

VERMONT K-12 STUDENT DATA PRIVACY AGREEMENT
Version 1.0

CHAMPLAIN VALLEY SCHOOL DISTRICT

and

BRAINPOP LLC

SEPTEMBER 11, 2018

This Vermont Student Data Privacy Agreement ("DPA") is entered into by and between the Champlain Valley School District (hereinafter referred to as "LEA") and BrainPOP LLC (hereinafter referred to as "Provider") on [Insert Date]. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated [Insert Date] the Terms of Use and Privacy Policy, that govern the use of Provider's products and are posted on www.brainpop.com, and as updated from time to time ("Terms of Use") ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Provider may receive or create and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506; and the Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and

WHEREAS, this DPA complies with Vermont laws and Federal Law.

WHEREAS, for the purposes of this DPA, Provider is a school official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the "General Offer of Privacy Terms" (Exhibit "E"), agree to allow other LEAs the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from the LEA pursuant to the Terms of Use, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, and other applicable Vermont State laws, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in Exhibit “A” hereto:

BrainPOP is an animated educational site for students covering topics including Science, Social Studies, English, Math, Arts & Music, Health, and Technology

3. **Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as Exhibit “B”
4. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit “C”. In the event of a conflict, definitions used in this DPA shall prevail over term used in the .Terms of Use.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Terms of Use is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Terms of Use shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above.
2. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the pupil’s records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Parents can login into their children’s accounts and access their records. Parents may request login information from the child or his or her teacher. Provider shall respond in a timely manner (and no later than 45 days from the date of the request) to the LEA’s request for Student Data in a pupil’s records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account** The teacher on the account may export Student Data or an administrator through the administrator dashboard feature in “My BrainPOP.”

4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA unless otherwise required by law. Provider shall notify the LEA in advance of a compelled disclosure to a Third Party unless otherwise required by law.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Terms of Use. Provider shall ensure that subcontractors that provide services on Provider's behalf comply with the Terms of Use. .

ARTICLE III: DUTIES OF LEA

1. **Privacy Compliance.** LEA shall provide data for the purposes of the Terms of Use in compliance with FERPA, COPPA, PPRA, and all other privacy statutes, if applicable..
2. **Annual Notification of Rights.** If the LEA has a policy of disclosing education records under FERPA (34 CFR § 99.31 (a) (1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable State and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, and all other privacy statutes.
2. **Authorized Use.** The data shared pursuant to the Terms of Use S, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Terms of Use and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA.
3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.
4. **No Disclosure.** De-identified or anonymous information may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or

applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to LEA who has provided prior written consent for such transfer. Provider shall not copy, reproduce or transmit any data obtained under the Terms of Use and/or any portion thereof, except as necessary to fulfill the Service Agreement.

5. **Disposition of Data.** Districts and schools are able to delete information at any time and in real time using the administrator dashboard. Once information is deleted, Provider does not retain any copies. If information was not deleted by the school or the district before the subscription expired, Provider retains such information for a limited period of thirty (30) days. Student accounts within My BrainPOP classrooms that have not been active for a period of two years are automatically deleted as well. After such a period, all information is automatically disposed of and deleted - first from our server and then, two weeks later, from any back-up server. At that point it cannot be restored. If the District's jurisdiction requires the deletion of student data within a shorter time period, or upon immediate termination of the subscription, LEA is required to delete such data using the administrator dashboard as mentioned above or contact us for assistance. Districts and schools may request copies of any raw data from the database, which shall be provided within four (4) weeks of the request.

Upon written request and in accordance with the applicable terms in subsection a or b, below,

6. **Advertising Prohibition.** Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain data security measures, consistent with industry standards and commercial reasonable practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in Exhibit "F" hereto. These measures shall include, but are not limited to:
- a. **Passwords and Employee Access.** Provider shall secure usernames, passwords, and any other means of gaining access to the products or to Student Data, at a level suggested by the applicable standards. Provider shall only provide access to Student Data to employees or contractors that are necessary to provide the products and/or services. Employees with access to Student Data shall have signed confidentiality agreements.. All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.

