/or Power Factor Penalty Correction Provider(s).

SECTION 5: ESC'S ADMINISTRATIVE FEE COMPENSATION

5.1 **Revenue Split for Administrative Costs.** The ESC shall entitled to collect an administrative fee paid by the Aggregator under this Agreement, in an amount that is equal to thirty percent (30 %) of all Energy Aggregation and Consultant Services RFP 21-AGENCY-000088 – Page 3

revenues actually received and collected by Aggregator under this Agreement minus any applicable third party contracting costs such as invoice processing, tariff analysis, bill audits, etc. ("Revenues.")("Percentage Payment"). Amounts collected and remitted by Aggregator as sales tax, if any, and remitted directly to a taxing government entity shall be **excluded** from the definition of Revenues as well as consideration of any kind paid to Aggregator for services to TEC Members that utilize any other administrative agent and group purchasing agreement other than Region One Education Service Center and ESC.

5.1.1 **Payment of Percentage Payments.** Aggregator agrees to pay ESC its compensation in quarterly installments within sixty (60) days after the close of the quarter following Aggregator's receipt of payment for any service provided under this Agreement.

5.1.2 **Reporting Requirements.** Aggregator shall prepare a quarterly report in electronic format that includes usage by the member, usage and costs by meter; and collected fees detail.

5.1.3 **Audit Rights.** During the term of the Agreement, the Aggregator shall provide the ESC, upon ESC's reasonable request, confidential access to Aggregator's financial and non-financial records regarding the services provided hereunder and any revenue earned by the Aggregator under this Agreement. The Aggregator shall keep full and accurate books and records showing all receipts. Generally accepted accounting procedures will be followed at all times. ESC shall have the right, through its legal and financial representatives, who sign a confidentiality agreement with Aggregator on terms agreeable to both parties and at all reasonable times but no more than once every 12 months, to inspect copy and audit all such books and records as may be necessary to verify the reported compensation. If, as a result of such audit, it is established that the Aggregator has understated its revenue earned by the by ten percent (10%) or more of the amount reported to the TEC Administrator during the previous annual report period under this Agreement, all reasonable expenses of said audit shall be borne by the Aggregator, and any additional Percentage Payments determined to be rightly due and owing by any audit, shall immediately be paid by the Aggregator to ESC, from the original date the Percentage Payments became due. All such books and records shall be made available to the ESC for inspection, upon its reasonable request no more than once every 12 months, at the Aggregator's office location for at least two (2) years following the expiration or termination of this Agreement.

5.1.4 **Survival.** This provision shall survive this Agreement for a period of two (2) years.

SECTION 6: TERMINATION

6.1 **Termination for Cause.** Following written notice to Aggregator given in accordance with Paragraph 12.5 of this Agreement, ESC may immediately terminate this Contract, in whole or in part, "for cause" upon occurrence of one or more of the following or similar events:

6.1.1 Aggregator's registration as an aggregator is revoked by the Texas Public Utility Commission for any reason;

6.1.2 Aggregator makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to ESC or any TEC Member in connection with this Agreement or its performance hereunder; or

6.1.3 Aggregator violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

6.1.4 Aggregator fails to cure, or initiate steps reasonably calculated to cure, a default as required by this Agreement, within the time period required for cure; or

6.1.5 Aggregator violates any rule, regulation or law to which Aggregator is bound or shall be bound under the terms of this Agreement; or

6.1.6 Aggregator attempts the sale, transfer, pledge, conveyance, or assignment of this

Agreement contrary to the terms of this Agreement.

6.1.7 Aggregator ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Aggregator's assets or properties.

6.2 Termination by Law.

6.2.1 If any State or Federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.2.2 To the extent that the State of Texas terminates the requirement for entities to be registered as Aggregators in order to aggregate electricity, then, the requirement to maintain Aggregator registration is also terminated, and the ESC may, at its option, terminate this Agreement following ten (10) business days' written notice to the Aggregator in accordance with the notice provisions contained in this Agreement.

