



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

This CSCOPE License Agreement ("Agreement") is entered into by and between the following Parties:

Texas Education Service Center Curriculum Collaborative ("TESCCC")

5701 Springdale Road
Austin, Texas, 78723

Education Service Center, Region 20
1314 Hines Avenue
San Antonio, Texas 78208-1899

RECITALS

WHEREAS, TESCCC has developed and owns or licenses certain object code, source code, copyrights and ancillary supporting documentation relating to TESCCC's CSCOPE System and Content;

WHEREAS, TESCCC has developed a comprehensive online instructional system known as CSCOPE for K-12 schools consisting of a framework and collection of systemic curriculum model components, including but not limited to, reports, assessments and assessment items, answer keys, curriculum, instructional resources, instructional strategies, lesson plans, professional development courses and lessons, professional development assessments, scope and sequence, system help, and the metadata associated with all of the proceeding;

WHEREAS, the Service Center desires to license the CSCOPE System in order to market CSCOPE to school districts and schools, and to provide access to CSCOPE to Service Center Authorized Users;

WHEREAS, TESCCC desires to provide the Service Center with such license;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties (each a "Party", and together, the "Parties") agree as follows:

1. DEFINITIONS.

(a) "Authorized Users" are the employees, faculty, and staff officially affiliated with the Service Center, or contract employees, consultants, or temporary employees of the Service Center that have entered into confidentiality agreements with the Service Center with respect to CSCOPE, that is a current member of TESCCC and is in good standing for the school year in which it licenses the CSCOPE System and Content.

(b) "CSCOPE" means the combination of hardware, software, Content, network connectivity, security, expertise, licenses and sublicenses, as it may exist or may exist in the future, which collectively creates, administers, and operates the web-based curriculum

support system provided and owned by TESCCC, which is accessible only through the Internet, and includes, but is not limited to, assessments, assessment reporting, curriculum, lesson plans, teaching calendar, professional development, and additional components that may be added in the future.

(c) "Content" means all content hosted on the CSCOPE Website or otherwise offered in connection with CSCOPE, including, but not limited to, reports, assessments and assessment items, passages, answer keys, curriculum, instructional resources, scope and sequence, instructional resources, instructional strategies, lesson plans, calendaring, professional development courses, lessons, and resources, system help, topic-specific help, together with the metadata associated with all of the preceding.

(d) "Effective Date" means the date of final execution of this Agreement by each of the Parties to the Agreement.

(e) "Third Party" means any person, entity, school district or group other than TESCCC, the Service Center, and the Authorized Users of Service Center.

(f) "Website" means the CSCOPE website currently located at http://__portal.esc20.net/portal/page/portal/esc20public/CSCOPE_____, or any website or domain that may be designated by TESCCC in the future for access to the CSCOPE System.

2. TERM AND TERMINATION.

(a) Contract Term. The term of this Agreement shall be for a period commencing on the Effective Date and terminating on June 30, 2011. The period from the Effective Date through the termination date described in this Section 2(a) is the "Primary Term."

(b) Renewal Term. This Agreement will be automatically extended for successive one (1) year terms unless terminated by either Party (each, a "Renewal Term"). The commencement date of any renewal term shall be July 1 of each year following the Primary Term (each a separate "Commencement Date") and the termination date for any Renewal Term shall be on the anniversary of the termination date for the Primary Term (together with the termination date for the Primary Term, a "Termination Date"). The current term of this agreement, whether a Primary or Renewal Term, is referred to as the "Contract Term."

(c) Termination by TESCCC. In the event that: (i) the Service Center fails to pay any invoice as it comes due; (ii) the Service Center ceases to be a member of TESCCC; or (iii) the Service Center breaches this Agreement, each an "Event of Default", and the Service Center fails to cure the Event of Default within thirty (30) days of the receipt of written notice from TESCCC of the occurrence of such Event of Default, TESCCC may terminate this Agreement upon written notification to the Service Center of such termination. Termination will become effective thirty (30) days upon written notice.

(d) Termination by Service Center. Service Center may terminate without cause at the end of the Contract Term by providing sixty (60) days written notice of intent to terminate at the end of the term. In the event that TESCCC breaches this License Agreement and fails to cure the breach within thirty (30) days of the receipt of written notice from Service Center distinctly identifying the breach,, the Service Center may discontinue service and terminate this Agreement with written notification to TESCCC of such termination.. Termination will become effective thirty (30) days after written notice of termination after uncured breach. Upon termination, the Service Center shall make payment to TESCCC for services provided by TESCCC pursuant to the terms of this Agreement, and pursuant to the Bylaws of TESCCC, through and including the date of termination of the current Contract Term. TESCCC shall pay no refunds to the Service Center.

(e) Effect of Termination of the Agreement.