- b. **Destruction of Data.** Provider shall destroy or delete all Student Data obtained under the applicable subscription when LEA deletes the Student Data using the administrator dashboard feature. The Student Data will be purged from Provider's servers within two weeks.
- c. **Security Protocols.** Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Terms of Use in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Terms of except as necessary to fulfill the purpose of data requests by LEA.
- d. **Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
- e. **Security Technology.** When the service is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- f. **Security Coordinator.** If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.
- g. **Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with Provider's terms and Provider will be responsible for Subprocessors compliance. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance.
- h. **Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct digital and physical periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

2. **Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time of the incident, and not exceeding forty eight (48) hours. Provider shall follow the following process,

- a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under

the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.

- b. The security breach notification described above in section 2(a) shall include, at a minimum, the following information:
 - i. The name and contact information of the reporting LEA subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. At LEA's discretion, the security breach notification may also include any of the following:
 - i. Information about what the agency has done to protect individuals whose information has been breached.
 - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d. Provider agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- e. Provider further acknowledges and agrees to have a written incident response plan that reflects commercially reasonable practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a copy of said written incident response plan.
- f. Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA. If LEA requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, Provider shall cooperate with LEA who will notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above.

- g. In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as Exhibit "E"), be bound by the terms of this DPA to any other LEA who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. **Term.** The Provider shall be bound by this DPA for the duration of the applicable subscription period or so long as the Provider maintains any Student Data. .
2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the subscription has lapsed or has been terminated. LEA shall have the right to terminate the DPA and subscription in the event of a material breach of the terms of this DPA.
3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.
4. **Priority of Agreements.** This DPA and the Terms of Use shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Terms of Use, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Terms of Use shall remain in effect.
5. **Unilateral Modifications.** Provider may unilaterally modify the Terms of Use from time to time. If the Provider modified the Terms of Use, it will notify LEA of any material changes with thirty (30) days' written notice to allow LEA time to object to the changes or cancel its subscription.
6. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, sent to the designated representatives before:

a. Designated Representatives

The designated representative for the LEA for this Agreement is:

Name: Michael Kanfer

Title: Director of Network Services
Contact Information: mkanfer@cvsdvt.org

The designated representative for the Provider for this Agreement is:

Name: Legal Department
Title:
Contact Information: legal@brainpop.com

- b. **Notification of Acceptance of General Offer of Terms.** Upon execution of Exhibit E, General Offer of Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, to the designated representative below.

The designated representative for the notice of acceptance of the General Offer of Privacy Terms is:

Name: _____
Title: _____
Contact Information: _____

7. **Entire Agreement.** This DPA and the Terms of Use constitute 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 DPA may be amended and the observance of any provision of this DPA 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.

8. **Severability.** Any provision of this DPA 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 DPA, 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 DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
9. **Governing Law; Venue and Jurisdiction.** This DPA will be governed by and construed in accordance with the laws of the State of Vermont, without regard to conflicts of law principles. Each party consents and submits to the sole and exclusive jurisdiction of Vermont's state and federal courts for any dispute arising out of or relating to this service agreement or the transactions contemplated hereby. Without derogating from the above, any claim that LEA may have must first, and before taking any other legal action, be submitted to the Provider in the form of a complaint (to: info@brainpop.com), to enable the parties to resolve the claim in a friendly and effective manner. If the parties fail to resolve the claim in this manner in a reasonable timetable, it shall be resolved in the exclusive jurisdiction and venue as specified above. Notwithstanding the foregoing, the Provider may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.
10. **Authority.** Provider represents that it is authorized to bind to the terms of this DPA including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way.
11. **Waiver.** No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
12. **Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Student Data Privacy Agreement as of the last day noted below.

BrainPOP LLC

BY: Abraham Kadar Date: 11/12/2018

Printed Name: Dr. Abraham Kadar Title/Position: CEO and Founder

Name of Local Education Agency

BY: [Signature] Date: 11-12-2018

Printed Name: Michael Koster Title/Position: Director of Network Services

Note: Electronic signature not permitted.