6.3 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Aggregator shall affect an orderly transfer to ESC or to such person(s) or firm(s) as the ESC may designate, at no additional cost to ESC. Upon the effective date of expiration or termination of this Agreement, Aggregator shall cease all operations of work being performed by Aggregator, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Aggregator, in connection with the services rendered by Aggregator under this Agreement, regardless of storage medium, shall be transferred to ESC except for those documents, reports and work products which consist of Aggregator's proprietary work product and/or information. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Aggregator's sole cost and expense.

6.4 Termination for Convenience. Notwithstanding any term contained herein to the contrary, the ESC may terminate this Agreement at any time, with or without cause, by providing the Aggregator ninety (90) days' written notice. This provision will not be deemed an election of remedies by the ESC or a waiver of the ESC's right to seek any other legal or equitable remedy against the Aggregator for any matter arising in part or in whole under this Agreement.

6.5 Right to Fees Following Termination.

6.5.1 Termination of this Agreement for any reason will not terminate the Aggregator's right to continue to receive compensation payable under Supply Contracts entered into between REP Panel Members (under Standby Agreements negotiated by the Aggregator) and TEC Members or other school districts prior to termination.

SECTION 7: INSURANCE AND INDEMNITY

7.1 Insurance. Aggregator hereby agrees to provide and maintain in effect during the Term or any extension term of this Agreement, a third-party policy or policies of insurance of the type and with indemnification limits not less than the amounts set forth on the Certificate of Insurance provided by Aggregator in its RFP response to ESC.

7.2 INDEMNITY. Subject to Section 7.2.3 and 7.2.4, Aggregator agrees to and shall indemnify and hold harmless and defend the TEC, Region One, their respective boards of directors, officers, agents, and employees and attorneys (hereinafter collectively referred to as the "TEC") from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, for damage to any property, or for any breach of contract, arising out of, or in connection with the work done or services provided by Aggregator under this Agreement caused in whole or in part by the negligence of Aggregator/Consultant. It is the expressed intention of the parties hereto that the indemnity provided for in this paragraph is an agreement by Aggregator to indemnify and protect TEC from the consequences of Aggregator's negligence, whether that negligence is the sole or a concurring cause of the resulting injury, death or damage. Such indemnity shall not apply, however, to liability arising from the personal injury, death, or property damage of persons that is caused by or results from the sole negligence of the TEC. The indemnity provided for in this section shall survive the termination or expiration of this Agreement.

7.2.1 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

7.2.2 Aggregator shall promptly advise TEC in writing of any claim or demand against the TEC or Aggregator/Consultant, as the case may be, known to Aggregator due to Aggregator's activities under this Agreement, and shall see to the investigation and defense of such claim or demand at Aggregator's cost. The TEC shall have the right, at its option and at its own expense, to participate in such defense without relieving Aggregator of any of its obligations under this Article.

7.2.3 NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EXCEPT FOR DAMAGES DIRECTLY CAUSED BY AGGREGATOR'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OR THOSE THAT RESULT IN INJURY OR DEATH TO ANY PERSON, AGGREGATOR'S LIABILITY FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED TWO TIMES AGGREGATOR'S AGGREGATE COMPENSATION RECEIVED AS A RESULT OF THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

7.2.4 In no event shall Aggregator be liable for consequential, incidental, punitive, exemplary or indirect damages, including, without limitation, lost profits or lost opportunities or any other business interruption damages, in tort, contract or otherwise. In addition, Aggregator shall have no responsibility or liability for the delivery of any third party supplier or distributor's energy or the acts, omissions, misrepresentations or financial condition of any third party energy supplier or distributor.

SECTION 8: REPRESENTATIONS AND WARRANTIES

8.1 ESC and Aggregator represent and warrant that each has full power and authority to execute and perform this Agreement.

