

Oak Park Elementary School District 97 Data Services Agreement

1. **Nature of the Transaction.** Branching Minds, Inc. ("Branching Minds") agrees to sell and license to the School District first named in this Agreement ("Customer"), and Customer agrees to purchase and license from Branching Minds, the services ("the Services") and software (the "Software") listed in this Agreement (collectively referred to as the "Solution").
2. **License.** Upon commencement of the Solution, Customer will be licensed to use the Software according to the Branching Minds services agreement (the "Services Agreement"), which is attached hereto as Addendum B and incorporated into this Agreement by reference. The license shall be subject to the Term stated in Section 13 below. In the event of a conflict between the terms of this Agreement and the Services Agreement, the terms of this Agreement shall govern.
3. **Hosting.** Branching Minds may provide the Solution from any facility and may from time to time transfer any or all of the Services to any new facilities or relocate the personnel, equipment, and other resources used in providing the Services.
4. **Service Levels.** The Software is provided 24 hours per day, 7 days per week. Branching Minds shall ensure 99.5% up-time, Monday through Friday between 6 a.m. and 6 p.m. US Central Time ("Up-time"). Where Up-time percentage averages less than 99.5% in a three (3) month period, Customer shall have the right to be reimbursed, pro rata, for such time, or to terminate this Agreement immediately upon written notice to "Branching Minds".
5. **Security.** Branching Minds agrees to employ commercially reasonable security measures that comply with all applicable federal and state laws and regulations regarding data security and privacy for provision of the Solution, including testing of its servers for viruses at reasonable intervals and maintaining backup copies of all content. Branching Minds shall maintain complete and accurate records of these security measures and produce such records to client for purposes of audit upon reasonable prior notice during normal business hours. Except as expressly provided in this Section, neither Branching Minds nor its successors or assigns shall have any liability for the breach of its security measures or the integrity of the Services, unless caused by the negligence or intentional conduct of Branching Minds or its employees.
6. Branching Minds shall comply with all applicable local, county, state and federal laws and regulations, including without limitation those regarding the provision of educational software, copyright, student records, and student confidentiality, the Illinois School Student Records Act and the Family Educational Rights and Privacy Act. Branching Minds shall indemnify and hold Customer harmless for any claims made against Customer for breaches of this Section arising from the negligence of Branching Minds.
7. **Family Educational Rights and Privacy Act.** Branching Minds may receive education records from Customer only as an incident of service or training that it is required to provide to Customer pursuant to the terms of this Agreement. In the event Customer provides Personally Identifiable Information ("PII") (including but not limited to personally identifiable student information as defined by applicable state and federal law) to Branching Minds, Branching Minds shall be deemed a "contractor" under 34 CFR 99.31(a)(1)(B), and Branching Minds shall fully comply with all requirements of 34 CFR 99.31(a)(1)(B)(1) through (3). Branching Minds acknowledges that PII is the confidential information of Customer and shall not use it for any purpose, commercial or otherwise, except as expressly provided in this Agreement. Branching Minds agrees to abide by the requirements of applicable federal and state law pertaining to the protection and disclosure of PII, and agrees to take all reasonable measures to protect against the unauthorized disclosure of any PII. Except for use and disclosure to their employees and personnel to the extent necessary to fulfill its obligations under the terms of this Agreement, Branching Minds shall not use or further disclose PII. Upon the expiration or termination of this Agreement, Branching Minds agrees to promptly return to Customer any and all PII in Branching Minds' possession.
8. **Third Party Equipment and Software.** Unless otherwise indicated in the Services Agreement, Branching Minds will be responsible for the purchase of, and entering into appropriate licensing agreements concerning, any third party equipment and software necessary for the performance of the Solution. Ownership and/or licenses for the third party equipment and software shall be in the name of Branching Minds. All such purchases and subcontracting are subject to Customer's written pre-approval.

