

School District Addendum to BrainPOP Terms of Use

The provisions of this Addendum amend the Terms of Use and Privacy Policy as posted on www.brainpop.com and as updated from time to time (collectively, "Agreement") between the Board of Education of Community Unit School District No. 300, Kane, McHenry, DeKalb and Cook Counties, Illinois ("School District") and BrainPOP LLC ("Company"). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement only as it applies to the subscription. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and the term(s) of the Agreement that conflict(s) with this Addendum or are inconsistent with this Addendum shall be of no force or effect. All other terms and conditions of the Agreement shall apply.

1. Covered Data

As used in this Addendum, "School District data" means any data or information collected, maintained, generated, or inferred that alone or in combination personally identifies an individual student in accordance with the Family Educational Rights and Privacy Act, 34 C.F.R. § 99.3, and the Illinois School Student Records Act, 105 ILCS 10/2 and other non-public information, including student data, metadata, and user content. School District data shall not include de-identified or anonymous and aggregation information.

2. Compliance with State and Federal Law

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 ("FERPA") and the Illinois School Student Records Act (ISSRA), 105 ILCS 10/1 *et seq.* & 23 IAC 375.

The Company acknowledges for the purposes of this Addendum that it will be designated as a "school official" with "legitimate educational interests" in the School District data, as those terms have been defined under FERPA and ISSRA and their implementing regulations.

To the extent that the Company's collection, use or disclosure of personal information from students is governed by the Children's Online Privacy Protection Act ("COPPA"), the Company agrees that the Company's use of the School District data will be solely for the benefit of the School District's students and for the school system, and that the operator will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

With respect to the Company's collection, disclosure, or use of School District data as governed by the Protection of Pupil Rights Amendment ("PPRA"), the Company agrees that such collection, disclosure, or use, and any use of any School District data, shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District's students or educational institutions.

With respect to any "Covered Information" as defined by the Illinois Student Online Personal Protection Act, the Company agrees to comply with the terms of that Act and refrain from using the Covered Information in any way prohibited by the Act.

With respect to any “Personal Information” as defined by the Illinois Children’s Privacy Protection and Parental Empowerment Act, the Company agrees to comply with the terms of that Act to the extent applicable.

3. Company Obligations:

- 3.1 *Uses and Disclosures as Provided in the Agreement.* The Company may use and disclose the School District data provided by the School District only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. Only the individuals or classes of individuals will have access to the data that need access to the School District data to do the work described in the Agreement. The Company shall ensure that any subcontractors who may have access to School District data are contractually bound to follow the provisions of the Agreement.
- 3.2 *Nondisclosure Except as Provided in the Agreement.* The Company shall not use or further disclose the School District data except as stated in and explicitly allowed by the Agreement and state and federal law. The Company does not have permission to re-disclose School District data to a third party except as provided for in this Addendum and Agreement, as required by law, or as authorized in writing by the School District.
- 3.3 *Safeguards.* The Company agrees to take appropriate administrative, technical and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District data. The Company shall ensure that School District data are secured and encrypted during use, storage and/or transmission. The Company agrees to store and process the School District data in a manner that is no less protective than those methods used to secure the Company’s own data. The Company agrees that School District data will be stored on equipment or systems located within the United States. The Company shall maintain complete and accurate records of these security measures and produce such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. The School District reserves the right at its sole discretion to perform audits of the Company’s storage of School District data at the School District’s expenses to ensure compliance with the terms of the Agreement and this Addendum. School District’s right to audit is limited to no more than once per year and applies only to books, records and documents directly related to the School District.
- 3.4 *Reasonable Methods.* The Company agrees to use “reasonable methods” to ensure to the greatest extent practicable and to the best of Company’s knowledge that the Company and all parties accessing School District data are compliant with applicable state and federal law.
- 3.5 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Any material changes the Company may implement with respect to its privacy policies or terms of use documents shall be ineffective and inapplicable with respect to the School District and/or School District data unless the Company notifies the School District in writing of such changes. School District will have an opportunity to cancel their subscription if they do not agree to the updated material changes to the Terms of Use or Privacy Policy. Access by students or parents/guardians to the Company’s programs or services governed by the Agreement or to any School District data stored by the Company shall 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 this Addendum.

