



DATA SHARING AGREEMENT

This Data Sharing Agreement ("Agreement") is made between BE Publishing ("Provider") and the Leander Independent School District ("District"). The District and Provider will be collectively referred to as the "Parties."

1. DEFINITION, USE AND TREATMENT OF DATA.

- A. "Data" shall include, but is not limited to, the following: student data, employee data, metadata, user content, course content, materials, and all data and information that the District (or any authorized end user(s)) uploads or enters through their use of the product. "Data" shall include all Personally Identifiable Information in education records, directory data, and other non-public information. "Data" shall not include "De-identified Data" or anonymous usage data regarding use of Provider services.
- B. "De-identified Data" means District Data from which all Personally Identifiable Information, as defined herein, and attributes about such Data, have been permanently removed so that no individual identification can be made.
- C. "Data mining" or "Data scanning" means the act of searching through, analyzing, accessing, or extracting District Data, metadata, or information not necessary to accomplish the services or purpose(s) of this Agreement for the benefit of the District.
- D. "Personally Identifiable Information" or "PII" means information and metadata that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally Identifiable Information includes but is not limited to: (a) the student's name; (b) the name of the student's parent or other family members; (c) the physical address, email address or phone number of the student or student's family; (d) personal identifiers such as the student's state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student's date of birth, place of birth or mother's maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender.
- E. "Securely Destroy" or "Securely Destroyed" means to remove District Data from Provider's systems, paper files, records, databases, and any other media regardless

of format by permanently erasing or destroying using industry best practices to assure complete and permanent erasure or destruction. These industry best practices include, but are not limited to, ensuring that all files are completely overwritten and are unrecoverable.

- F. The District owns and retains all rights, title and interest to, or has appropriate possessory rights in, Data. Provider makes no claim of license, title or ownership to or in Data.
- G. All Data accessed or used by the Provider shall always be treated as confidential by Provider and shall not be copied, used or disclosed by Provider for any purpose not related to providing services to the District. As outlined in more detail below, Provider recognizes that Personally Identifiable Information is protected against disclosure by Federal and State Statutes and Regulations, and Provider agrees to comply with said restrictions.

2. PURPOSE, SCOPE AND DURATION.

- A. For Provider to provide services to the District, it may become necessary for the District to share certain Data related to the District's students, employees, business practices, and/or intellectual property.
- B. The Parties acknowledge that the District is subject to the Family Educational Rights and Privacy Act (20 U.S.C. 12332(g)) (FERPA), which law and supporting regulations generally address certain obligations of an educational agency or institution that receives federal funds regarding disclosure of Personally Identifiable Information in education records. As set forth in more detail below, the Parties agree that Provider is a "school official" under FERPA and has a legitimate educational interest in Personally Identifiable Information from education records because Provider: (1) provides a service or function for which the District would otherwise use employees; (2) is under the direct control of the District with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure of Personally Identifiable Information from education records.
- C. The parties expect and anticipate that Provider may receive Personally Identifiable Information in education records from the District only as an incident of service or training that Provider provides to the District pursuant to this Agreement. Provider shall be permitted to use any such Personally Identifiable Information in education records as a function of performing its duties and obligations. Provider represents that it shall not use or further disclose any Personally Identifiable Information in education records other than as a function of performing its duties and obligations.
- D. This Agreement becomes effective immediately upon the date of execution and shall remain in effect during the time that Provider provides services to the District. Provider agrees to use said Data solely for the purposes of providing services to the District.

3. DATA COLLECTION.

A. Provider will only collect Data necessary to fulfill its duties as outlined in this Agreement.

4. DATA USE.

A. Provider will use Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.

5. DATA DE-IDENTIFICATION.

A. Provider may use De-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, identification numbers, dates of birth, demographic information, location information, and school identification. Further, Provider agrees not to attempt to re-identify de-identified Data and not to transfer De-identified Data to any party authorized to receive such Data pursuant to this Agreement unless that party agrees not to attempt re-identification.

6. MARKETING AND ADVERTISING PROHIBITED.

A. Provider shall not use any Data to advertise or market to students, their parents or the District's employees or officials.

B. Provider is strictly prohibited from engaging in targeted advertising for students, parents and staff on any website, online service, online application or mobile application.

C. Targeted advertising by a national assessment provider is permitted if Provider secures written consent of the student if the student is eighteen (18) years or older or the students' parent if the student is seventeen (17) years of age or younger, given in response to clear and conspicuous notice, if the information is used solely to provide access to employment, educational scholarships, financial aid, or post-secondary educational opportunities.

7. DATA MINING.

A. Provider is prohibited from mining Data for any purposes other than those agreed in writing to by the Parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited. Data mining is defined as the process of analyzing Data from different perspectives and summarizing it into useful information by finding correlations or patterns among data fields in relational databases.

8. DATA SHARING.

A. Provider shall not share Data with any additional parties, including but not limited to an authorized subcontractor or non-employee agent except as set out in this Agreement, without prior written consent of the District. To the extent necessary to

perform its obligations, Provider may disclose Data to subcontractors pursuant to a written agreement whereby the subcontractors agree to protect Data in a manner consistent with the terms of this Agreement. Provider shall periodically conduct or review compliance monitoring and assessments of subcontractors to determine their compliance with this Agreement.