9. **Customer Responsibilities.** In addition to any other duties and obligations set forth in this Agreement, Customer will undertake the following responsibilities at Customer's sole cost and expense:
- a. Completion of any Customer requirements set forth in the Services Agreement;
 - b. Provision and continuous operation of all communication lines, parts, modems, interface equipment and workstations as necessary or reasonably appropriate for use and maintenance of the network capacity between Customer facilities and the Software;
 - c. Cooperation with and assistance to any third parties involved in the transition to the Software;
 - d. Inspection and review of all reports and other output provided by Branching Minds and notification to Branching Minds of any incorrect reports or output within three business days after Customer's knowledge of any such information;
 - e. Training of appropriate Customer personnel to properly prepare input for and to effectively utilize output from the Software; and
 - f. Cooperation with Branching Minds by, among other things, making available as reasonably requested management decisions, information, approvals, and acceptances in order that Branching Minds may properly accomplish its obligations and responsibilities under this Agreement.
- Payment.** Customer will make payments for the quoted price of the Software according to the Services Agreement.
10. **Ownership.** All Customer Personally Identifiable Information and other data received by Branching Minds from Customer (collectively, "Customer Data") will remain Customer's property, and upon the expiration or termination of this Agreement for any reason, all Customer Data will be returned to Customer or, if Customer is not willing to receive such data within six (6) months after expiration or termination of this Agreement, Branching Minds shall destroy the Customer Data. Branching Minds may use aggregate data from schools or districts for marketing and internal research purposes. Branching Minds shall own all intellectual property rights, including copyright, trademark, patent and trade secret rights in and to the Software, and this Agreement shall not be construed as a transfer of any right, title or interest in the Software.
11. **License.** During the term of this Agreement, Customer grants to Branching Minds the limited, nonexclusive right and license to copy, display, perform, modify and otherwise use (and permit others to use) any Customer Data, including Customer Data that would qualify as school student record information under the Illinois School Student Records Act, 105 ILCS 10/1 *et seq.*, or Personally Identifiable Information under the Family Educational Rights and Privacy Act, solely for the purpose of rendering the Services to Customer.
12. **Delays.** "Branching Minds" is not responsible for any failure to provide the Solution if such failure is caused by changes to the format of the Customer Data, changes to Customer's equipment or software, or Customer's delay or failure in the performance of customer responsibilities.
13. **Service Term.** The term of the Service shall commence on March 15, 2016 and shall expire automatically on July 1, 2016, unless sooner terminated in accordance with this Agreement.
14. **Effect of Termination.** Sections 5, 6, 7, 11, 16, 18, 19, 20, 23, 25 and 26 shall survive any expiration or termination of this Agreement. Upon expiration or termination, Customer shall cease to use the Software and return to Branching Minds any proprietary materials provided to Customer in performance of this Agreement.
15. **Limited Warranties.** Branching Minds warrants, for the benefit of Customer only, that the third party equipment purchased under this Agreement will conform in all material respects to the specifications supplied by the manufacturer. Branching Minds shall pass through all third party warranties and Branching Minds' sole obligation and Customer's exclusive remedy as against Branching Minds for any defect or nonconformity in the equipment will be Branching Minds' cooperation with Customer to provide it with the benefit of any warranty and support commitment of the third-party manufacturers and suppliers of the equipment. Branching Minds warrants that the services provided under the attached Services Agreement will be performed using generally accepted industry standards and practices and in compliance with all applicable state, federal, municipal or local educational institution codes. Branching Minds' limited warranty covering the Software is set forth in the Services Agreement.

16. **DISCLAIMER OF WARRANTY.** THE LIMITED WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, STATUTORY OR OTHERWISE). CUSTOMER ACKNOWLEDGES THAT BRANCHING MINDS IS NOT THE MANUFACTURER OF THE EQUIPMENT AND EXPRESSLY WAIVES ANY CLAIM AGAINST BRANCHING MINDS BASED UPON ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT WITH RESPECT TO THE THIRD PARTY EQUIPMENT.

17. **Indemnification.**

Branching Minds agrees to indemnify, defend and hold harmless Customer and its board of education, individual board members, officers, directors, administrators, employees, agents, attorneys and assigns, against any third party claims, demands, causes of action, arbitrations, losses, liabilities, damages, and penalties, including reasonable attorneys fees and court costs, to the extent arising from (1) any breach of this Agreement by Branching Minds; and (2) any negligent act or omission of Branching Minds or any of its employees, subcontractors or suppliers. Branching Minds shall maintain liability insurance sufficient to fulfill its obligations under this Section and shall submit proof of such insurance to Customer upon request. Such insurance may not be changed by Branching Minds in a manner that would lessen the protection provided to Customer during the term of this Agreement without Customer's prior written consent.