- 3.6 *Data Return/Destruction.* Upon expiration or termination of the subscription or upon the School District's request, the Company agrees that it promptly shall deliver to the School District, and shall return to the School District all School District data or allow the School District to export its data prior to the termination or expiration of the subscription. School District is in full control over the data at all times through the administrator dashboard feature and can delete it at any time. If return of the data is not feasible or if the School District agrees, then the Company shall destroy the data. School District data must be destroyed in a secure manner. The Company agrees to send a written certificate that the data was properly destroyed or returned within 30 days of the end of the Agreement or within 30 days of the School District's request for destruction. The Company shall destroy School District data in such a manner that it is permanently irretrievable in the normal course of business.
- 3.7 *Minimum Necessary.* The Company attests that the data requested by the Company from the School District for the School District to access the Company's products or services represents the minimum necessary data for the services as described in the Agreement and that only necessary individuals or entities who are familiar with and bound by the Agreement will have access to the School District data to perform the work.
- 3.8 *Authorizations.* When necessary, the Company agrees to secure individual authorizations to maintain or use the School District data in any manner beyond the scope or after the termination of the Agreement.
- 3.9 *Data Ownership.* The School District owns the School District data. The Company does not obtain any right, title, or interest in any of the School District data.
- 3.10 *Misuse or Unauthorized Release.* The Company shall notify the School District promptly upon discovering the misuse or unauthorized release of School District data held by the Company or one of its subcontractors, regardless of whether the misuse or unauthorized release is the result of a material breach of the Agreement.
- 3.11 *Data Breach.* In the event of a data breach, which means an unauthorized disclosure, access, alteration, or use of School District data or circumstances that could have resulted in such unauthorized disclosure, access, alteration or use, the Company shall promptly institute the following: (1) notify the School District by telephone or email as soon as practicable, after the Company becomes aware of the data breach; (2) provide the School District with the name and contact information for an employee or team of the Company who shall serve as the Company's primary security contact; (3) assist the School District with any investigation, review of all relevant records; and (4) assist the School District with any notification the School District deems necessary related to the security breach. The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District. The Company shall reimburse and indemnify the School District for any costs imposed on the School District or reasonably undertaken by the School District at its discretion associated with a data breach, including reimbursement of reasonable legal fees, audit costs, fines, and other fees undertaken by the School District because of the security breach.
- 3.12 *Access to Data.* Any School District data in the possession or under the control of the Company shall be made available to the School District upon request by the School District. The

Company shall be responsible to provide copies of or access to School District's data in the possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), requests for student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, or any other request.

3.13 *Service Levels.* The Company's products or services are provided 24 hours per day, 7 days per week.

3.14 *Harmful Code.* Using a recent version of a reputable virus- checking product (to the extent commercially available), Company will check the Software, as well as any systems used by Company to deliver the Software, for any harmful code, including, without limitation, any viruses, worms, or similar harmful code, and will use commercially reasonable efforts to eliminate any such harmful code that the Company discovers.

4. Prohibited Uses

4.1 The Company shall not sell School District data; use or share School District data for purposes of targeted advertising; or use School District data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.

4.2 Notwithstanding the previous paragraph, the Company may use School District data to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on the Company's website, online service, or application; or investigate a matter related to public safety. The Company shall notify the School District as soon as possible of any use described in this paragraph.

