



District User License Agreement for Texas Education Service Center Curriculum Collaborative (TESCCC) CSCOPE Curriculum Management System and Content

DISTRICT USER LICENSE AGREEMENT

This District User License Agreement (this “**DULA**”) is entered into as of July 1, 201_ (the “**Effective Date**”) between the Texas Education Service Center Curriculum Collaborative (“**TESCCC**”), a Texas nonprofit corporation, currently comprised of 19 Education Service Centers in the State of Texas (each of the ESCs who is a member of TESCCC being referred to as an “**ESC**”), and Ector County ISD, an independent school district in the State of Texas (the “**ISD**”).

RECITALS

A. TESCCC has developed, for the benefit of independent school districts, charter schools, and other educational institutions in the State of Texas (collectively, “**ISDs**”), a K-12 curriculum framework including assessments and assessment items, answer keys, curriculum components and resources, instructional components and resources, instructional strategies, and professional development courses and lessons (collectively, the “**Content**”) and plans to develop additional content in the future (the “**Additional Content**”).

B. National Education Resources, Inc. (“**NER**”) has developed and currently hosts a website (the “**Website**”) containing the Content in an easily usable format. The Content, as provided on the Website, is known as “**CSCOPE**.”

C. NER has entered into an agreement with TESCCC, effective as of July 1, 2010 (the “**Services Agreement**”), under which it will provide services (the “**Services**”) to the ISDs who license the Content from TESCCC.

D. The parties wish to enter into this DULA in order to license the right to use the Content and the Website to the ISD and to receive, through the Services Agreement, the right to receive the Services from NER.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this DULA shall have the meaning set forth in the Recitals, in this Section 1 or elsewhere in this DULA:

1.1 “**Additional Content**” has the meaning ascribed to it in Recital A.

1.2 “**Authorized Users**” means the employees of the ISD, employees and representatives of TESCCC and the ESCs, respectively, who TESCCC and ESCs designate as Authorized Users, and any individual who has received TESCCC’s express written consent to be an Authorized User.

1.3 “**Confidential Information**” includes: proprietary information of either party to this DULA and all other information disclosed under this DULA by one party to the other: (i) which (x) when disclosed in writing, is labeled or otherwise marked as being confidential; and (y) when disclosed orally, is identified as confidential at the time of disclosure, with subsequent confirmation to the other party, in writing, within 30 days after disclosure, identifying the date and type of information disclosed, and the fact that the information is confidential; or (ii) which a reasonable person under similar circumstances would ascertain is proprietary and confidential.

1.4 “**Content**” has the meaning set forth in Recital A.

1.5 “**CSCOPE**” has the meaning set forth in Recital B.

1.6 “**ESC**” has the meaning set forth in the first paragraph of this DULA.

1.7 “**Event of Default**” means: (i) a material breach of any representation, warranty, covenant or obligation of a party under this Agreement, and the failure of that party to remedy the material breach within 60 days following its receipt of written notice of the breach from the other party; (ii) a party becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings; or (iii) TESCCC or NER cease operations.

1.8 “**NER**” has the meaning set forth in Recital B.

1.9 “**Event of Default**” means: (i) a material breach of any obligation of a party under this DULA, and the failure of that party to remedy the material breach within 60 days following its receipt of written notice of the breach from the other party; (ii) a party becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings; or (iii) the occurrence of any other event defined in this DULA as an Event of Default.

1.10 “**Intellectual Property Rights**” means all rights with respect to copyrights, trademarks, trade secrets, patents, know-how and all other legally protectable or proprietary intellectual property rights of any nature whatsoever.

1.11 “**ISD Data**” means non-public, confidential or proprietary information of TESCCC or an ISD that is disclosed to or accessible by NER in connection with this DULA or any of the Services. Without limitation, ISD Data includes personalized lesson plans, lecture outlines, and other materials created by ISD personnel for which the ISD has not given written permission to make available to other ISDs or Authorized Users.

1.12 “**ISDs**” has the meaning set forth in Recital A.

1.13 “**Services**” has the meaning ascribed to it in Recital C.

1.14 “**Services Agreement**” has the meaning set forth in Recital C.