Customer agrees to indemnify, defend and hold harmless Branching Minds, its affiliates, and the respective members, managers, employees, or agents thereof, against any third party claims, demands, causes of action, arbitrations, losses, liabilities, damages, and penalties, including reasonable attorneys fees and court costs, to the extent arising from (1) any breach of this Agreement by Customer; and (2) any negligent act or omission of Customer or any of its employees, subcontractors or suppliers.

18. **Infringement Claim.** Branching Minds warrants that the Software and Services will not infringe any valid United States patent, trademark, or copyright. Branching Minds shall defend, hold harmless, and indemnify Customer from and against any and all claims, actions, and liabilities brought by any third party alleging that the Software infringe upon a trade secret, or a registered patent or copyright in the United States and Branching Minds shall pay all costs and damages arising out of any such claim.


19. **Insurance.** Branching Minds shall procure and maintain through an insurance company or companies licensed to conduct business in Illinois insurance with coverage and limits as specified below, and shall cause Customer's board of education, individual board members, officers, administrators, employees, agents, attorneys, and assigns, to be named as additional insured on these policies by endorsement. All such insurers shall carry a Best Key Guide Rating of A / XV. The commercial general liability and automobile liability policies shall be endorsed to reflect that coverage is primary to and noncontributory with any other insurance available to Customer. The commercial general liability policy shall by endorsement provide contractual liability coverage including the indemnity obligations provided in this agreement. Each such policy shall include by endorsement a requirement of at least 30 days written notice to Customer prior to any termination, cancellation or material amendment to that policy. Upon execution of this agreement and on an annual basis thereafter during the term of this agreement or any extension thereof, Branching Minds shall furnish to Customer certificate(s) of insurance, policies, and endorsements reflecting the required coverages. The type and minimum limits of insurance required are as follows:

Type	Limits
Commercial General Liability	
Per Occurrence:	\$1,000,000
Aggregate:	\$2,000,000
Automobile Liability:	\$1,000,000 (combined single limit)
Workers' Compensation:	Statutory Minimum

20. **Viruses.** Branching Minds will run a commercially available virus protection program against the Software prior to delivery to Customer and eliminate any viruses detected in that process.
21. **Damage to Property.** In the event Branching Minds is solely responsible for damage to or destruction of Customer's physical property (collectively "Damage") in performance under this Agreement Branching Minds shall, at its sole cost, repair or replace such Damage. Such repair or replacement shall return Damage to at least equivalent condition or function of such property immediately before the Damage occurred. In the case where does not repair or replace Damage within thirty (30) days, or other commercially reasonable timeframe, Customer may set off costs of such Damage against payments due to Branching Minds. Where Damage exceeds anticipated payments due to Oak Park School District 97 under this Agreement, Branching Minds shall reimburse Customer for remaining balance within thirty (30) days after demand.
22. **Taxes.** Neither federal excise tax nor State of Illinois Sales Tax applies to Customer. The amounts to be paid to Branching Minds hereunder are inclusive of all other taxes that may be levied, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. Branching Minds shall be responsible for any taxes levied or imposed upon the income or business privileges of Oak Park School District 97.
23. **Assignment.** This Agreement and the rights and obligations of the parties hereunder may not be assigned or otherwise transferred by either party without prior written consent from the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in its entirety as the result of a sale of all or substantially all of its assets, a merger, reorganization or spin-off, without having to obtain the other party's consent.
24. **Applicable Law.** This Agreement shall be construed under the laws of the State of Illinois, exclusive of its choice of law's provisions.
25. **Entire Agreement.** This Agreement, and the Services Agreement attached hereto, constitute the entire agreement between the parties and supersede all other prior or present understandings, either verbal or written, regarding the subject matter. This Agreement may only be modified or amended in a writing executed by both parties. Any additional or contrary terms or conditions contained in any purchase order or other document issued by Customer shall be null and void unless expressly agreed to in a written modification or amendment to this Agreement.
26. **Criminal Background Check.** Branching Minds shall conduct, at its own cost and expense, criminal background checks of all of its employees and agents who work on Customer's property. All such background shall be conducted in accordance with Section 10-21.9 of the School Code, 105 ILCS 5/10-21.9. Branching Minds shall not allow anyone to work at Customer's property whose criminal background check reveals items that would prohibit them from working with children under Illinois law or reveals other criminal conduct or inappropriate behavior which reasonably calls into question such individual's fitness to work with children. Branching Minds shall indemnify and hold Customer harmless for any claims made against Customer related to "Branching Minds'" breach of this Section.

