

DATA SHARING AGREEMENT
BETWEEN
THE HOUSTON INDEPENDENT SCHOOL DISTRICT
AND
B.E. Publishing, Inc.

This Data Sharing Agreement, herein referred to as "DSA", for confidential data sharing is entered into by and between the Houston Independent School District ("HISD") and B.E. Publishing, Inc. ("BEP") who, as parties to the DSA, elect to accept its terms, to wit:

PREAMBLE

The mission of BEP is to provide HISD with access to online keyboarding software called EduTyping. To that end, data is being requested as part of the DSA to fulfill the organization's mission. BEP agrees that the data transferred from HISD to BEP is and shall remain the sole and exclusive property of HISD. The DSA establishes that individually-identifiable health information that falls under the protection of the Health Insurance Portability and Accountability Act ("HIPAA"), data that deals with confidentiality provisions of the Patient Safety Rule, and social security numbers will not be released. Data that are released must be used consistent with the Family Education Rights and Privacy Act (FERPA), HIPAA and HISD's policies for managing student education records and other confidential information. HISD grants BEP license to use such data only for the following purpose and for no other purpose: Use of online keyboarding software called EduTyping.

The scope of the project addressed in this DSA is limited to the use of teacher and student data solely for the purpose of using EduTyping.

Any annual and final reports based on the data provided to BEP must be submitted to HISD.

THEREFORE, the parties agree to the following terms of this DSA:

1. Data Sharing

The data shall be provided by HISD to BEP. The format will vary depending on integration method and requirements. Any data received by BEP pursuant to this DSA shall be destroyed when it is no longer needed for the designated purpose. Notwithstanding the foregoing, or anything contained hereto the contrary, to the extent that BEP maintains regular back-up or centralized retention of electronically created data or electronically stored information (collectively "ESI"), such ESI may be retained as necessary to comply with the existing policy for back-up and archiving of ESI, so long as no

information required to be kept confidential hereunder is otherwise accessible to any of BEP's employees, contractors or agents.

2. Confidentiality

BEP will maintain the confidentiality of any and all student data obtained from HISD as a part of this DSA. The confidentiality requirements under this paragraph shall survive the termination or expiration of this DSA or any subsequent agreement intended to supersede this DSA. To ensure the continued confidentiality and security of the student and staff data processed, stored, or transmitted under this DSA, BEP shall establish a system of safeguards that will at minimum include the following:

- a. BEP shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all data, including electronically-maintained or transmitted data received from, or on behalf of HISD. These measures will be extended by contract to all subcontractors used by BEP.
- b. BEP and its employees, subcontractors and agents involved in the handling, transmittal, and/or processing of data provided under this DSA will be required to maintain the confidentiality of all student and staff-related personally identifiable information.
- c. Procedures and systems that shall require the use of secured passwords to access computer databases used to process, store, or transmit data provided under this DSA.
- d. Procedures and systems, such as good practices for assigning passwords, shall be developed and implemented to maintain the integrity of the systems used to secure computer databases used to process, store, or transmit data provided under this DSA.
- e. Procedures and systems that ensure that all confidential student and staff data processed, stored, and/or transmitted under the provisions of this DSA shall be maintained in a secure manner that prevents the interception, diversion, or other unauthorized access to said data.
- f. The procedures and systems developed and implemented to process, store, or transmit data provided under this DSA shall ensure that any and all disclosures of confidential student and staff data comply with all provisions of federal (HIPAA, FERPA, E-Government, etc.) and Texas state laws relating to the privacy

rights of students and staff as such laws are applicable to the parties to this DSA.

- g. BEP shall return to HISD all data or any portions thereof requested by HISD, or, at HISD's election and subject to clause 1 above, BEP shall destroy all or any part of HISD's data that is within the possession or control of BEP and shall upon request by HISD, provide certification of such destruction.
- h. Permission shall be obtained from HISD prior to publications or disclosure of data, or other uses not outlined in this DSA.

3. Indemnification

BEP shall hold HISD and its past and present and future trustees, officers and employees harmless and shall indemnify all such parties against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party, occurring or in any way incident to, arising out of, or in connection with any acts of BEP and its agents, employees, and subcontractors done in connection with this DSA.