1.15 “**Website**” has the meaning ascribed to it in Recital B.

2. License

Subject to the terms of this DULA, TESCCC hereby grants the ISD the non-exclusive, non-transferable and non-assignable license, during the term of this DULA, to use, copy and distribute the Content, subject to the following restrictions:

2.1 The ISD shall use the Content solely (i) for the ISD's educational purposes; (ii) on campuses which are part of the District; and (iii) through Authorized Users.

2.2 The ISD shall not use the Content for commercial purposes.

2.3 Unless it has obtained the express prior written consent of TESCCC, which may be granted or withheld in TESCCC's sole discretion, the ISD shall not, directly or indirectly: (i) provide the Content to anyone who is not an Authorized User; or (ii) allow anyone who is not an Authorized User to have access to the Website.

2.4 Unless it has obtained the express prior written consent of TESCCC, which may be granted or withheld in TESCCC's sole discretion, the ISD shall only grant Authorized Users such access to the Content and the Website as is necessary to allow the Authorized User to perform the services they have contracted to perform for the ISD.

2.5 The ISD shall not sell, lease, sublicense, disclose, assign, or transfer the Content. The ISD shall not use the Content to operate a service bureau, to act an application service provider or for any commercial purpose.

2.6 The ISD shall not, directly or indirectly, attempt to reverse engineer, decompile, disassemble or otherwise attempt to access or discover the source code for the Website.

2.7 The ISD shall not use, remove, delete, modify, obscure or alter in any way any trademark, tradename, product name or logo, or any copyright or trademark notice or other proprietary notice, legend, symbol or label contained in or attached to the Content for the Website.

2.8 The ISD shall not incorporate any portion of the Content into another software program, database or alternative content delivery system without the express written consent of TESCCC, which may be granted or withheld in TESCCC's sole discretion.

2.9 The ISD shall use its best efforts to prevent access to the Website and Content by anyone who is not an Authorized User. If the ISD becomes aware of any unauthorized use, it shall immediately give written notice of the unauthorized use to TESCCC and NER and cooperate with TESCCC and NER to terminate the unauthorized use.

2.10 The ISD shall use its best efforts to ensure that Authorized Users affiliated with the ISD comply with the terms and restrictions of this DULA and the Terms of Use on the Website.

2.11 Except as expressly provided in this DULA, the ISD shall not, without prior express written consent of TESCCC, copy, distribute or publicly display any portion of the Content.

2.12 The ISD shall not adapt, modify or create derivative works based on the Website, including the Content, other than for use by the ISD in accordance with the terms of this DULA. The ISD shall provide TESCCC with written notice of any efforts to create adaptations, modifications and derivative works, and with all information relating to its efforts as is requested by TESCCC. All

adaptations, modifications and derivative works that the ISD creates shall be the exclusive property of TESCCC.

2.13 The ISD shall not use the Content or the Website in any manner that is not expressly authorized by the terms of this DULA.

All rights to the use of the Content that are not specifically granted to the ISD in this Agreement are reserved by TESCCC.

3. Right to Receive Services.

3.1 For the term of this DULA, NER shall provide the ISD with, and the ISD shall have the right to receive from NER, all Services described in the Services Agreement as if the ISD were a party to the Services Agreement.

3.2 NER is executing this DULA to indicate its acknowledgement that it is required to provide all of the Services described in the Services Agreement to the ISD and that it will be compensated for the provision of the Services through payments from the ESCs. NER further acknowledges that these payments constitute valid consideration to support its obligations to the ISDs under this DULA.

4. Required Hardware and Software

4.1 The ISD is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed by the ISD to use CSCAPE. The ISD acknowledges that it has received a copy of written specifications established by NER for the hardware and software necessary to use CSCAPE as contemplated by this DULA. The ISD further acknowledges that Authorized Users whose computer systems do not meet the minimum requirements established by NER shall not be entitled to access to the Website. In addition, the ISD agrees that the minimum specifications may be modified from time to time as long as it receives at least 90 days prior written notice of any changes to the system requirements.

4.2 By its execution of its acknowledgement to this DULA, NER confirms its obligation to provide the information required by Section 4.1 to TESCCC in order to enable TESCCC to fulfill its obligations under that Section.