8.2 Aggregator represents and warrants that it has the experience and ability to perform the services required by this Agreement; that it will perform said services in a professional, competent and timely manner; and that its performance of this Agreement shall not violate any federal, state, or municipal

laws.

8.3 Aggregator represents that it is registered as a Class IIA Aggregator and Broker with Texas Public Utility Commission and is not otherwise disqualified from performing aggregation services under this Agreement.

8.4 Aggregator warrants that it is under no obligation to any other entity that in any way conflicts with this Agreement and that it is free to enter into this Agreement. Aggregator further warrants that it has no ownership in, or relationship with any REP or other provider of energy supply or products and receives no remuneration either monetary or in-kind from any of these kinds of individuals or companies.

SECTION 9: CONFIDENTIALITY AND DATA HANDLING

9.1 The Aggregator shall not disclose the contents of this Agreement, other than those aspects which are required to be communicated in performance of the duties under this agreement which include each participating cooperative member's historical energy usage data and legal entity information when shared with applicable third party energy suppliers as necessary for such members to select their preferred third party energy supplier, to any third-party without the express written consent of the ESC or its participating cooperative members, unless the Aggregator is compelled to make such disclosure under an applicable law or regulation or under an order of a court or tribunal of competent jurisdiction.

92 The ESCs ability to enter a confidentiality agreement respective to this Agreement is limited and governed by Chapter 552 of the Texas Government Code (commonly referred to as the "Texas Public Information Act"). Consequently, the Aggregator must specifically identify, in writing, to ESC information which Aggregator contends constitute trade secrets and/or commercial or financial information that if disclosed would cause substantial competitive harm to Aggregator and should be excepted from the disclosure requirements of the Texas Public Information Act. In response to any request from a third-party for disclosure of this information, the ESC shall decline to release the information and, in accordance with Texas Government Code §552.305, as amended, notify the Aggregator of the request for disclosure, and request an Attorney General opinion as to whether or not the information should be released. The ESC is not obligated to advocate whether or not the subject information is excepted from disclosure. It is the Aggregator's/Consultant's sole responsibility to present arguments against disclosure to the Attorney General.

93 All reports and data provided to, created or utilized by Aggregator in connection with its provision of services that contain any TEC Members' or any ESC's data or information shall remain property of TEC. Aggregator agrees to hold in confidence all employee information received from the Aggregator shall use such information as necessary to complete the scope of services outlined herein and for no other purpose. Aggregator shall protect all information received from TEC from use by unauthorized third-parties or associated entities, misuse, espionage, loss or theft. This information will not be transmitted or used for the purpose of solicitation in any form. Aggregator shall comply with all applicable State and Federal laws and regulations protecting the privacy of citizens and TEC Members.

SECTION 10: CONSULTANT MATERIALS AND SOFTWARE

10.1 **Aggregator Materials.** Except for the Aggregator tools, processes, software, pre-existing materials including contracts and methodologies, products, services, data, documentation, know-how, techniques, including data, notes, reports, or other documents that are made or compiled by Aggregator during the term of this Agreement in connection with the performance of the services that do not include any tangible or intangible property of any applicable TEC Member or ESC (collectively, the "Aggregator Materials") which the TEC acknowledges and agrees are owned by the Aggregator the TEC shall be entitled to and shall own all of the results, proceeds, and work product of Aggregator's and contracts

prepared by attorneys on behalf of TEC. The Aggregator Materials, except to the extent placed in the public domain by the Aggregator shall be considered trade secrets of the Aggregator/Consultant.

102 Software License. TEC agrees that the software (including database formats and source code and output) developed and used by Aggregator in support of this Agreement is the sole and exclusive property of the Aggregator or is utilized by Aggregator with the requisite permission needed. The Aggregator by execution of this Agreement grants TEC, its Administrator, and its Members a limited license to the use of the software in support of this Agreement. Any copying, reproduction, modification, distribution, or use by the Customer and participating cooperative members beyond the scope described in the license agreement is strictly prohibited.