Nothing in this DSA shall be construed to create a claim or cause of action against the District for which it is not otherwise liable, nor to waive any immunity or defense to which the District may be entitled nor to create an impermissible deficiency debt of the District.

4. Right to Audit

BEP shall provide HISD and its designees with information and access to its premises (upon giving reasonable notice) as HISD may reasonably require evidence of compliance with the DSA and applicable state and federal law.

5. Entire Agreement

This document states the entire agreement between BEP and HISD with respect to its subject matter and supersedes any previous and contemporaneous or oral representations, statements, negotiations, or agreements.

6. Execution

Each of the persons signing this DSA on behalf of a party or entity other than a natural person represents that he or she has authority to sign on behalf and to bind such party.

7. Assignment

None of the signatories to this DSA may assign their rights, duties, or obligations under this DSA, either in whole or in part, without the prior written consent of the other signatories to this DSA.

8. Severability

If any provision of this DSA is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this DSA such provision shall be fully severable. This DSA shall remain in full force and effect unaffected by such severance, provided that the severed provision(s) are not material to the overall purpose and operation of this DSA.

9. Waiver

Waiver by any signatory to this DSA of any breach of any provision of this DSA or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this DSA shall not operate as a waiver of such right. All rights and remedies provided for in this DSA are cumulative.

10. Modification and Amendments

This DSA may be amended or modified at any time by mutual agreement of the authorized representatives of the signatories to this DSA. HISD and BEP further agree to amend this DSA to the extent amendments are required by an applicable law or policy issued by an appropriate regulatory authority if the amendment does not materially affect the provisions of this DSA. However, if new laws, policies, or regulations applicable to HISD and BEP are implemented which materially affect the intent of the provision of this DSA, the authorized representatives of the signatories to this DSA shall meet within a reasonable period of time, from the date of notice of such change of law, policy, or regulations, to confer regarding how and/or if those laws, policies, or regulations will be applied or excepted.

11. Term of this DSA

This DSA shall be in effect for a term commencing from the effective date, which is the date when the DSA is fully executed by both parties, until the date the current business relationship ends between HISD and BEP.

12. Criminal History Background Check

Pursuant to Sections 22.0834 and 22.085 of the Texas Education Code, BEP hereby certifies that all employees, subcontractors and volunteers of BEP who are hired by BEP on or after January 1, 2008, and who have continuing

duties related to the contracted services; and has or will have direct contact with students have passed a national criminal history background record information review as required by those sections.

BEP shall send or ensure that the employee or applicant sends to the Texas Department of Public Safety ("DPS") information that is required by the DPS for obtaining national criminal history record information, which may include fingerprints and photographs. DPS shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

BEP must also obtain certifications from all subcontractors that their employees to whom Section 22.0834 applies have also passed a national criminal history background record information review.

BEP must also provide assurances that all of its employees, subcontractors and volunteers, including those hired before January 1, 2008, who have contact with students have passed a criminal history background check current within the last year. If an employee, subcontractor or volunteer of the BEP has a criminal conviction or has received deferred adjudication for a felony offense or a misdemeanor involving moral turpitude, the District may elect not to enter into this contract, or cancel the contract.

WARNING: Section 44.034 of the Texas Education Code requires that a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

The district may terminate this contract if the district determines that the person or business entity failed to give notice as required by Section 44.034 (a) or misrepresented the conduct resulting in the conviction. The district will compensate the person or business entity for services performed before the termination of the contract.

HOUSTON INDEPENDENT SCHOOL DISTRICT

REQUESTOR'S SIGNATURE:

By: _____
Patrick Porter
Senior Manager
Data Governance

B.E. PUBLISHING, INC

**HOUSTON INDEPENDENT
SCHOOL DISTRICT**

By: *Rene Barajas* *10/16/17* By: _____
Representative Date Rene Barajas Date
Chief Financial Officer

Director of Business Operations OR
Title

By: _____
Sherrie H. Robinson Date
Controller

APPROVED AS TO FORM:

Elneita Hutchins-Taylor Date
General Counsel

05-0573141
Taxpayer Identification Number