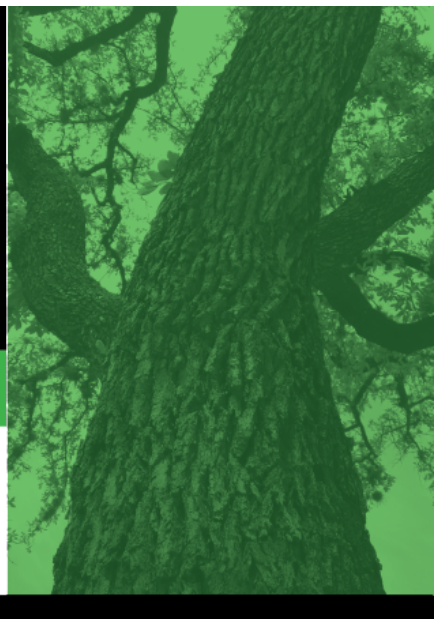
ASCENDER
ELEVATING TECHNOLOGY SOLUTIONS

ASCENDER GUIDES



Texas Computer Cooperative

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ASCENDER End User License Agreement

In order to use or access the ASCENDER software (“Software”) provided by TEXAS COMPUTER COOPERATIVE ("TCC") through 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"). In addition to any other indication of agreement to abide and be bound by the terms of this EULA, accessing or using the Software constitutes your agreement to do so. TCC and/or ESC 20 are sometimes referred to in this EULA by the pronouns “we”, “our”, or “us”, LEA is sometimes referred to in this EULA by the pronouns “you” and “your”, and the person acknowledging agreement to be bound by this EULA on behalf of an LEA is sometimes referred to as “I”. 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 the 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 LEA to contractually bind such LEA to this EULA. On behalf of such LEA, I agree that any use of the 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 am an authorized delegate of the LEA (hereinafter, in addition to all other users on behalf of the LEA, the "authorized delegate(s)") allowed to access, use, and disclose the LEA Data (defined below) in connection with the Software. The LEA also agrees that any 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 the 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 use and access the Software through its authorized delegates and employees. The LEA shall not copy, modify, publish, release, lend, sell, rent or otherwise disclose the Software to any third party or give third party access to the Software without the express prior written consent of the TCC and solely in accordance with 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 Software. The LEA grants TCC a non-exclusive, limited license to use, store, and access data inputted by or on behalf of the LEA (collectively, the “LEA Data”) in connection with the Software’s purposes and functionality.
    1. **Security**. To the extent that the LEA is given access to the Software, it will comply with any system security policies (as may be revised from time to time in TCC’s or ESC 20’s discretion) 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, and return the software to the TCC promptly upon request. The LEA assumes all risks arising from or relating to the 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 ALL CLAIMS, CAUSES OF ACTION,**

LIABILITIES, DAMAGES, AND OTHER LOSSES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, EXPERT FEES, AND EXPENSES (COLLECTIVELY, "CLAIMS"), ARISING FROM OR RELATING TO THE LEA'S USE OF THE SOFTWARE.

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 an authorized delegate.

3. TCC is the sole owner of, and shall retain the entire rights to, all intellectual property related to the Software, including without limitation any copyrights, trademarks, trade secrets, patents, and any other proprietary rights. Without limiting the generality of the foregoing, all right, title, and interest in the Software, and all updates, upgrades, enhancements, customizations, derivative works, and modifications thereto (collectively, the "Modifications"), and in any ideas, know-how, and programs developed by the TCC are its exclusive property. Unless transferred by TCC (which it may do in its sole and absolute discretion, in whole or in part), title and ownership rights to the Software and all Modifications (including all copies thereof) shall at all times remain exclusively with TCC. TCC also retains title to and all intellectual property rights in the Software and Modifications, including any implied rights. TCC expressly does not grant the LEA any rights whatsoever in the Software source code or otherwise beyond the rights specifically stated herein.
4. TCC reserves the right to monitor the access and use of the Software by the 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 the Software or any TCC user, host or network and agrees to indemnify, defend, and hold TCC and ESC 20 harmless from and against all Claims arising from or relating to the LEA's transmission of LEA Data to TCC or ESC 20, whether through the Software or not.
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 use commercially reasonable means and efforts 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. Notwithstanding anything else herein to the contrary, the LEA Data may be disclosed by TCC pursuant to an order of any court or like entity or other valid official 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 (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 use commercially reasonable means to maintain the confidentiality and prevent the unauthorized disclosure by us of your LEA Data. 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 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 other services 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 the Software 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. Further, Confidential Information may be disclosed pursuant to valid court order or other judicial or administrative process; provided, however, the party whose Confidential Information is requested must be promptly notified of such request and allowed to contest such disclosure or seek protective orders to maintain confidentiality.

6. The LEA agrees that any use of the Software not expressly authorized herein is prohibited, and that any violation of this EULA, at the sole discretion of TCC, may result in immediate termination or suspension of the LEA’s right to use or access the Software. Further, the LEA acknowledges that its right to use and access the Software is contingent upon the LEA’s applicable TCC Member ESC’s compliance with a Service Level Agreement (“SLA”) between ESC 20 and such TCC Member ESC and that ESC 20 may terminate or suspend the LEA’s right to use and access the Software due to a breach of the SLA. The LEA assumes liability for all costs, expenses and damages arising out of its use of the Software and/or any breach of this EULA, including, without limitation, any unauthorized use or disclosure of the LEA Data and/or the Software. TCC will provide the Software to the LEA to use in accordance with associated documentation solely for your LEA student and business information operations. **THE SOFTWARE, MODIFICATIONS, AND RELATED DOCUMENTATION ARE PROVIDED "AS IS". TCC AND ESC 20 DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER TCC NOR ESC 20 SHALL BE LIABLE TO THE LEA FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOSS OF DATA, PROFIT, REVENUE, OR USE OF ANY NATURE FOR ANY REASON, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR**

OTHERWISE, EVEN IF TCC OR ESC 20 HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE OTHERWISE FORESEEABLE.

7. TCC reserves the right to revise the EULA at any time, including any license terms other than monetary terms. The LEA shall be notified of any revisions in writing. This EULA completely replaces and restates any and all previous or conflicting end user license agreement for or related to the Software.
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 exclusively in San Antonio, Bexar County, Texas, to the exclusion of any other permissive or appropriate venue. The LEA waives any claim that such forum is inconvenient. The prevailing party in any action arising from or related to the Software or your use thereof is entitled to an award of its reasonable attorneys' fees, expert fees, and expenses.
9. The terms hereof constitute the entire agreement between the parties and supersedes any prior agreements, subject in all respects to TCC's rights under Section 7, above. You may not transfer, assign, lease, sublicense, or otherwise allow any third-party to use or access the Software.
10. 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.

THIS IS A CONTRACT. By clicking the Accept button, on behalf of the LEA, I agree and accept this EULA.