5. Obligations of TESCCC

5.1 TESCCC will oversee the relationship between NER and the ESCs and will take appropriate steps to cause NER to provide the Services to the ISD.

5.2 TESCCC will devote appropriate resources, in its sole discretion, to create Additional Content and will promptly provide completed Additional Content to NER for incorporation into the Website.

5.3 TESCCC will devote appropriate resources, in its sole discretion, to work with NER to develop additional Website features and functionalities for the benefit of the ISD.

5.4 TESCCC will provide Terms of Use for posting on the Website.

6. Consideration. Under a separate agreement between the ISD and the ESC, the ISD shall pay the ESC for the right to license the Content and receive Services as provided by this DULA. Under a separate agreement between NER and TESCCC, TESCCC shall receive consideration for the provision of the

Content as provided by this Agreement. Although neither party is required to make any payment to the other under this DULA, each party acknowledges that the arrangements described in this Section 6 constitute fair and adequate consideration for the performance of its obligations under and its compliance with the terms of this DULA.

7. Ownership and Use of Intellectual Property.

The ISD acknowledges that it has no intellectual property rights or ownership interest whatsoever in any Content (including but not limited to any text, images, photographs, animations, video, audio, music, “applets” incorporated into the application, and the related the printed materials and documentation), the Website (including but not limited to the branding, navigation, and “look and feel” of the Website), the name “CSCOPE” (including any related logos, trademarks and service marks), or the products, services, programs or technology that TESCCC makes available to the ISD through this DULA or otherwise, and whether protected by copyright, trade secret, patent or other intellectual property rights.

8. Term and Termination.

8.1 Except as otherwise provided in this Section 8, this Agreement shall commence on the Effective Date and terminates one year from the Effective Date (the “**Initial Term**”).

8.2 This Agreement shall terminate automatically on the termination of the Services Agreement.

8.3 Following the Initial Term, either party may terminate this Agreement with or without cause by giving the other party 30 days advance written notice of termination.

8.4 Either party may terminate this Agreement immediately on an Event of Default.

8.5 The provisions of Sections 1, 7, 9, 10, 11, 12, and 13 shall survive the termination of this DULA.

9. Indemnification

9.1 Each party shall indemnify the other party and hold the other party and each of its respective directors, officers, employees and agents (each, an “**Indemnitee**”) harmless, from and against any and all claims, damages, losses, causes of action, suits, settlements, awards and judgments (“**Claims**”) of any nature brought, alleged, asserted against or incurred by any Indemnitee, including, but not limited to, any Claims brought under the concepts of strict liability, contract, tort, statute or regulation, and specifically including any Claims relating to the infringement of any Intellectual Property Right or similar right of a third party or any other basis and including all costs and expenses of investigation, defense and resolution of such Claims (including, without limitation, attorney’s fees, expert witnesses, and other reasonably related costs and expenses including any internal costs incurred by any Indemnitee) to the extent arising from the failure of the indemnifying party to comply with its obligations under this DULA, the inaccuracy of any representations or warranties made under this DULA, or any negligence or misconduct of the indemnifying party or its employees, contractors or other representatives, or any infringement claim.

9.2 Each Indemnitee shall give the other party (the “**Indemnifying Party**”) prompt written notice of any threatened or actual Claim. However, failure to promptly notify the Indemnifying Party shall not relieve the Indemnifying Party of its indemnification obligations except to the extent the failure materially prejudices its ability to investigate or defend the Claim. The Indemnitee shall provide

commercially reasonable cooperation to the Indemnifying Party in the investigation and defense of any Claim and grant the Indemnifying Party exclusive control of the defense and settlement of the Claim except that no Claim in which an Indemnitee is named as a defendant may be settled or compromised without that Indemnitee's express written consent, which may be conditioned upon the execution of a release of all Claims against some or all of the Indemnitees and the party bringing Claim.