5. Miscellaneous

5.1 *Indemnification and Insurance.* The Company agrees to indemnify, defend and hold harmless School District and its officers, directors, employees, agents, attorneys and assigns, against any third-party claims, demands, actions, arbitrations, losses and liabilities resulting from damage directly caused by the Company employees, contractors, or subcontractors in performing the obligations under the Agreement or this Addendum. The indemnities set forth herein shall be limited to the amounts covered by insurance and subject to the following: School District shall provide Company 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. The Company shall maintain liability insurance evidencing that the Company has workers compensation insurance as required by law and general liability insurance with a minimum limit of \$2,000,000. All insurers shall be rated A+-VII or better by A.M. Best or comparable rating service. The comprehensive general liability shall name the School District as an additional insured with a waiver of subrogation in favor of the School District. The Company shall provide the School District with certificates of insurance and/or copies of policies reasonably acceptable to the School District evidencing

the existence of the coverage described above, including form and deductibles, during the duration of the Agreement. The failure to provide acceptable insurance shall be deemed a breach of the Agreement and the School District may immediately terminate the subscription. Such certificates of insurance shall indicate that should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to the School District in accordance with the policy provisions.

- 5.2 *Infringement.* The Company certifies to the best of its knowledge that no third party has any claim to any trademark, patent, or proprietary interest in any product or services the Company provides to the School District. The Company will defend, hold harmless, and indemnify the School District from any claims brought by a third party against the School District to the extent based on an allegation that the Company product or services infringe any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party. If the School District's use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute other equally suitable product or service; (ii) modify the allegedly infringing Company product or service to avoid the infringement; (iii) procure for the School District the right to continue to use the Company products or services free of the restrictions caused by the infringement; or (iv) take back such Company products or services and refund to the School District the license fee previously paid for the Company products depreciated on a straight line basis over 12 months and terminate the School District's license to use the Company's product. The indemnities set forth herein shall be limited to the amounts covered by insurance and subject to the following: School District shall provide Company 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.
- 5.3 *No Indemnification or Limitation of Liability by School District.* Any provision included in the Agreement that requires the School District to indemnify the Company or any other party is deleted and shall not apply to the School District. Any provision in the Agreement, except for Section 5.4 of this Addendum, that limits the Company's liability is deleted.
- 5.4 *Mutual Limitation of Liability.* Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this agreement.
- 5.5 *Taxes.* The School District is a tax-exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.
- 5.6 *Payments.* The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.
- 5.7 *Freedom of Information Act.* The Company acknowledges that School District is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (the "FOIA"), and that the School District shall not be in breach of any confidentiality provisions contained in the Agreement if the School District releases a record in compliance with the FOIA.

5.8 *Governing Law.* The Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois with no regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in (a) law, County, Illinois, or the federal district court for the Northern District of Illinois. Any references to required notices of demands, arbitration, or mediation in the Agreement are not applicable to the Parties. Notwithstanding the foregoing, my claim in connection with this Addendum must first, and before initiating any other legal action, be submitted to the Company in the form of a Complaint (to: info@br.ibm.com), in an effort to resolve the claim in a friendly and effective manner. Notwithstanding the foregoing, Company may seek injunctive or other equitable relief to protect its Intellectual Property rights in any court of competent jurisdiction.

5.9 *Renewal of Agreement.* The parties may renew the Agreement and this Addendum in writing. Any provision in the Agreement that provides for an automatic renewal of the Agreement is deleted.

5.10 *Termination.* The School District may immediately terminate the Agreement if the School District makes the determination that the Company has breached a material term of this Addendum. In addition, the School District may terminate this Agreement at any time without cause after providing the Company with 90 days written notice and shall be entitled to reimbursement of all fees previously paid but not yet incurred.

5.11 *Amendment.* No amendment or modification to this Agreement shall be effective unless and until the amendment or modification is in writing and signed by all parties to this Agreement.

5.12 *Effective Date.* This Addendum shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of the duly authorized representatives.

Company: BrainPOP LLC

4. Scott Kulp

J. Fri ID 21;

On behalf of the Board of
Education
Community Unit
School District No. 300

Susan Harkin

03/13/2020

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COO