



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

This District User License Agreement (this “**DULA**”) is entered into as of July 1, 2012 (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 ESC that is a member of TESCCC being referred to as an “**ESC**”), and \_\_\_\_\_, 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, a K-12 curriculum system 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. The ISD is currently a party to a District User License Agreement between the ISD and TESCCC providing for the receipt of services from National Education Resources, Inc. (“**NER**”) and it wishes to terminate that agreement.

C. 3rdL is engaged in the business of designing, implementing, and supporting customized, online-deliverable systems for the management of K-12 public school curricula to be used by teachers and administrators.

D. TESCCC has awarded 3rdL a contract (the “**Services Agreement**”) to develop a website (the “**Website**”) for the Content and provide TESCCC with other services (all services required to be provided in the Services Agreement are being referred to in this Agreement as the “**Services**”) as provided in this DULA. The Content, as provided on the Website, is referred to as “**CSCOPE**” and together with all software and hardware used to provide the Content on the Website is referred to as the “**CSCOPE System**.”

E. TESCCC wishes to enter into this DULA in order to provide the ISD with a license to use the Content and the Website and to receive Services from 3rdL.

Accordingly, 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 “**3<sup>rd</sup>L**” means 3rdL Corporation, a New York corporation.

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

1.3 “**Authorized Users**” means the employees of the ISD that has licensed use of CSCOPE and the CSCOPE System, employees and representatives of ESCs and the TESCCC, and any individual who has received TESCCC’s express written consent to be an Authorized User.

1.4 “**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.

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

1.6 “**CSCOPE**” has the meaning set forth in Recital D.

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

1.8 “**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.

1.9 “**ISD**” has the meaning set forth in the first paragraph of this DULA.

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

1.11 “**Services**” has the meaning ascribed to it in Recital D.

1.12 “**Services Agreement**” has the meaning set forth in Recital D.

1.13 “**Website**” has the meaning ascribed to it in Recital D.

## 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 each of the following restrictions:

2.1 The ISD shall use the Content solely: (i) for the ISD’s educational purposes; (ii) on campuses that are CSCOPE participants; 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) allow anyone who is not an Authorized User to have possession of the Content; or (ii) allow anyone who is not an Authorized User to have username and password access to the Website. The ISD may, if permitted by TESCCC policies and by ISD policies acceptable to TESCCC, allow parents, students and community members to view the Content and the Website as long as they do not view the Content and the Website outside of the presence of an Authorized User.

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 obtain the Services contracted for under this DULA.

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 as 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 it shall cooperate with TESCCC and 3rdL 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, without prior express written consent of TESCCC, which may be granted or withheld in TESCCC's sole discretion, the ISD shall not, 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 prompt 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 CSCCOPE in any manner that is not expressly authorized by the terms of this DULA.

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

### **3. Right to Receive Services.**

3.1 For the term of this DULA, 3rdL shall provide the ISD with, and the ISD shall have the right to receive from 3rdL, all Services described in the Services Agreement as if the ISD were a party to the Services Agreement. The ISD acknowledges its understanding that some of the Services may be provided by the ESCs.

3.2 The District User License Agreement currently in effect (if any) between TESCCC and the ISD which provides for the ISD's receipt of services from NER is hereby terminated as of the date that Content is no longer available on the website hosted by NER. On termination of that agreement, neither party shall have any rights or obligations under that agreement other than rights and obligations that, by the terms of the agreement, survive its termination or expiration.

**4. Required Hardware and Software.** The ISD is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed by the ISD to use CSCCOPE. The initial minimum specifications are attached as Exhibit A. The ISD acknowledges that Authorized Users whose computer systems do not meet the minimum

specifications 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 TESCCC gives it at least 90 days prior written notice of any changes to the system specifications.

## **5. Obligations of TESCCC**

5.1 TESCCC will contract with 3rdL to obtain the Services for the benefit of the ISD.

5.2 TESCCC will devote appropriate resources, in its sole discretion, to create Additional Content, and will promptly incorporate the Additional Content into the Website or will provide the Additional Content to 3rdL for incorporation into the Website.

5.3 TESCCC will devote appropriate resources, in its sole discretion, to work with 3rdL to develop additional Website features and functionalities for the benefit of the ISD.

**6. Consideration.** The ISD has entered into a contract with an ESC granting it the right to receive access to CSCOPE from TESCCC under this DULA. The parties agree that the agreement between the ISD and the ESC and the terms and conditions of this Agreement, constitute good and valid consideration to support the parties' rights and obligations under this Agreement.