10. Confidentiality

10.1 Each party (as applicable, a "**Disclosing Party**") acknowledges that, except as otherwise provided by law, all Confidential Information disclosed to the other party (the "**Receiving Party**") pursuant to this DULA is owned by the Disclosing Party. This Agreement shall not be deemed to vest in either party any rights to the Confidential Information of the other party. Each party shall keep the Confidential Information strictly confidential and prevent the unauthorized use, disclosure, or publication thereof, whether negligent, inadvertent or otherwise, by its employees, consultants, agents or representatives. Each party shall prevent unauthorized access to the Confidential Information and shall permit access only to those persons authorized to work on the matter to which the Confidential Information relates. The non-disclosure obligations shall continue after the termination of this DULA.

10.2 Each party consents to the disclosure of the other party's Confidential Information to those employees, contractors and consultants who have a need to know such information in order to comply with the terms of this DULA and who have agreed to be bound by the terms of this Section 10.

10.3 On termination of this DULA, either party may make a written request for return of any Confidential Information, and within 10 days after such request, unless retention is required by law, the other party shall deliver to the requesting party: (a) all materials furnished to the Receiving Party by the Disclosing Party; and (b) all tangible media of expression in the Receiving Party's possession or control which incorporate or include any Confidential Information of the Disclosing Party. Electronic records shall be delivered in the format requested by the Disclosing Party. In addition, the Receiving Party shall permanently delete any of the Disclosing Party's Confidential Information that is electronically stored on all equipment under its control. A Receiving Party shall, within 10 days of written request, provide the Disclosing Party with written certification of the Receiving Party's compliance with its obligations under this Section 10.

10.4 Except to the extent that confidentiality is required by law, the provisions of this Section 10 do not apply to the extent that: (i) the information communicated was already known to the Receiving Party, without any obligation to keep it confidential, at the time of the Receiving Party's receipt of the information; (ii) the information communicated was received in good faith from a third party lawfully in possession of the information and having no obligation to keep it confidential; (iii) the information communicated was publicly known at the time of receipt or has become publicly known other than by a breach of this DULA; (iv) the information was independently developed without reference to the Confidential Information. In addition, this Section 10 shall not apply if the Receiving Party is ordered by an administrative agency or other governmental body of competent jurisdiction (including a request under the Texas Open Records Act or similar law or regulation) to disclose the Confidential Information. However, the Receiving Party will attempt to notify the Disclosing Party prior to disclosure in order to give the Disclosing Party a reasonable opportunity to seek an appropriate protective order, and the Receiving Party shall disclose only that portion of the Confidential Information that it is required to disclose under an administrative or other governmental order.

11. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other that:

11.1 The execution and delivery of this DULA has been duly authorized by the governing board of such party and that this DULA is valid and binding.

11.2 It is under no obligation or restriction, nor will it assume any obligation or restriction, that does or would in any way interfere or conflict with, or that does or would present a conflict of interest concerning performance of its obligations under this Agreement.

11.3 THE WARRANTIES STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY EACH PARTY TO THE OTHER. THERE ARE NO OTHER WARRANTIES WITH RESPECT TO THE CONTENT, THE WEBSITE, CSCOPE OR ANY OTHER MATTER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF ONE PARTY HAS INFORMED THE OTHER TO THE CONTRARY. NO AGENT OF EITHER PARTY IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF THE PARTIES AS SET FORTH IN THIS DULA.

12. LIMITATION OF LIABILITY.

12.1 THE TOTAL LIABILITY OF EITHER PARTY WITH RESPECT TO THIS AGREEMENT (INCLUDING LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE AMOUNT PAID UNDER THIS AGREEMENT BY THE ISD TO THE ESC FROM WHICH IT ACQUIRED THE RIGHT TO ENTER INTO THIS AGREEMENT IN THE 12-MONTH PERIOD PRIOR TO THE OCCURRENCE OR CIRCUMSTANCE GIVING RISE TO THE ALLEGED CAUSE OF ACTION. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ATTORNEYS' FEES, IN ANY WAY DUE TO, RESULTING FROM OR ARISING IN CONNECTION WITH THIS AGREEMENT.

12.2 NOTWITHSTANDING THE FOREGOING, THERE IS NO LIMITATION OF LIABILITY FOR VIOLATION OF THE RESTRICTIONS SET FORTH IN SECTION 2 OR THE PROVISIONS OF SECTION 10.