(i) Access to CSCOPE System. Upon termination of this Agreement, all rights granted to the Service Center relating to the CSCOPE System under this Agreement shall terminate, and TESCCC may immediately disable the Website and terminate the Service Center's access to the CSCOPE System.

(ii) Service Center Responsibilities. Upon termination of this Agreement, the Service Center agrees to delete, erase or otherwise permanently remove, within sixty (60) days of such termination, all Content from any storage device, including but not limited to servers, work stations, hard drives, CDs, USB flash drive, and Zip disks within the control of the Service Center. The Service Center agrees to immediately notify all Service Center Authorized Users of the termination of this Agreement and to direct all Service Center Authorized Users to remove, delete and/or destroy all CSCOPE Content in electronic or printed form. Additionally, the Service Center agrees to return or destroy all CSCOPE, and Derivative Products in the possession of or created by the Service Center.

3. LICENSE; RESTRICTIONS ON CSCOPE USE.

(a) License. Subject to the terms of this Agreement, the Service Center and its Authorized Users are granted a nonexclusive, nontransferable, and non-assignable license during the term to access and use the CSCOPE System and Content according to the restrictions and terms of this Agreement. Pursuant to this Agreement, the Service Center and its Authorized Users are granted the rights solely to:

(i) Access and use the CSCOPE System and Content for Service Center purposes, and print or otherwise duplicate and distribute individual curriculum components contained in the CSCOPE System and Content as part of educator-developed curriculum and instruction materials administered by Authorized Users, for Service Center purposes only, including for the purposes of marketing, demonstrating, or licensing CSCOPE during the term of the Agreement. Any other duplication, distribution or use without express written permission is strictly prohibited.

(b) License Restrictions.

(i) Other than as expressly granted and subject to the license granted herein, and except as otherwise provided for in the TESCCC Bylaws, the Service Center and its Authorized Users have no right, title or interest in the CSCOPE System and Content. At all times, TESCCC shall have the exclusive right to retain control over the CSCOPE System and Content.

(ii) In accordance with the TESCCC Bylaws, the Service Center shall market the CSCOPE System and Content to school districts and schools within the territory which is serviced by the Service Center. The Service Center may not sell, rent, lease, sublicense, disclose, market, assign, transfer or otherwise provide any content or access to CSCOPE System or Content, or use the web site to operate a service bureau or to act as an application service provider. The Service Center may provide temporary access to the CSCOPE System and Content to school districts and schools for marketing and sales purposes, for a period of up to fourteen (14) days, provided the school district or school first enters into a confidentiality agreement with respect to the CSCOPE System and Content. Content may not be transferred or provided to another entity or Third Party without express prior written permission of TESCCC.

(iii) Except as otherwise requested or authorized in writing by TESCCC, the Service Center shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to access or discover the CSCOPE System source code.

(iv) The Service Center may not use, remove, delete, modify, obscure or alter in any way any trademark, trade name, product name, or logo, or any copyright or trademark notice or other proprietary notice, legend, symbol, or label contained in or attached to the CSCOPE System and Content.

(v) The Service Center shall not incorporate any portion of the CSCOPE System and Content, including but not limited to, framework documents, instructional plans, lesson plans, assessment items and materials, scoring guides and rubrics, into another software program or database, without express written permission from TESCCC and its suppliers.

(vi) The Service Center shall make best efforts to prevent access to the CSCOPE System and Content by unauthorized persons, unauthorized entities, or Third Parties, and is responsible for terminating any unauthorized access or use outside the permitted license, of which the Service Center has actual notice or knowledge, within 3 days of such notice or knowledge.

(vii) The Service Center shall make best efforts to ensure that Authorized Users affiliated with the Service Center comply with the terms and restrictions of this Agreement.

(viii) Except as expressly permitted under this Agreement, none of the materials contained in or accessed through the CSCOPE System and Content may be copied, distributed, publicly displayed, or publicly performed.

(ix) The Service Center may not adapt, modify, or create derivative works based on the CSCOPE System and Content other than for use in the Service Center for the term of this Agreement, unless the Service Center first obtains express written permission of TESCCC.

(x) Use of the CSCOPE System and Content in any way that is not authorized by the terms of this Agreement is strictly prohibited, unless the Service Center first obtains express written permission of TESCCC.

(xi) All rights not specifically granted in this Agreement are reserved by TESCCC and its suppliers.

4. INTELLECTUAL PROPERTY. Any Content, product, service, program, or technology made available to the Service Center and its Authorized Users through the CSCOPE System and Content may be protected by copyright, trade secret, patent, and/or other intellectual property rights and laws. TESCCC and its suppliers retain all right, title, and interest, including all copyright, trade secret, and other intellectual property rights in and to the CSCOPE System and Content, including but not limited to any text, images, photographs, animations, video, audio, and music, as well as “applets” incorporated into the application and the accompanying printed materials and documentation for software.