Branching Minds

Board of Education of Oak Park
District 97, Cook County, Illinois

By: 
Its Duly Authorized Agent
Title: Chief Operating Officer
Printed Name: David Magier
Date: 3.15.16

By:
President
Attest:
Secretary
Date:

ADDENDUM A

THIS ADDENDUM A, effective simultaneously with the attached Licensed Product Agreement (the "Agreement") by and between "Branching Minds", a corporation organized and existing under the laws of "Branching Minds" (the "Company") and the Board of Education of Oak Park School District 97, Cook County, Illinois (the "Board"), is incorporated in the attached Licensed Product Agreement and modifies the Agreement (and all supplemental terms and conditions and policies applicable to the Agreement) as follows:

1. The Company shall cause each officer, director, employee and other representative who shall have access to any personally identifiable student record information of Oak Park School District 97 students (hereinafter "Confidential Student Records") during the term of the Agreement (collectively, the "Authorized Representatives") to maintain in strict confidence and trust all Confidential Student Records. The Company shall take all reasonable steps to insure that no Confidential Student Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for the Board under the Agreement and have agreed to be bound by the terms of this Agreement; (ii) are authorized representatives of the Board, or (iii) are entitled to such Confidential Student Records from the Company pursuant to federal and/or Illinois law. The Company shall use Confidential Student Records, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement. The identity of Authorized Representatives having access to the Confidential Student Records will be documented and access will be logged.

2. The Company and the Board agree that the purpose of this Addendum is to ensure compliance with the Family Educational Rights and Privacy Act ("FERPA") and the Illinois School Student Records Act ("ISSRA"). The Company is hereby identified as an entity acting for the Board in the performance of functions that a Board employee or employees would otherwise perform.

3. The Company shall institute commercially reasonable physical and technical safeguards, no less rigorous than accepted industry practices (updated as such practices evolve), to protect the Confidential Student Records from unauthorized access or disclosure (a "Security Breach").

4. In the event of a Security Breach, the Company shall promptly institute the following:

i. Provide the Board with the name and contact information for an employee of the Company who shall serve as the Board's primary security contact and shall be available to assist customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach;

ii. Notify the Board of a Security Breach as soon as practicable, but no later than twenty-four (24) hours after the Company becomes aware of it; and

iii. Notify the Board of any Security Breaches by telephone at the following number: 708-524-3000, e-mailing the Board with a read receipt at d97board@op97.org and with a copy by e-mail to the Company's primary business contact within the School District.

Immediately following the Company's notification to the Board of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Company agrees to fully cooperate with the Board in the Board's handling of the matter, including, without limitation:

i. Assisting with any investigation;

ii. Facilitating interviews with the Company's employees and other involved in the matter; and

iii. Making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, or as otherwise reasonably required by the Board.

5. Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, the Company covenants and agrees that it promptly shall deliver to the Board, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the Board, all Confidential Student Records of District 97 students. The Company hereby acknowledges and agrees that, solely for purposes of receiving access to Confidential Student Records and of fulfilling its obligations pursuant to this provision and for no other purpose (including without limitation, entitlement to compensation and other employee benefits), the Company and its Authorized Representatives shall be deemed to be school officials of the School Board, and shall maintain the Confidential Student Records in accordance with all federal state and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in the Confidential Student Records shall survive termination of the Agreement. The Company shall indemnify and hold harmless the School Board from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with a breach by the Company or any of its officers, directors, employees, agents or representatives of the obligations of the Company or its Authorized Representatives under this Addendum A.

