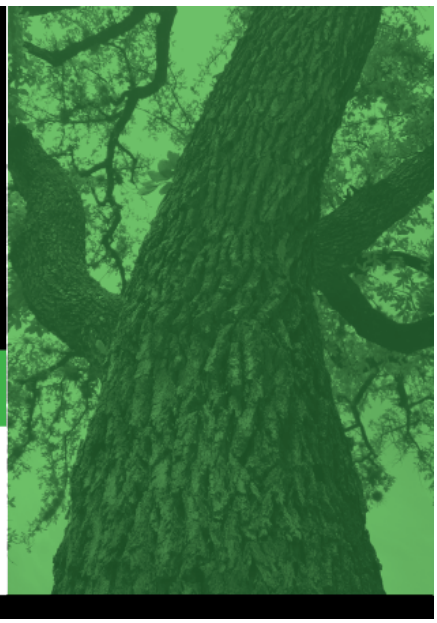
ASCENDER
ELEVATING TECHNOLOGY SOLUTIONS

ASCENDER GUIDES



Texas Computer Cooperative

Table of Contents

Texas Computer Cooperative i
Texas Computer Cooperative 1

Texas Computer Cooperative

ASCENDER End User License Agreement

In order to participate in the use of ASCENDER software provided by TEXAS COMPUTER COOPERATIVE (“TCC”), EDUCATION SERVICE CENTER REGION 20 (“ESC 20”), you, on behalf of your Local Education Agency (“LEA”), must agree and adhere to the following terms and conditions contained in this End User License Agreement (hereinafter the "EULA"). TCC and/or ESC 20 are sometimes (referred to in this EULA by the pronouns we, our, or us and LEA is sometimes referred to in this EULA by the pronouns you and your. Throughout this EULA, references to either you or us includes the respective employees, officers, agents and any others acting on behalf of either you or us. If you do not agree to these terms and conditions, your LEA may not use ASCENDER software. If you have questions concerning this EULA, please contact the TCC via ESC 20, or by e-mail at info@ascendertx.com.

ASCENDER End User License Agreement.

I have been authorized by my Organization (hereinafter the “LEA”) to contractually bind such LEA to this EULA. On behalf of such LEA, I agree that any use of ASCENDER software is subject to the following terms and conditions, and agree to fully comply with such terms and conditions:

1. The LEA agrees that I shall be an authorized delegate of the LEA (hereinafter the "authorized delegate(s)") allowed to access district data for purposes of use in ASCENDER. The LEA also agrees that any ASCENDER software, data and any other information concerning ASCENDER sent from the TCC or ESC 20, to my LEA will be accessible only by such authorized delegates, except that ASCENDER software may be accessed by certain LEA employees as stated below.
2. TCC, grants the LEA a non-sublicensable, non-exclusive, and non-transferable limited license to ASCENDER only by the authorized delegates and the LEA's authorized employees. The LEA shall not copy, modify, publish, release, lend, sell, rent or otherwise disclose the ASCENDER software to any third party or give third party access to the ASCENDER software without the express prior written consent of the TCC per Section 5.6 of the TCC Software License Standards and Provisions accepted by the LEA. The LEA shall notify TCC immediately of any unauthorized use or disclosure of the ASCENDER software. The LEA grants TCC a non-exclusive, limited license to use the LEA Data for purposes of compiling the ASCENDER software.
    1. **Security**: To the extent that the LEA is given access to ASCENDER Software, it will comply with any system security policies (as may be revised from time to time) and will not tamper with, compromise, or circumvent any security or audit measures employed for the software. The LEA will exercise reasonable care in using the software, not surrender possession of the software to any third party, use the software solely to perform the applicable duties, return the software to the TCC upon request, and the LEA assumes all risk of use of the software. **TO THE EXTENT ALLOWED BY LAW, THE LEA SHALL INDEMNIFY AND HOLD THE TCC AND ESC 20 HARMLESS FROM AND AGAINST THE LOSS OF OR ANY DAMAGE TO THE SOFTWARE WHILE BEING USED BY THE LEA.**
    2. **Restrictions**. The LEA agrees that it will not: (i) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (ii) modify, adapt, create derivative works based upon, or translate the Software; (iii) resell for profit, distribute, or otherwise grant any rights in the Software to any other party; or (iv) authorize or permit anyone to access the Software other than in connection with its

internal data information operations.

