

9/8/23
BrainPOP

AGREEMENT Regarding
NYSED Data Privacy and Security
In Accordance with Section 2-d of the New York Education Law

This is an agreement ("Agreement") dated June 26, 2023 entered into by and between **BrainPOP LLC**, with its principal place of business located at 71 W 23rd Street, 17th Floor, New York, NY 10010 ("Contractor"), and **Chester Union Free School District**, with its principal place of business located at 64 Hambletonian Avenue, Chester NY 10918 ("CUFSD"). This Agreement is a rider to the Contractor's Terms of Use and Privacy Policy, as posted at www.brainpop.com, as updated from time to time (collectively, the "Terms of Use"), which govern CUFSD's use of Contractor's products.

Upon execution by Contractor's and CUFSD's authorized representatives, this Agreement shall be deemed to have been in full force and effect as of the effective date.

WHEREAS, CUFSD is an educational agency within the meaning of New York State Education Law, Section 2-d ("Section 2-d"), and Contractor is a third party contractor within the meaning of Section 2-d; and

WHEREAS, Contractor and its authorized officers, employees, students and agents shall have access to "student personally identifiable information (PII)," and "student data" regulated by Section 2-d; and

WHEREAS, the provisions of this Agreement are intended to comply with Section 2-d in all respects. To the extent that any term of the Terms of Use conflicts with the terms of this Agreement, the terms of this Agreement shall apply and be given effect.

NOW, THEREFORE, it is mutually agreed that the Terms of Use is hereby amended in accordance with this Agreement, as follows:

1. Confidential Information

1.1 Contractor agrees that in performing the Agreement with CUFSD, Contractor may have access to confidential information in the possession of CUFSD, regarding student personally identifiable information ("PII"). For the purposes of this Agreement, it is agreed that the definition of Confidential Information includes all personally identifiable documentary, electronic, or oral information of students made known to Contractor or maintained by Contractor in connection with the applicable subscription. This Confidential Information includes Student Data as defined under Section 2-d. The Confidential Information does not include de-identified, anonymous, or aggregate information.

1.2 Contractor agrees to comply with Section 2-d, and the corresponding regulations promulgated by the Commissioner of Education of New York ("Commissioner") thereunder. In addition, Contractor agrees to comply with any changes in Section 2-d, the Commissioner's regulations and relevant CUFSD policy that may be amended or modified during the term of the applicable subscription. Upon request by CUFSD, Contractor shall provide CUFSD with copies of its policies and related procedures that pertain to the protection of PII. It may be made available in a form that does not violate Contractor's own information security policies, confidentiality obligations, and applicable laws.

1.3 CUFSD is in full control over the PII at all times through the administrator dashboard feature. Upon expiration of the applicable subscription to which this Agreement applies, CUFSD can delete the PII at any time, and in real-time. Once deleted by the CUFSD, the PII will be purged within two (2) weeks. If CUFSD does not delete the PII upon two (2) years of termination of the applicable subscription, Contractor shall automatically destroy all PII obtained in connection with the products and/or services provided herein,

and from all backup servers after an additional two (2) weeks. If student PII is to be maintained by Contractor for any lawful purpose, such data shall remain in an encrypted format and shall be stored on systems maintained by Contractor in a secure data facility.

1.4 The parties further agree that the terms and conditions set forth in this Confidential Information section and all of its subparts shall survive the expiration and/or termination of the applicable subscription.

2. Data Inspection and Challenges to Data

Education Law Section 2-d and FERPA provide parents and eligible students the right to inspect and review their child's or the eligible student's PII stored or maintained by CUFSD. To the extent PII is held by Contractor pursuant to the Terms of Use, CUFSD is in full control over the Student Data at all times through the administrator dashboard feature. CUFSD can view and manage the Student Data at any time, and in real-time. . If a parent or eligible student contacts Contractor directly to review any of the PII held by Contractor pursuant to the Agreement, Contractor shall promptly notify CUFSD and refer the parent or eligible student to CUFSD.

In the event that a student's parent or an eligible student wishes to challenge the accuracy of student data (pertaining to the particular student) that may include records maintained, stored, transmitted, and/or generated by Contractor pursuant to the Agreement, CUFSD is able to correct the Student Data at any time and in real time using the administrator dashboard .

If applicable, a teacher or principal who wishes to challenge the accuracy of data pertaining to the teacher or principal personally, which is disclosed to Contractor pursuant to the Agreement CUFSD is able to correct the applicable APPR Data at any time and in real time using the administrator dashboard.