5. ACCESS TO CSCOPE. The Service Center is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed by the Service Center to access the CSCOPE System via the Internet. The Service Center acknowledges that TESCCC has provided written specifications of the System Requirements required of the Service Center and Authorized Users, and further acknowledges that TESCCC is not responsible for providing access to the CSCOPE System to Users whose computer systems do not meet the minimum System Requirements. TESCCC reserves the right to modify the System Requirements from time to time as may be necessary to support the CSCOPE System, and shall provide at least ninety (90) days written notice of any changes to the System Requirements prior to implementation thereof.

6. OWNERSHIP. The Service Center recognizes that TESCCC is the owner of or has license to CSCOPE.

7. TESCCC REPRESENTATIONS AND WARRANTIES.

(a) TESCCC represents and warrants that it has the full power and authority to enter into this Agreement and has the necessary authority to license the CSCOPE System and Content.

(b) Neither TESCCC nor its suppliers shall be responsible for the content of any site linked to it. The Service Center’s connection to any such linked site is at the Service Center’s own risk.

(c) THE WARRANTIES STATED IN THIS AGREEMENT ARE THE SOLE AND THE EXCLUSIVE WARRANTIES OFFERED BY TESCCC. THERE ARE NO OTHER WARRANTIES WITH RESPECT TO THE CSCOPE SYSTEM AND CONTENT PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF TESCCC HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF TESCCC IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF TESCCC AS SET FORTH HEREIN.

8. SERVICE CENTER REPRESENTATIONS AND WARRANTIES. The Service Center represents and warrants that: (i) it has the full power and authority to enter into this Agreement; (ii) it will implement reasonable security procedures to allow only properly credentialed Authorized Users to access to the CSCOPE System and Content; and (iii) it will implement reasonable security procedures consistent with the existing Service Center and TESCCC policies to prevent to the CSCOPE System and Content from being used for purposes other than as expressly permitted by this Agreement.

9. LIMITATION OF LIABILITY. THE TOTAL LIABILITY OF EITHER PARTY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO 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 SERVICE CENTER TO TESCCC IN THE CONTRACT TERM IN WHICH THE ACT OR INJURY THAT GAVE RISE TO THE LIABILITY OCCURRED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THIS AGREEMENT. NOT WITHSTANDING THE FOREGOING, THERE IS NO LIMITATION FOR CLAIMS OF COPYRIGHT INFRINGEMENT OF CSCOPE OR CONTENT.

10. PAYMENT. Payments shall be made by the Service Center to TESCCC in the amount and according to the schedule that shall be provided on an annual basis by the TESCCC Governing Board.

11. PRICE CHANGES. After the Primary Term, for each year this Agreement is in effect, the CSCOPE license fee may be increased by an amount up to the rate of the annual increase in Consumer Price Index for All Urban Consumers ("CPI"), provided that TESCCC provides notice of such price increase to the Service Center at least three (3) months prior to any Commencement Date for a Contract Term for which such increase will be applicable.

12. NOTICES. Any notice, request or other communication required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by registered mail, return receipt requested; (c) sent by overnight air courier; (d) sent by facsimile; or (e) sent by electronic mail (E-mail) and including any executed documents in attachment form, in each case forwarded to the appropriate address set forth below. Either Party may change its address for notice by written notice to the other Party. Notices will be considered to have been given: (i) at the time of actual delivery in person; (ii) three (3) business days after posting by registered mail; (iii) one (1) day after delivery to an overnight air courier service; (iv) the moment of confirmed transmission by facsimile; or (v) the moment of confirmation of receipt of said electronic mail by the recipient.

13. WAIVER. The failure of either Party to enforce any provision hereof, or the failure of either Party to require the performance of the other Party, shall not constitute or be construed as a present or future waiver of such provision, nor in any way affect the ability of either Party to enforce any provision of this Agreement at a later time.

14. SEVERABILITY. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the Parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such an amendment, such invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

15. FORCE MAJEURE. Neither Party will incur any liability to the other on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond its reasonable control and without negligence of the Parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, acts of terrorism, and earthquakes, but the ability to meet financial obligations is explicitly excluded.

16. LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles. All actions or proceedings arising in connection with this Agreement and or services performed under this Agreement shall be tried and litigated solely in the state and federal courts located in Travis County, Texas. Each Party irrevocably consents to the exclusive jurisdiction and venue of such courts.

AGREED AND ACCEPTED:

Name: _____

Title: Executive Director, Education Service Center Region 20__

By: _____

Signature

Date

Title: Board Chairman

Name: _____

Chairperson, TESCCC Governing Board