

(California Education Code § 49073.1 Compliance)
Amendment to the Terms of Use between Oxnard School District and BrainPOP LLC (“Amendment”)

This Amendment is made part of and modifies the Terms of Use, User Agreement and Privacy Policy as posted on the website www.brainpop.com and as updated from time to time (hereinafter referred to as the “Terms of Use”) between Oxnard School District (“District”) and BrainPOP LLC (“Consultant”). Terms not defined otherwise herein shall have the meaning ascribed to them in the Terms of Use. To the extent any conflict or inconsistency between this Amendment and the terms of the Terms of Use, this Amendment will prevail for the applicable subscription period (“Subscription”).

Pursuant to Assembly Bill 1584 (“AB 1584”), which was codified under the Education Code as section 49073.1, the California Legislature requires that any agreement entered into, renewed or amended after January 1, 2015 between the District and a third-party Consultant must contain the statements and provisions specified under Education Code section 49073.1(b);

The District is a California school district subject to certain state and federal laws governing education, including but not limited to: (i); (ii) the Children’s Online Privacy Protection Act, (“COPPA”) 15 U.S. 6501; (iii) Federal Educational rights and Privacy Act (“FERPA”) 20 U.S.C. section 1232g, 34 C.F.R. Part 99; (iv) SB 1177, Student Online Personal Information Protection Act (“SOPIPA”) California Business & Professional Code § 20 U.22584; (v) the Protection of Pupil Rights Act (“PPRA”) 20 U.S.C. 1232 (h); (vi) the Health Insurance Portability and Accountability Act (HIPPA) 42 U.S Code 1320(d);

The District owns computerized data that includes personal information and is required, under Civil Code sections 1798.29 and 1798.82 and Government Code section 6252, to disclose any breach of its security systems in an expedited manner;

The District desire to subscribe to Consultant’s online educational products with individual account functionality and are entering into this Amendment to that effect.

THEREFORE, the Consultant agree as follows:

1. If applicable, consultant agrees that this Amendment amends any the Terms of Use that is in place with the Consultant and the District for the limited purpose of ensuring District’s compliance with the provisions and requirements of AB 1584 as set forth in Education Code section 49073.1. All terms and provisions not expressly modified hereby remain in full force and effect.

2. **Pupil Records.** The Consultant acknowledges and agrees that Pupil Records (as defined below) are and remain the property of the District and Consultant shall not access, use or dispose of such records except for the purposes contemplated under this Amendment or Terms of Use or in compliance with the written direction of the District;

As used herein, “Pupil Records” or “Student Records” include any student personally identifiable information concerning a student that is maintained by the District or acquired from the student or his or her legal guardians through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil Records do not include anonymized data. Pupil Records does not include de-identified information (information that cannot be used to identify an individual pupil) used by Consultant or other

third party to: (1) improve educational products for adaptive learning purposes and for customized pupil learning; (2) demonstrate the effectiveness of a provider's products for marketing purposes; (3) develop and improvement educational sites, services, or applications; or (4) any other purposes as outlined in the Terms of Use.

- i. **Pupil-generated content.** Notwithstanding the foregoing, either the administrator on the account or the pupils retain possession and control of their own pupil-generated content. If pupil-generated content is created, Consultant shall provide a feature allowing some of the Pupil Records to be exported to an excel spreadsheet.
 - ii. **Non-Dissemination of Student Information.** Consultant shall not use Pupil Records for any purpose other than those required or specifically permitted under the Amendment;
 - iii. **Correction of Student Records.** Consultant shall provide a description of the procedures by the Administrator may review and correct, if needed, personally identifiable information. The administrator of the account can contact Consultant to correct any information.
 - iv. **Confidentiality of Student Records.** Consultant shall take actions to ensure the security and confidentiality of Pupil Records. Such actions shall include but not limited to designating and training responsible individuals on ensuring the security and confidentiality of Pupil Records. Consultant understands and agrees that enacting these measures will not absolve Consultant of liability in the event of Consultant's unauthorized disclosure of Pupil Records.
 - v. **Notification.** Consultant shall work with District staff to ensure that the school or District affected by an unauthorized disclosure of Pupil Records is notified.
 - vi. **Disposition of Student Records.** = District has access to Pupil Records at all times. If Pupil Records are deleted by District, Consultant will delete Pupil Records within two weeks. If any such records are created during the term of that agreement, Consultant shall ensure District can save or or destroy, at the District's option. If District does not delete Pupil Records, the Pupil Records will be deleted within two (2) years after the termination of the applicable Subscription. .
3. **Term** – If applicable as a modification to an existing contract, this Amendment shall remain in effect and shall expire or terminate after termination of the applicable Subscription.
4. **FERPA.** District agrees to work with Consultant to ensure District's compliance with FERPA.

IN WITNESS WHEREOF, the District and the Consultant have executed this agreement to be effective as of the Effective Date first written hereinabove.

OXNARD SCHOOL DISTRICT

By: Robert Feenan, Asst Supt Ed Services
[Name/Title]

Date: 5/13/16

BrainPOP LLC

By: _____
[Name/Title]

Date: _____