6. The Company shall not sell or otherwise disclose to a third party any data received from the School Board or District 97 students. The Company shall in all respects comply with the applicable provisions of the *Children's Online Privacy and Protection Act*, as amended from time to time.

7. The Company shall not transmit to or store any data received from the School Board on a server or other data storage medium located outside the United States of America.

8. Any changes the Company may implement with respect to its privacy policies shall be ineffective and inapplicable with respect to the School Board unless the School Board affirmatively consents in writing to be bound by such changes. Student record access granted to parents/guardians of Oak Park School District students must not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in the Agreement or this Addendum.

“Branching Minds”

Board of Education of Oak Park
District 97, Cook County, Illinois

By: David Magier
Its Duly Authorized Agent

By: _____
President

Title: Chief Operating Officer

Attest: _____
Secretary

Printed Name: David Magier

Date: 2.23.16

Date: _____



1407 Broadway, 24th Floor New York, NY 10018
(646) 450-5174 / info@branchingminds.com

SOFTWARE SERVICES AGREEMENT

Service Provider:
Branching Minds, Inc.
("Branching Minds")
1407 Broadway, 24th Floor
New York, NY 10018

Customer:
Oak Park Elementary School
District #97 ("Customer")
970 W. Madison Street
Oak Park, IL 60302

WHEREAS, Branching Minds is the sole owner of certain proprietary software applications (the "Software," and, in combination with other related services provided by Branching Minds which may include monitoring, maintenance, support, backup, and training, the "Services"); and

WHEREAS, Branching Minds is engaged in the business of providing its customers with access to, and the use of, the Software on websites ("Websites") located on the Internet, and the Services;

and

WHEREAS, Customer desires to access and use the Software; and

WHEREAS, Branching Minds has agreed to provide the Services to Customer, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties agree as follows:

1. THE SERVICES.

a. Agreement. This Agreement sets forth the terms and conditions under which Branching Minds agrees to provide Customer with access to its Software and Services. Attached hereto as "Services & Fee" Schedule is a list and description of the Services to be provided to Customer. In the event that Customer desires to obtain additional Services from Branching Minds at any time during the Term, the parties shall identify the additional services and the price on additional written "Services & Fee" Schedules.

b. License Grant. Branching Minds grants to Customer a limited, non-transferable, non-exclusive license to access and use the Services via the Websites and to use the Services and any documentation provided by Branching Minds only as authorized in this Agreement.

c. Authorized Users. Customer and its employees, agents and contractors that have a need to use the Services (collectively, "Authorized Users") shall have the right to operate and use the same. Any such individual or entity is subject to the terms and conditions of this Agreement, and must agree to be bound by the terms and conditions of this Agreement. Customer shall not grant access to the Services to any outside vendor or any other person or entity without Branching Minds' prior written consent, which consent may be withheld, delayed, or conditioned in Branching Minds' sole discretion. Customer shall not sublicense the Services or permit any third party to run, operate or otherwise make use of the Services. Customer shall not use the Services for any purpose other than Customer's business. Customer may copy for its own internal use Branching Minds' manuals, training materials, and other reference materials as long as appropriate copyright markings are applied and maintained but it may not post any such materials on the Internet or to any other location that can be accessed by unauthorized users under any circumstances.

2. CUSTOMER RESPONSIBILITIES

Customer shall have sole responsibility for administering access security (e.g., the granting of rights to an Authorized User). Customer is solely responsible for maintaining its Authorized User's computers and providing user network and Internet access to the Services. Customer is solely responsible for ensuring that its users comply with the terms and conditions with respect to use of the Services that are set forth in this Agreement. Customer shall provide connectivity and security to the Internet for its location(s) for purposes of providing adequate access to Services. Branching Minds shall not be responsible for the reliability, access to, or continued availability of the communications lines, or the corresponding security configurations, used by Customer in accessing the Websites to use the Services. Customer shall be solely responsible for ensuring that all Customer content and data, including documents uploaded to the Websites, is accurate, not corrupt in any way, and does not contain any viruses.