SECTION 11: MEDIATION

11.1 In the event that the TEC or the Aggregator shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request a mediation of the dispute.

11.2 Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

11.3 In the event the TEC and the Aggregator are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this Paragraph shall be deemed to have occurred.

11.4 At all times during the course of any dispute resolution process, the Aggregator shall continue diligently and without delay to perform the services and obligations of the Agreement unless the matter of the dispute makes it impractical to do so.

11.5 The TEC and Aggregator hereby agree that no claim or dispute between the ESC and Aggregator arising out of or relating to this Agreement shall be decided by any arbitration proceeding including, without limitation, any proceeding under the Federal Arbitration Act (9 U.S.C. Sections 1-14), or any applicable State arbitration statute, including, but not limited to, the Texas General Arbitration Act.

SECTION 12: GENERAL CONDITIONS

12.1 Governing Law and Venue. This Agreement will be construed in accordance with the laws of the State of Texas, including that body of law pertaining to conflict of laws. Venue for any dispute shall lie in Hidalgo County, Texas.

12.2 Assignment/Delegation. The Aggregator may not assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of ESC, which consent shall not be unreasonably withheld. Any attempted assignment or delegation without such consent will be void. The sale of all or substantially all of the assets or equity of Aggregator shall not be deemed an assignment or delegation of the Aggregator requiring ESC's consent.

12.3 Waivers and Consents. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver of consent shall be deemed to be or shall constitute a waiver of consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given and shall not constitute a continuing waiver or consent.

12.4 Modifications. This contract can be modified or rescinded only by a writing signed by both parties and their duly authorized agents.

12.5 Notices. Any notice hereunder may be given by U.S. certified or registered mail, return receipt

requested, to the parties addressed to the address listed in the signature block of each below. Such addresses may be changed, or additional addresses added from time to time by written notice of such change given in accordance with this section.

12.6 **Broker Complaints.** Complaints and inquiries regarding Aggregator's broker services should be directed to the Public Utility Commission of Texas, Customer Protection Division, Telephone: 1-888-782-8477, Email: customer@puc.texas.gov.

12.7 **Administrative Remedies.** Aggregator agrees to exhaust its administrative remedies under Region One Education Service Center Policy before seeking judicial relief of any type in connection with any dispute or controversy related to this contract.

12.8 **Severability.** In the event any provision of this Agreement shall be found invalid, void and/or unenforceable, for any reason, neither this Agreement generally nor the remainder of this Agreement shall thereby be rendered invalid, void and/or unenforceable, but instead each such provision, and (if necessary) other provisions hereof, shall be reformed by a court of competent jurisdiction so as to effect, insofar as is practicable, the intention of the parties as set forth in this Agreement; provided, however, that if such court is unable or unwilling to effect such reformation, the remainder of this Agreement shall be construed and given effect as if such invalid, void and/or unenforceable provisions had not been a part hereof.

12.9 **Construction.** The *contra proferentem* doctrine shall not apply. Any ambiguities in this Agreement shall not be construed in favor of or against either party, as this Agreement was negotiated and both parties were involved in the wording and inclusion of all clauses.

12.10 **Force Majeure.** "Force Majeure" shall mean any event that is not within the reasonable control of the Party claiming Force majeure ("Claiming Party") and which could not be outcome by the exercise of due diligence by the Claiming Party and for which there is not a commercially reasonable substitute therefore. In the event of Force Majeure, the Claiming Party is excused from performance under this Agreement (except for making payments then due or become due under the Agreement for performance prior to the Force Majeure event after providing written notice to the other party setting forth the details of the Force Majeure and the actions taken to remedy for Force Majeure). The Claiming party shall take all commercially reasonable measures to remedy the Force Majeure as quickly as possible.