3. Training

Contractor represents and warrants to its best knowledge that any of its officers, employees, and/or assignees who will have access to student data pursuant to the Terms of Use will receive training on the applicable federal and state laws governing confidentiality of such student data, prior to obtaining initial or any further access to such data.

4. Use/Disclosure of Data

4.1 Contractor shall not sell or use for any commercial purpose student data that is received by Contractor pursuant to the Agreement and Terms of Use or developed by Contractor to fulfill its responsibilities pursuant to the Agreement and Terms of Use, except otherwise stated in Terms of Use.

4.2 Contractor shall use the student data, records, or information solely for the exclusive purpose of and limited to that necessary for the Contractor to perform the duties and services required under the Terms of Use.

Contractor shall not collect or use educational records of CUFSD or any student, data of CUFSD for any purpose other than as explicitly authorized in this Agreement or the Terms of Use.

4.3 Contractor shall ensure, to the extent that it receives student data pursuant to the Agreement, that it will not share Confidential Information with any additional unauthorized parties, including an unauthorized subcontractor or non-employee agent, without prior written consent of CUFSD, unless

otherwise authorized in Terms of Use. Contractor shall indemnify CUFSD from third party claims resulting from the acts and omissions of the Contractor's employees and subcontractors in regards to Confidential Information. All indemnities set forth herein shall be limited up to amounts covered by insurance and subject to the following: CUFSD shall provide Contractor with: (a) prompt written notice of such claim; (b) the right to solely control and direct the investigation, preparation, defense and settlement thereof; and (c) reasonable assistance and information.

5. Contractor's Additional Obligations under Section 2-d and this Agreement

Contractor acknowledges that, with respect to any student data received through its relationship with CUFSD pursuant to the Agreement it is obliged to maintain a Data Security & Privacy Plan, and fulfill the following obligations:

- ☐ execute, comply with and incorporate as Exhibit "A" to this Agreement, as required Section 2-d, the Parents' Bill of Rights for Data Privacy and Security developed by CUFSD;
- ☐ store all data transferred to Contractor pursuant to the Agreement by CUFSD, in an electronic format on systems maintained by Contractor in a secure data facility or hard copies under lock and key;
- ☐ limit internal access to student data to Contractor's officers, employees and agents who are determined to need such access to such records or data to perform the services set forth in the Terms of Use;
- ☐ not disclose student data to any other party who is not an authorized representative of Contractor using the information to carry out Contractor's obligations under the Agreement, unless: (I) the other party has the prior written consent of the applicable student's parent or of the eligible student; or (II) the other party has the prior written consent of the applicable teacher or principal; or (III) the disclosure is required by statute or court order, and notice of the disclosure is provided to CUFSD no later than five business days before such information is required or disclosed (unless such notice is expressly prohibited by the statute or court order);
- ☐ use reasonable administrative, technical and physical safeguards that align with the NIST Cybersecurity Framework and are otherwise consistent with industry standards and reasonable practices, including encryption, firewalls and password protection in accordance with industry standards, to protect the security, confidentiality and integrity of student data of CUFSD while in motion or in custody of Contractor from unauthorized disclosure;
- ☐ not mine Confidential Information for any purposes other than those agreed to in writing by the Parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited; notify CUFSD, promptly and without unreasonable delay, of any breach of security resulting in an unauthorized release of Students' PII. In addition, Contractor shall take prompt steps to limit and mitigate the damage of such security breach or unauthorized release to the reasonable extent practicable, and promptly reimburse CUFSD for the actual cost of any notifications CUFSD makes as a result of the security breach or unauthorized release. Contractor further acknowledges and understands that Contractor may be subject to civil and criminal penalties in accordance with Section 2-d for violations of Section 2-d

and/or this Agreement.

- ☐ understand that any breach of the privacy or confidentiality obligations set forth in this Agreement may, at the sole discretion of CUFSD, result in CUFSD immediately terminating this Agreement; and
- ☐ familiarize its applicable officers, employees and agents with this Agreement and with the "Parents' Bill of Rights for Data Privacy and Security."

The Contractor acknowledges that failure to fulfill these obligations shall be a breach of the Agreement.

6. Except as specifically amended herein, all of the terms contained in the Terms of Use are hereby ratified and confirmed in all respects, and shall continue to apply with full force and effect.

IN WITNESS WHEREOF, Contractor and CUFSD execute this Agreement as follows:

BrainPOP LLC

CUFSD

By: Anna Friedman

By: Ed Spence

Title: Senior Director, Legal

Title: Tech Director + Data Analyst

Signature: Anna Friedman

Signature: [Signature]

Date: 9/7/2023

Date: 9/8/23