

## STUDENT DATA/DATA BREACH SPECIAL TERMS AND CONDITIONS

This Student Data/Data Breach Special Terms and Conditions dated November 3, 2015 (hereinafter "Agreement") is by and between Cambridge Public Schools ("CPS") and BrainPOP LLC ("Contractor"), a contractor performing institutional services and functions that may require student data to perform those services and functions. This Agreement shall be incorporated into the Terms of Use, User Agreement and Privacy Policy as posted on [www.brainpop.com](http://www.brainpop.com) that govern the use and subscription to any of BrainPOP Products ("Terms of Use"). If there is an inconsistency between the Terms of Use, User Agreement and Privacy Policy and this Student Data/Data Breach Special Terms and Conditions Agreement, the terms of this Student Data/Data Breach Special Terms and Conditions Agreement will prevail.

1. Contractor and CPS have contracted for the Contractor to provide subscription to online educational content ("the Services"), which are institutional services and functions, to CPS. In the course of performing the Services, Contractor will obtain confidential student records and/or confidential student record information that contain personally identifiable student records, personally identifiable student data and/or student data and/or student information ("Data Files"). CPS and Contractor acknowledge and agree that this Agreement is for the purpose of sharing Data Files between the parties in a manner consistent with the Family Education Records Privacy Act of 1974 ("FERPA"). The Data Files will be used by the Contractor's employees to populate student data for the purpose of delivering these Services. Contractor further acknowledges and agrees that all copies of such Data Files, including any modifications or additions to data from any source that contains personally identifiable information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original Data Files. The ability to access or maintain Data Files and/or any personally identifiable student data contained therein under this Agreement and Terms of Use shall not under any circumstances transfer from Contractor to any other party.

2. Contractor acknowledges and agrees that it is providing institutional services or functions for CPS and that it is under direct control of CPS with respect to the use and maintenance of Data Files in connection with these Services. Contractor additionally acknowledges and agrees that at no point in time is the Contractor the owner of the Data Files. Ownership rights are maintained by CPS and CPS reserves the right to request the prompt return of any portion of the Data Files and/or all Data Files at any time for any reason whatsoever. Contractor further acknowledges and agrees that it shall adhere to the requirements set forth in both applicable federal and state law regarding the use and re-disclosure of the Data Files, including without limitation, any personally identifiable student data and/or personally identifiable information and/or any student data and/or student information contained within the Data Files. Contractor also acknowledges and agrees that it shall not make any re-disclosure of any Data Files, including without limitation, any personally identifiable student data and/or personally identifiable information and/or any student data and/or student information contained in the Data Files, without the express written consent of CPS. Additionally, Contractor agrees that only authorized employees of the Contractor shall have access to the Data Files and that it and its employees shall protect the confidentiality of the Data Files in such a way that parties other than officials of CPS and their authorized agents cannot identify any students.

3. Contractor also acknowledges and agrees to:
- (i) use personally identifiable student data shared under this Agreement for no purpose other than in connection with and through the provision of the Services

- (ii) use reasonable methods, consistent with industry standards, to protect the Data Files and/or any personally identifiable student data contained therein from re-disclosure, and to not share the Data Files and/or any personally identifiable student data received under this Agreement with any other entity without prior written approval from CPS.
- (iii) not copy, reproduce or transmit the Data Files and/or any personally identifiable student data contained therein ,except as necessary to fulfill the Services.
- (iv) notify the Chief Information Officer for CPS in writing within three (3) days of Contractor's determination that it has experienced a data breach, breach of security or unauthorized acquisition or use of any Data Files and/or personally identifiable student data contained therein. Contractor agrees that said notification shall include, to the extent feasible, the date or approximate dates of such incident and the nature thereof, the specific scope of said breach (i.e., what data was accessed, used, released or otherwise breached, including the names of individual students that were affected by said breach) and what actions or steps with respect to the incident that Contractor plans to take or has taken in response to said breach.
- (v) not provide any Data Files or any personally identifiable data contained therein to any party ineligible to receive student records and/or student record data and information protected by FERPA and any other applicable regulations. .
- (vi) to maintain backup copies , of Data Files in case of Contractor system failure or any other unforeseen event resulting in loss of Data Files, unless CPS has deleted such data.
- (vii) CPS shall have full control and access to Data Files at all times through the dashboard feature. CPS may request copies of any raw data from the Contractor's database, which shall be provided within four (4) weeks of the request.
- (viii) CPS will have reasonable time to access, copy and/or delete Data Files before termination of the subscription. Once information is deleted, the Data Files are purged from Contractor's servers within two (2) weeks of the date of deletion. .
- (ix) to, in the event of the Contractor's cessation of operations, provide CPS access to Data Files and provide CPS access to subsequently erase and/or otherwise destroy any Data Files, be it digital or physical form, still in Contractor's possession such that Contractor is no longer in possession of any student work belonging to CPS.
- (x) to allow CPS to delete Data Files that it collects or receives under this Agreement.
- (xi) To, upon receipt of a litigation hold request from CPS, immediately implement a litigation hold and preserve all documents and data relevant identified by CPS and suspend deletion, overwriting, or any other possible destruction of documentation and data identified in, related to, arising out of and/or relevant to the litigation hold