3. The TCC is the sole owner of, and shall retain the entire rights to, any copyrights, trademark, trade secret and any other proprietary rights in the ASCENDER Software.
    1. **Ownership**. All right, title, and interest in the Software, Updates, Upgrades, or modifications thereof, or in any ideas, know-how, and programs developed by the TCC during the term of the EULA is its exclusive property. Title and ownership rights to TCC's Software, enhancements, customizations, and changes made to the Software pursuant to this EULA, and all copies thereof, shall at all times reside exclusively with TCC or its Third Party Technology licensors, as may be applicable. TCC also retains all title, copyright and other proprietary rights in the Software and Derivative Works, including any implied rights. TCC expressly does not grant the LEA any rights whatsoever in the Software source code.
4. TCC reserves the right to monitor the access and use of the ASCENDER software by the participating LEA. The LEA shall not transmit any LEA Data that contains viruses, worms, Trojan horses or other disabling devices or use spamming, flooding, or other means to interfere with ASCENDER or any TCC user, host or network.
5. TCC and the LEA acknowledge and agree that the LEA Data is confidential information and that only those with a need to know shall have access to such information. TCC agrees to maintain the confidentiality of the LEA Data. TCC agrees to promptly notify the authorized delegate in writing of any unauthorized disclosure of the LEA Data. The LEA Data may be disclosed by TCC pursuant to an order of any court or like entity or other valid official government legal process. The LEA Data also may be disclosed by TCC to an agent of TCC that may be assisting with additional development projects and/or to any TCC vendor providing technical or other services to TCC provided however that such agent or vendor shall be subject to a non-disclosure agreement.
    1. **Confidential Information**. Each party acknowledges that it may have access to certain confidential information of the other party ("**Confidential Information**") including the Software, LEA Data[1)] (including but not limited to raw data), the terms under this EULA, and all materials or information identified as confidential. Each party agrees, (a) it will hold the Confidential Information of the other party in confidence with at least the same level of care as it uses for its own confidential information of the same nature, but not less than a reasonable level of care; (b) it will not use all or any portion of the Confidential Information for its own account or the account of any third party, except as expressly permitted by this EULA, © unless required by law, it will not disclose any Confidential Information to any third party, except that party's attorneys, accountants and other advisors as reasonably necessary. The parties shall not publicize the contents of the terms and provisions of this EULA without the express written consent of the other party.
    2. **Confidentiality of LEA Data**. We will treat your LEA Data with utmost confidentiality. Should we require access to the LEA Data in order to fulfill our duties under this EULA, you will permit such access as is reasonable under the circumstances to our personnel responsible for supporting the obligations of this EULA who are bound by duties of confidentiality no less restrictive than those contained in this EULA. Should we be required to give access to LEA Data to any of our subcontractors, vendors, Software licensors, or any other third party in order to fulfill our duties under this EULA, you will permit such access, provided however, such third party must agree in writing to maintain the confidentiality of LEA Data no less stringently than as required by this EULA. We shall have the limited right to combine the unidentified raw data with that of other users of the System into an anonymous aggregated database, provided however, that such data would not include names or other indices indicating its source. If necessary, the parties will execute an appropriate confidentiality and non-disclosure agreement in compliance with privacy laws and to protect LEA Data. TCC may aggregate, compile, and use LEA

Data in order to improve, develop or enhance the Software and/or Systems offered, or to be offered, by TCC; provided that no LEA Data is identifiable as originating from, or can be traced back to, the LEA in such aggregated form.

3. **Personal Identifiable Information (PII)**. Any and all PII stored in ASCENDER is created, entered, and maintained locally at the discretion of the LEA. TCC agrees to maintain the confidentiality and security of all PII data. TCC agrees to promptly notify the LEA in writing of any unauthorized disclosure of the PII data. The PII may be disclosed by TCC pursuant to an order of any court or like entity or other valid official government legal process.
4. **Exceptions**. Information shared between us and you will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known to the receiving party directly or indirectly from a source that does not have an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this EULA by the receiving party; or (iv) is independently developed by the receiving party. The foregoing exceptions shall not apply to LEA Data.

6. The LEA agrees that any use not authorized herein or any otherwise inappropriate use of ASCENDER is prohibited, and that any violation of this EULA, at the discretion of TCC may result in immediate termination of the LEA license to ASCENDER, cancellation of access to any ASCENDER software and may prevent the LEA from further participation in the use of ASCENDER. The LEA assumes liability for all costs, expenses and damages arising out of its use of ASCENDER and/or any material breach of this EULA, including, without limitation, any unauthorized use or disclosure of the LEA Data and/or the ASCENDER software. TCC will provide the ASCENDER software to the LEA to use in accordance with associated documentation solely for your LEA student and business information operations. **THE SOFTWARE, SYSTEM AND RELATED DOCUMENTATION ARE PROVIDED "AS IS". TCC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TCC SHALL NOT BE LIABLE TO THE LEA FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE FOR ANY REASON, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF TCC HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES.**
7. TCC reserves the right to revise the EULA at any time without notice, including any license terms other than monetary terms. The LEA shall be notified of any revisions in writing. This license agreement takes precedence over any previous or conflicting end user license agreement for ASCENDER.
8. If any provision of this EULA is found to be invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the remaining provisions will remain in full force. This EULA shall be governed by and construed in accordance with the laws of the State of Texas (except that body of law controlling conflicts of law). Any claim or action for breach of this EULA shall be brought in the state or federal courts in the State of Texas. The venue for any action under or relating to this EULA will be in San Antonio, Bexar County, Texas.
9. You agree that any electronic signature that you provide through this online process are valid and enforceable as your legal signature. You acknowledge that your electronic signature will legally bind you to the terms and conditions contained in this EULA just as if you had physically signed the same in paper form with a pen.

By clicking the Accept button, on behalf of the LEA, I agree and accept this ASCENDER End User License EULA.

1)

Note that TCC does not access LEA Data.