**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 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 DULA shall commence on the Effective Date and shall terminate on August 31, 2013 (the "**Initial Term**"). This DULA shall automatically continue for additional one-year terms unless either party gives the other 90 days advance written notice that it does not intend to renew.

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

8.3 Either party may terminate this DULA immediately: (i) on a material breach of any representation, warranty, covenant or 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 (or five days in the case of a payment default); (ii) if a party becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings; or (iii) if TESCCC or 3rdL ceases operations.

8.4 The provisions of Sections 1 (Definitions), 7 (Ownership and Use of Intellectual Property), 9 (Confidentiality), 10 (Representations and Warranties), 11 (Limitation of Liability), and 12 (Miscellaneous) shall survive the termination of this DULA.

## **9. Confidentiality**

9.1 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 DULA 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.

9.2 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 9.

9.3 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 Receiving Party shall deliver to the Disclosing Party: (a) all materials containing Confidential Information furnished to the Receiving Party by the Disclosing Party or developed using the 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 any 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 9.

9.4 The provisions of this Section 9 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 from the Disclosing Party; (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. However, this Section 9 shall not apply if the Receiving Party is ordered by a court, an administrative agency or another governmental body of competent jurisdiction (including a request under the Texas Open Records Act or similar law or regulation) to disclose the Confidential Information. In that event, the Receiving Party shall attempt to promptly notify the Disclosing Party in writing 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.

## **10. REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants to the other that:

10.1 The execution and delivery of this DULA has been duly authorized by such party and this DULA is valid and binding.

10.2 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 DULA.

**10.3 THE WARRANTIES STATED IN THIS DULA 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.**

**11. LIMITATION OF LIABILITY.**

**11.1 THE TOTAL LIABILITY OF EITHER PARTY WITH RESPECT TO THIS DULA (INCLUDING LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE AMOUNT PAID UNDER THIS DULA BY THE ISD TO THE ESC FROM WHICH IT ACQUIRED THE RIGHT TO ENTER INTO THIS DULA 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.**

**11.2 NOTWITHSTANDING THE FOREGOING, THERE IS NO LIMITATION OF LIABILITY FOR VIOLATION OF THE RESTRICTIONS SET FORTH IN SECTION 2 OR THE PROVISIONS OF SECTION 9.**

**12. MISCELLANEOUS.**

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

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

12.3 Governing Law. This DULA, 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.

12.4 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.

12.5 Counterparts; Facsimile. This DULA 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 shall be deemed an original executed copy of this DULA.

12.6 Construction. 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.

12.7 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: \_\_\_\_\_ Independent School District  
\_\_\_\_\_  
\_\_\_\_\_, Texas \_\_\_\_\_

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 12.7.

12.8 Attorneys' Fees. Subject to Section 11.1, 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.

12.9 Entire Agreement; Amendment. This DULA 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.

12.10 Injunctive Relief. Breach of certain of the obligations in this DULA, including Sections 2.1 through 2.11 (relating to restrictions), 9 (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.

12.11 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. This Section 12.11 shall not in any way limit the ability of TESCCC to enter into amendments to the Services Agreement and TESCCC shall have full authority to amend the Services Agreement as it determines is appropriate, in its sole judgment, without prior notice to or approval of the ISD.

12.12 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.

12.13 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.

*Signature Page Follows*



\_\_\_\_\_ **Independent School District**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Texas Education Service Center  
Curriculum Collaborative**

By:



Name: Wade Labay

Title: Director, State CSCOPE

*Signature Page*

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

**EXHIBIT A  
HARDWARE AND SOFTWARE SPECIFICATIONS**

To use the advanced features found in the CSCOPE system, your computer must meet the following requirements:

Windows XP or higher

- Internet Explorer 7.0 or higher
- Mozilla Firefox 3.6 or higher
- Google Chrome
- Safari 3.2 or higher
- Opera 10.10 or higher

Mac OSX 10.4 or higher

- Mozilla Firefox 3.6 or higher
- Safari 3.2 or higher
- Opera 10.10 or higher
- Google Chrome

Additional Recommendations:

- Internet browser must be set to allow JavaScript to run.
- Pop-up blockers must be turned off or allowed for the website: [www.mycscope.us](http://www.mycscope.us)
- This site is best viewed with your monitor's resolution set to 1024 x 768 or higher.
- The CSCOPE system is best viewed when your default font or view is set to "Medium" in Internet Explorer, "Normal" in Mozilla Firefox, or "Normal" in Google Chrome. If your font size is set significantly larger or smaller, you may experience some difficulty viewing the website.

Please note that some content may be available in formats that require third party software, such as Adobe PDF Reader, etc.