- B. In the event any person(s) seeks to access any Data beyond the access that is provided to Provider's employees for purposes of providing services to the District under this Agreement, Provider will inform the District of such request in writing as soon as possible but no later than two business days unless expressly prohibited by law or judicial order. The District will respond to all requests for Data received by Provider; Provider will not respond in any way to such requests for Data. Provider shall only retrieve requested Data upon receipt of, and in accordance with, written directions by the District.
- C. Should Provider receive a Public Information Act (PIA) request, court order or lawfully issued subpoena seeking the release of such Data or information, Provider shall, as soon as possible but no later than two business days, provide District with a copy of the PIA, court order or lawfully issued subpoena prior to releasing the requested Data or information. Release of Data or information shall be done in accordance with all applicable laws and regulations.

9. RIGHTS AND LICENSE IN AND TO DATA.

- A. Parties agree that all rights, including all intellectual property rights, to Data shall remain the exclusive property of the District, and Provider has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in this Agreement. This Agreement does not give Provider any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in this Agreement. This includes the right to sell or trade Data.

10. ACCESS.

- A. Any Data held by Provider will be made available to the District as soon as possible but no later than two business days upon request by the District.

B. TEXAS PUBLIC INFORMATION ACT:

Notwithstanding any provisions of this Agreement to the contrary, Provider understands that Leander ISD is subject to and will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to the Texas Public Information Act. Any part of this Agreement that is of a confidential or proprietary nature must be clearly and prominently marked as such by Provider. If a Public Information Act request is made for Provider's confidential or proprietary information, Leander ISD will notify Provider and Attorney General as required by law. In the event Provider has possession and/or control of the District's information or Data that is requested under the Public Information Act, Provider shall provide the information to the District within five business days.

11. SECURITY CONTROLS.

- A. Provider shall store and process Data in accordance with industry best practices, including implementing appropriate administrative, physical and technical safeguards to secure such Data from unauthorized access, disclosure, alteration, and use. Provider shall ensure that all such safeguards, including the manner in which Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, as well as the terms and conditions of this Agreement.
- B. Provider shall conduct independent periodic risk assessments (no less than once every 2 years) and remediate any identified security vulnerabilities in a timely manner.
- C. Provider shall have a written incident response plan, which shall include but is not limited to, notification to the District as soon as possible but no later than 72 hours in the event of a confirmed security or privacy incident, as well as procedures for responding to a breach of any of the District's Data in Provider's possession.

12. NOTIFICATION OF AMENDMENTS TO POLICIES.

- A. Provider shall not change how Data is collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from the District.
- B. Provider shall provide notice to the District of any proposed change to its Terms of Use, Privacy Policy, and/or any similar policies/procedures thirty (30) days prior to the implementation of any such change. the District may terminate the service agreement with Provider upon notification of amendment to such terms. This Agreement supersedes online Terms of Use and Conditions.

13. NOTIFICATION OF DATA BREACH.

- A. When Provider becomes aware of a confirmed disclosure or security breach concerning any Data covered by this Agreement, Provider shall notify the District as soon as possible but no later than 72 hours and take immediate steps to limit and mitigate the damage of such security breach to the greatest extent possible.
- B. The Parties agree that any confirmed breach of the privacy and/or confidentiality obligations set forth in this Agreement may, at the District's discretion, result in the District immediately terminating the service agreement.
- C. In addition to and notwithstanding any termination provision set forth in the service agreement(s), in which the District shares Data with Provider, the service agreement(s) may be terminated by the District if Provider fails to cure such breach within thirty (30) days of receiving written notice from the District of such breach (or such longer time necessary to cure such breach if the breach cannot be cured in 30 days). The Party in breach shall identify to the non-breaching Party all steps taken to cure such breach and the estimated timeframe for such cure.

14. TERMINATION AND RETURN/DESTRUCTION OF DATA

- A. Upon termination or expiration of the service agreement, or if Provider ceases to perform services for the District that requires access to Data, Provider shall ensure that all Data delivered to or collected by Provider or authorized subcontractors/agents during the course of the service agreement is securely returned or Securely Destroyed, as requested by the District, within thirty (30) calendar days of District request. Further, Provider shall certify to the District in writing within forty-five (45) calendar days of District request that all Data stored in any manner by Provider or authorized subcontractors/agents has been Securely Destroyed.

15. MISCELLANEOUS

- A. Term. The Provider shall be bound by this Agreement for the duration of the service agreement or so long as the Provider maintains any Data.
- B. Termination. In the event that either party seeks to terminate this Agreement, they may do so by mutual written consent so long as the service agreement has lapsed or has been terminated.
- C. Priority of Agreements. This Agreement shall govern the treatment of Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes. In the event there is conflict between the terms of this Agreement and the service agreement, or with any other bid/RFP, license agreement, terms of service, privacy policy, or other writing, the terms of this Agreement shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the service agreement shall remain in effect.
- D. Entire Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
- E. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this Agreement or affecting

the validity or enforceability of such provision in any other jurisdiction.

- F. Governing Law; Venue and Jurisdiction. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- G. Authority. Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Data and portion thereof is stored, maintained or used in any way.
- H. Waiver. Waiver by any party to this Agreement of any breach of any provision of this Agreement 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 Agreement shall not operate as a waiver of such right. All rights and remedies provided for in this Agreement are cumulative. Nothing in this Agreement shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of the District, its trustees, officers, employees, and agents as a result of the execution of this Agreement or performance of the functions or obligations described herein.
- I. Assignment. None of the parties to this Agreement may assign their rights, duties, or obligations under this Agreement, either in whole or in part, without the prior written consent of the other party to this Agreement.

Name: Erin Mainville
Title: Accountant
Signature: Erin Mainville
Date: 8/15/19