13. MISCELLANEOUS.

13.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13.2 Third Party Beneficiaries. There are no third party beneficiaries to this DULA.

13.3 Governing Law. This Agreement, and all related matters, shall be governed by the laws of the State of Texas, without regard to choice of law or conflict of law principles that direct the application of the laws of a different state.

13.4 Jurisdiction and Venue. Any action or proceeding in connection with this DULA shall be brought in Travis County, Texas. The parties irrevocably (i) submit to the exclusive jurisdiction of such courts, and (ii) waive any objection to venue of any action or proceeding or any argument that such court is in an inconvenient forum.

13.5 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same

instrument. An executed email/PDF of this DULA, followed by an original signed document delivered by overnight mail, shall be deemed an original executed copy of this DULA.

13.6 Construction. Each party has had the opportunity to consult with an attorney of its choice in the negotiation and consummation of this DULA and the parties have participated jointly in the negotiation and drafting of this DULA. Accordingly, if an ambiguity or question of intent or interpretation arises, this DULA shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this DULA. Whenever used in this DULA, the singular number will include the plural, and the plural number will include the singular, and pronouns in the masculine, feminine, or neuter gender will include each other gender. Headings are used for convenience only, and are not to be given substantive effect. All references to section numbers are references to sections of this DULA, unless otherwise specifically indicated. Recitals are part of this DULA and shall be considered in its interpretation.

13.7 Notices. All notices or other communications required or permitted to be given pursuant to this DULA shall be in writing and shall be properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) delivered in person to the required addressee; or (iii) delivered to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the required addressee. Notice so mailed shall be effective five days following its deposit with the United States Postal Service; notice sent by a commercial delivery service shall be effective one day following delivery to the commercial delivery service; notice given by personal delivery shall be effective when received by the addressee; and notice given by other means shall be effective only when received at the designated address of the required addressee. For purpose of notices, the addresses of the parties shall be as follows:

To: Ector County Independent School District
P. O. Box 3912
Odessa_, Texas 79760

To: Texas Education Service Center Curriculum Collaborative
5701 Springdale Road
Austin, Texas 78723

Any party shall have the right to change its address for notice to any other location within the continental United States by giving 30 days written notice to the other party in the manner set forth in this Section 13.7.

13.8 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of any of this DULA, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which the party may be entitled.

13.9 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements or understandings between the parties. No amendment to this DULA shall be valid unless it is in writing and signed by both parties.

13.10 Injunctive Relief. Breach of certain of the obligations in this DULA, including Sections 2.1 through 2.11 (relating to restrictions), 9 (Indemnification), 10 (Confidentiality), as well as breach of certain other provisions of this DULA, would cause irreparable damage to a party and therefore, in addition to all other remedies available at law or in equity, each party shall have the right to seek equitable and injunctive relief for breach of those provisions without the necessity of posting bond or proving damages. In addition, each party shall be liable to the other under this DULA if there is any breach by a party or its affiliates, or by their respective employees, contractors, consultants, auditors, agents or representatives.

13.11 No Partnership. This DULA is not intended in any manner to and does not create the relationship of principal and agent between the parties, nor shall this DULA be deemed to establish a partnership or joint venture. Neither party shall have the power, express or implied, to obligate or bind the other in any manner whatsoever. Each party shall be solely responsible for compensating its own employees, including the payment of employment-related taxes.

13.12 Severability. If any provision of this DULA is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, the invalid, illegal or unenforceable provision shall be severed from the remainder of this DULA, and the remainder of this DULA shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, to the minimum extent necessary to render the provision valid, legal and enforceable and to the extent necessary to adjust equitably the parties' respective rights and obligations under this DULA.

13.13 Delays or Omissions. No course of dealing between the parties, no failure to exercise and no delay in exercising, any right under this DULA shall operate as a waiver of that right, nor shall any single or partial exercise of any right under this DULA preclude any other or further exercise of that or any other right. No waiver shall be effective unless made in writing and signed by all of the parties. All remedies, either under this DULA or by law or otherwise afforded to any party, shall be cumulative and not alternative.

Executed as of the Effective Date.

Ector County Independent School District

**Texas Education Service Center
Curriculum Collaborative**

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____