12.11 **Non-Waiver.** No delay or omission by any party to exercise any right or power under this Agreement will impair such right or power or be construed to be a waiver thereof. No waiver by either of any default or non-performance shall be construed as a waiver of any other default or non-performance under this Agreement, whether of a like kind or of another nature. Nothing herein shall be construed as a waiver of ESCs governmental immunity to suit and liability beyond the limited waiver provided by law.

12.12 **Severability.** Except as otherwise stated in this Agreement, any provision or article declared unlawful or unenforceable by a court of law or regulatory agency with jurisdiction, or deemed unlawful due to a statutory change, shall be deemed to be omitted and shall not affect the validity or enforceability of any of the other provisions of this Agreement.

12.13 **Representation.** The person executing this Agreement on behalf of ESC represents that he or she has the authority to enter into this Agreement on behalf of ESC.

12.14 **Headings.** All headings used in this Agreement are for convenience of reference only and are not to be used in interpreting the obligations of the parties under this Agreement.

12.15 **Third-Party Beneficiaries.** This Agreement inures to the benefit of and obligates only the Parties executing it, including all members of the Texas Energy Center. No other person or entity shall be deemed a party or third-party beneficiary of any term or provision of this Agreement. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

12.16 No Waiver of Immunity. By this Agreement, the ESC does not consent to litigation or suit, and the ESC hereby expressly revokes any consent to litigation that it may have granted by the terms of this Contract or any other contract or agreement, any charter, or applicable State law. Nothing contained herein shall be construed in any way so as to waive in whole or part the ESCs sovereign immunity. Aggregator assumes full responsibility for its work performed hereunder and hereby releases, relinquishes and discharges the ESC, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether they be either of the parties hereto, their employees, or other third parties) and any loss of or damage to property (whether the property be that of either of the parties hereto, their employees, or other third parties) that is caused by or alleged to be caused by, arising out of, or in connection with Aggregator's work to be performed hereunder. This release shall apply with respect to Aggregator's work regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance.

12.17 Expenses. Unless otherwise provided herein, each party hereto shall bear the responsibility of any and all expenses incurred by the party in the performance of any obligation under this Agreement.

12.18 Attorney Fees. Any party hereto that prevails in enforcing any term of this agreement against the other party shall be entitled to recover its reasonable and necessary attorney's fees and costs of suit against the non-prevailing party.

12.19 Texas Public Information Act. The requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code, Subchapter J, may apply to this Agreement if it is valued at more than \$1 million. The Aggregator agrees the Agreement can be terminated if the Aggregator knowingly or intentionally fails to comply with a requirement of that subchapter, including the preservation of all "contracting information" (as defined in 552.003) and the provision, upon request of the ESC, of all contracting information. Contracting information includes, but is not limited to, records, communications and other documents related to any selection process, contract, payments, receipts, scope of work, and performance.

12.20 By entering into this Agreement, Supplier certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. Supplier hereby certifies and verifies that neither Supplier, nor any affiliate, subsidiary, or parent company of Supplier, if any (the "Supplier Companies"), boycotts Israel, and Supplier agrees that Supplier and Supplier Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

12.21 Entirety. This Agreement constitutes the entire agreement between the parties and supersedes all prior communications pertaining to the subject matter of this Agreement.

The Parties represent that the undersigned individuals have the authority to execute this agreement. The parties agree to be bound by all terms of this Agreement as evidenced by the signatures of the authorized representatives listed below.

AGGREGATOR:

**TEXAS ENERGY CENTER, by and
through its Administrator, REGION ONE
EDUCATION SERVICE CENTER**

By: 

By: 

Printed Name: Brian McDermott

Printed Name: Dr. Eduardo Cancino

Title: Executive Director

Title: Interim Executive Director

4/7/2021
Date

Apr 8, 2021
Date

ADDRESS FOR NOTICE:

ADDRESS FOR NOTICE:

Region One Education Service Center
Attn: Executive Director
1900 West Schunior Street
Edinburg Texas 78541-2233