EXHIBIT "A"

DESCRIPTION OF SERVICES

[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]
BrainPOP, BrainPOP Jr, BrainPOP Espanol, BrainPOP Francais, BrainPOP ESL

EXHIBIT "B"

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	

Category of Data	Elements	Check if used by your system
	Language information (native, preferred or primary language spoken by student)	
	Other demographic information-Please specify:	
Enrollment	Student school enrollment	
	Student grade level	x
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	x
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	x

Category of Data	Elements	Check if used by your system
Special Indicator	English language learner information	
	Low income status	
	Medical alerts /health data	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
	Other indicator information-Please specify:	
Category of Data	Elements	Check if used by your system
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID number	
	State ID number	
	Vendor/App assigned student ID number	
	Student app username	x
	Student app passwords	x
Student Name	First and/or Last	x

Category of Data	Elements	Check if used by your system
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures etc. Other student work data -Please specify:	x
Transcript	Student course grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	

Category of Data	Elements	Check if used by your system
	Student bus card ID number	
	Other transportation data -Please specify:	
Other	Please list each additional data element used,	x

Category of Data	Elements	Check if used by your system
	stored or collected by your application	

No Student Data Collected at this time _____.

*Provider shall immediately notify LEA if this designation is no longer applicable.

EXHIBIT “C”

DEFINITIONS

De-Identifiable Information (DII): De-Identification refers to the process by which the Vendor removes or obscures any Personally Identifiable Information (“PII”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

Educational Records: Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider’s software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students’ parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

Provider: For purposes of the Service Agreement, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term "Provider" includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

Pupil Generated Content: The term “pupil-generated content” means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means both of the following: (1) Any personally identifiable information that directly relates to a pupil that is maintained by LEA and (2) any personally identifiable information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this Agreement.

Terms of Use: refers to the Terms of Use and Privacy Policy as posted on www.brainpop.com and as updated from time to time.

School Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

Student Data: Student Data includes any personally identifiable data, whether gathered by Provider or provided by LEA or its users, students, or teachers, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of Vermont and Federal laws and regulations. Student Data as specified in Exhibit B is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

Student Personal Information: "Student Personal Information" means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student. For purposes of this DPA, Student Personal Information is referred to as Student Data.

Subscribing LEA: An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

Sub-processor: For the purposes of this Agreement, the term "Sub-processor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"

DIRECTIVE FOR DISPOSITION OF DATA

[Name or District or LEA] directs [Name of Company] to dispose of data obtained by Company pursuant to the terms of the Service Agreement between LEA and Company. The terms of the Disposition are set forth below:

<u>Extent of Disposition</u> Disposition shall be:	 _____ Partial. The categories of data to be disposed of are as follows: [INSERT CATEGORIES] _____ Complete. Disposition extends to all categories of data.
<u>Nature of Disposition</u> Disposition shall be by:	 _____ Destruction or deletion of data. _____ Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Provider shall destroy or delete all applicable data.
<u>Timing of Disposition</u> Data shall be disposed of by the following date:	 _____ As soon as commercially practicable _____ By (Insert Date) _____ [Insert special instructions.]

Authorized Representative of LEA

Date

Verification of Disposition of Data
by Authorized Representative of Provider

Date

Authorized Representative of Company

Date

OPTIONAL EXHIBIT "E"
GENERAL OFFER OF PRIVACY TERMS

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and the LEA to any other school district ("Subscribing LEA") who accepts this General Offer through its signature below. The Provider agrees that the information on the next page will be replaced throughout the Agreement with the information specific to the Subscribing LEA filled on the next page for the Subscribing LEA. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing LEA may also agree to change the data provide by LEA to the Provider to suit the unique needs of the Subscribing LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Provider shall notify the LEA in the event of any withdrawal so that this information may be transmitted to the Subscribing LEAs.

BrainPop LLC

BY: Avraham Kadar.

Date: 11/12/2018

Printed Name: Dr. Avraham Kadar

Title/Position: CEO and founder

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA's individual information is contained on the next page. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

BY: _____

Date: _____

Printed Name: _____

Title/Position: _____

EXHIBIT “F” DATA SECURITY REQUIREMENTS

[INSERT ADDITIONAL DATA SECURITY REQUIREMENTS HERE]

00618-00001/4286742.1