4. Contractor certifies to the best of its knowledge under the penalties of perjury that it complies with all applicable federal and state laws, regulations and rules as such laws may apply to the

receipt, storing, maintenance or access to personal student information, including without limitation, all applicable standards for the protection of personal student information and maintaining safeguards for personal student information. . Further, the Contractor hereby certifies to the best of its knowledge under the penalties of perjury that it shall fully comply with the provisions of the federal Family Educational Rights Privacy Act, 20 U.S.C. §1232g and to fully protect the confidentiality of any personally identifiable student data and/or personally identifiable information and/or student data and/or student information provided to it or its representatives. Contractor further represents and warrants that it has reviewed and complied with all information security programs, plans, guidelines, standards and policies that apply to the work it will be performing, that it will communicate these provisions to and enforce them against its subcontractors and will implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personally identifiable student information and/or student record information from unauthorized access, destruction, use, modification, disclosure or loss. Contractor also represents and warrants that if personal information and/or student record information is to be stored on a laptop , that such electronic devices are encrypted and that all such devices will be scanned at the completion of any contract or service agreement and/or research study or project to ensure that no personal information and/or student record information is stored on such electronic devices. Furthermore, Contractor represents and warrants that it has in place a service that will allow it to wipe the hard drive on any stolen laptop or mobile electronic device remotely and have purchased locks for all laptops and other mobile electronic devices and have a protocol in place to ensure use by employees.

5. Contractor represents, warrants and agrees that its Terms of Use as updated from time to time, shall be amended as it relates to the Services as follows:

- a. Any indemnification provision contained in the Contractor's terms of service, terms and conditions of use and/or privacy policies shall not apply to any breach or violation of the terms of this Agreement.
- b. Any provision in the Contractor's terms of service, terms and conditions of use and/or privacy policies that require that the City and/or CPS, as a user, to carry insurance coverage shall not apply to any breach or violation of the terms of this Agreement.
- c. Any provision in the Contractor's terms of service, terms and conditions of use and/or privacy policies which specifically disclaim all implied warranties or merchantability, non-infringement and fitness for a particular purpose, the implied conditions of satisfactory quality and acceptance as well as any local jurisdictional analogues to the above and other implied or statutory warranties shall not apply to any breach or violation of the terms of this Agreement.
- d. Any provision in the Contractor's terms of service, terms and conditions of use and/or privacy policies by which the City and/or CPS is specifically releasing the Contractor from liability shall not apply to any breach or violation of the terms of this Agreement.
- e. This Agreement will form an integral part of the Terms of Use for CPS during the term of the subscription. Unless expressly changed herein, all other terms and conditions of the Terms of Use, as updated from time to time, shall not be affected, and shall remain in full force and effect. In any contradiction or discrepancy between the terms of this Agreement to those of the Terms of Use, the terms of this Agreement shall prevail for the term of the subscription. .

6. Contractor represents that it is authorized to bind to the terms of this Agreement and Terms of Use, including confidentiality and destruction of Data Files and any personally identifiable student data contained therein, all affiliated companies, individuals, employees or contractors who may

have access to the Data Files and/or any personally identifiable student data contained therein, or may own, lease or control equipment or facilities of any kind where the Data Files and any personally identifiable student data contained therein is stored, maintained or used in any way.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, and intending to be legally bound, each party has caused this Agreement to be duly executed as a Massachusetts instrument under seal as of the day and year first written above.

*BRAINPOP LLC*

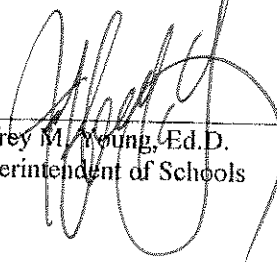


Name

11/3/2015

Title

CAMBRIDGE PUBLIC SCHOOLS



Jeffrey M. Young, Ed.D.  
Superintendent of Schools