3. PAYMENT TERMS

a. Acceptance. Customer agrees to accept the Services, and Branching Minds, by its acceptance of this Agreement, agrees to provide the Services to the Customer, in accordance with the payment terms and conditions as set forth or described in the section of the Services & Fee Schedule, attached hereto, named "Fees".

4. TRAINING; CUSTOMER SUPPORT

a. In accordance with the section of the Services & Fee Schedule named "Training", training shall be provided to Customer's employees on the use of the Software. If the Customer makes a specific request for unique or additional training or other services, Branching Minds shall perform those services for the Customer at a time and location that is mutually agreed upon by both parties. All such additional training and/or other services that are rendered will be invoiced in accordance with the then prevailing rates at the time such training or other services are provided, and are subject to change. The Services & Fee Schedule includes a statement of current prevailing rates for

additional training and professional services.

b. Branching Minds offers Customer Support via online chat through the Websites, as well as by phone. Official helpdesk hours of operation are 8:00 a.m. until 5:00 p.m. eastern time. The support services may be changed at anytime without notice to Customer or may be discontinued in the sole discretion of Branching Minds at any time.

5. INTELLECTUAL PROPERTY

a. License. Customer is granted a limited, non-exclusive license to use the Software under the terms of this Agreement in the business or professional activities of Customer. All right, title, and interest in and to the Software, and all intellectual property rights in and to the Software, the Websites and all other materials shall remain solely vested in, too and with Branching Minds.

6. PASSWORD

As part of the registration process for Subscription Services, Customer will establish passwords. Customer is solely responsible for maintaining the confidentiality of such passwords and agrees that Branching Minds has no obligations with regard to the use by third parties of such passwords. Customer is entirely responsible for any activity occurring under each Customer account and password. Customer agrees to notify Branching Minds immediately if Customer has any reason to believe that the security of Customer data or any password has been compromised.

7. HOSTING PROVIDER.

The Software will be hosted by an authorized subcontractor (the "Hosting Provider") that has been engaged by Branching Minds and shall only be accessed by Customer on the Websites, using the Customer's computers. As a part of the Services, the Hosting Provider shall be responsible for maintaining a backup of Customer data. The Hosting Provider shall have access to Customer data solely for the purpose of enabling Branching Minds to provide the Services and will not access or use Customer data for any other purposes.

8. USE, ACCURACY AND EFFICACY

The use, accuracy and efficacy of the Software depend in large measure upon the accuracy and completeness of the data provided to Branching Minds by Customer. Customer agrees that it will use the Software in a manner consistent with this Agreement, and applicable guidelines, training and directions from Branching Minds.

9. CONFIDENTIALITY

a. "Confidential Information" is the confidential business information disclosed by the "Disclosing Party" to the "Receiving Party" whether orally or in writing, that is designated as confidential or that should reasonably be understood to be

confidential given the nature of the information and the circumstances of disclosure. Branching Minds and Customer are both Disclosing Parties (when disclosing its confidential information) and Receiving Parties (when receiving the other's information). Confidential Information may take the form (as examples) of the Software, information regarding this Agreement (including pricing information) and any documentation provided to Customer by Branching Minds. Confidential Information does *not* include any information that is generally publicly known at the time of disclosure, or that the Receiving Party legally learns independently, or independently develops without breaching this Agreement.

b. Except to fulfill the purposes of this Agreement:

- i. The Receiving Party will not use the Disclosing Party's Confidential Information, and will maintain the confidentiality of the Disclosing Party's Confidential Information at least to the degree as the Party maintains the confidentiality of her/its own such information.
- ii. The Receiving Party may disclose Confidential Information to professionals (such as certified public accountants and attorneys) who are obligated to keep it confidential, and may disclose it when required by subpoena or otherwise by law.

c. Remedies. Each party acknowledges that the disclosure of any Confidential Information, or any information which at law or equity ought to remain confidential, shall immediately give rise to continuing irreparable injury to the other party inadequately compensable in damages at law. Each party shall be entitled to obtain immediate injunctive and other equitable relief against the breach or threatened breach of any of the foregoing confidentiality undertakings (without the necessity to post a bond or to demonstrate the inadequacy of legal remedies), in addition to any other remedies which may be available. Customer hereby consents to the obtaining of such injunctive relief.

d. Assistance and Cooperation. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

10. HOSTING PROVIDER AND LIMITATION OF LIABILITY

The hosting provider is an independent third party not controlled by Branching Minds. Accordingly, IN NO EVENT WILL BRANCHING MINDS BE LIABLE FOR ANY DIRECT, GENERAL, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE TO DATA, DAMAGES FOR LOSS OF BUSINESS

PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, DUE TO PROBLEMS (INCLUDING BUT NOT LIMITED TO ERRORS, MALFUNCTIONS) ASSOCIATED WITH THE FUNCTIONS OF SERVERS MAINTAINED BY THE HOSTING PROVIDER, EVEN IF BRANCHING MINDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Miscellaneous

a. Unenforceability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

b. Force Majeure. Any delay or inability of Branching Minds in complying with the terms hereof arising from unforeseeable causes or events beyond Branching Minds' control, including, without limitation, Customer's failure to supply information or assistance necessary for Branching Minds to provide the Services, acts of God, acts of public enemy, acts of the federal, state, or local governments in either sovereign or contractual capacity, terrorism, fires, floods, internet failure or acts of a third party, shall excuse any resulting or related delay or failure in the performance by Branching Minds.

c. Survival. The provisions of Sections 6, 11, 12 and 14 shall survive the termination or expiration of this Agreement.

d. No Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party and their respective successors or permitted assigns, and will not confer third-party beneficiary rights upon any other person or entity.

Services & Fee Schedule

Product	Cost
Branching Minds Complete License \$6/student ~all students (K8) 20% Discount:	\$35,784 \$28,628
License Subtotal	\$28,628
Tech Implementation (yearly)	\$2,400
Total Cost	\$31,028

Included in the Partnership

Student Insight Surveys & Support Recommendations

- Literacy, Behavior (Social/Emotional, Attention, & Executive Function), & Math
- All topics differentiated for ELL
- Parent-facing recommendations of supports they can use at home

Progress Monitoring

- Collects teachers' observations of student behaviors linked to academic and cognitive skills
- Collects data of interventions/accommodations used by teachers, including frequency, duration and impact of use

- Integrates data from 3rd party progress monitoring and universal screener assessments via CSV flat file or manual entry
- Direct integration with DIBELS Data System
- Create intervention plans scaffolded by best practices
- Coordinate and assign tasks across broader staff

Reporting

- Generates reports based on use of issue identification, progress monitoring and support recommendation tools (aligned with RTI Action Network Recommendations)
- Reports can be exported into a variety of formats, emailed, or printed

Roster integration automated to Branching Minds via Clever

Online implementation support and training-of-trainer sessions

Goals of Partnership (*Customizable*)

- Help school-level RTI/MTSS teams streamline their RTI/MTSS processes, improve student outcomes, and reduce referrals of students misidentified for special education placements.
- Enable general education classroom teachers to deliver tier 1 and 2 level differentiation and intervention with fidelity
- Promote communication, collaboration and coordination across broader intervention team, families and the students themselves.



Oak Park Schools Professional Learning 2018-19

Middle School Workshop

Activity	Participants	Timeline	Duration	# Sessions	Session type	Unit price
Branching Minds Platform Overview	MTSS Teams & Grade Level Representatives	Fall	6 hours	1	onsite	\$2,800
				2018-2019	Sub Total:	\$2,800

Full Handbook Workshop:

Activity	Participants	Timeline	Duration	# Sessions	Session type	Unit price
Kickoff Planning & Handbook Orientation Review BrM MTSS Handbook, set Initiative goals and priorities with keys for success	School Data teams & District data people (20 people-K8)	May	6 hours	1	onsite	\$2,800
Develop and begin Implementation Work Groups: 1) Policy and Guidelines, 2) Communication 3) Professional Development, 4) Metrics and Monitoring						
Reviewing products/documents	BrM staff (Oak Park Pt Person)	summer	10 hours		remote	\$1,500
				2017-2018	Sub Total:	\$4,300
						Total PD Costs: \$7,100