

UTAH STUDENT DATA PRIVACY AGREEMENT

Version 2.0

NORTH STAR ACADEMY

and

BRAINPOP LLC

March 21, 2019

This Utah Student Data Privacy Agreement (“DPA”) is entered into by and between the North Star Academy (hereinafter referred to as “LEA”) and BrainPOP LLC (hereinafter referred to as “Contractor”) on March 21, 2019. The Parties agree to the terms as stated herein.

## **RECITALS**

**WHEREAS**, the Contractor has agreed to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) pursuant to a contract dated (“Service Agreement”); and

**WHEREAS**, in order to provide the Services described in the Service Agreement, the Contractor 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; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; and

**WHEREAS**, the documents and data transferred from LEAs and created by the Contractor’s Services are also subject to Utah state student privacy laws, including the Utah Student Data Protection Act UCA Section 53E-9; and

**WHEREAS**, for the purposes of this DPA, Contractor is a school official with legitimate educational interests in accessing Education Records pursuant to the Service Agreement for the limited purposes of this DPA; 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 Contractor may, by signing the “General Offer of Privacy Terms” (Exhibit “E”), agree to allow other LEAs in Utah 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 Contractor from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, COPPA, PPRA and other applicable Utah State laws, all as may be amended from time to time. In performing these services, the Contractor 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, Contractor shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided.** The Contractor has agreed to provide digital educational products and services outlined in Exhibit "A".
3. **Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached 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 Service Agreement.

## **ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS**

1. **Student Data Property of LEA.** All Student Data transmitted to the Contractor pursuant to the Service Agreement is and will continue to be the property of the student.
2. **Parent Access.** The LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may request the opportunity to inspect and review Student Data in the student's records, and seek to amend Student Data that are inaccurate, misleading or in violation of the student's right of privacy. Contractor 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 student's records held by the Contractor to view or correct as necessary. In the event that a parent of a student or other individual contacts the Contractor to review any of the Student Data accessed pursuant to the Services, the Contractor shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Third Party Request.** Should a Third Party, including law enforcement and government entities, request data held by the Contractor pursuant to the Services Agreement, the Contractor shall redirect the Third Party to request the data directly from the LEA. Contractor shall notify the LEA in advance of a compelled disclosure to a Third Party. Contractor shall share Student Data with law enforcement if required by law or court order.
4. **Subprocessors.** Contractor shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner consistent with the terms of this DPA. Contractor shall provide the LEA with a description of the subprocessors or types of subprocessors who have access to the LEA's student data and shall update the list as new subprocessors are added.

## **ARTICLE III: DUTIES OF CONTRACTOR**

1. **Privacy Compliance.** The Contractor shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRRA and all other Utah privacy statutes as they relate to the collection, use, storage, or sharing of student data.
2. **Authorized Use.** The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service

Agreement and/or otherwise authorized under the statutes referenced in the prior subsection. Contractor also acknowledges and agrees that it shall not make any re-disclosure of any Student Data.

**3. Employee Obligation.** Contractor shall require all employees and subprocessors 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. Use of De-identified information.** De-identified information may be used by the Contractor 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). Contractor agrees not to attempt to re-identify de-identified Student Data.

**5. Disposition of Data.** Upon written request Contractor shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. The duty to dispose of Student Data shall not extend to data that has been de-identified. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "D". Upon receipt of a request from the LEA, the Contractor will immediately provide the LEA with any specified portion of the Student Data within 10 calendar days of receipt of said request.

**6. Additional Acceptable Uses of Student Data.** Contractor is prohibited from using Student Data for any secondary use not described in this agreement except:

- a. for adaptive learning or customized student learning purposes;
- b. to market an educational application or product to a parent or legal guardian of a student if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product;
- c. to use a recommendation engine to recommend to a student
  - i. content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or
  - ii. services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;
- d. to respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.; and
- e. to use Data to allow or improve operability and functionality of the third-party contractor's internal application.

#### **ARTICLE IV: DATA PROVISIONS**

**1. Data Security.** The Contractor agrees to abide by and maintain adequate data security measures, consistent with standards and best practices within the educational technology industry,

and to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. These measures shall include, but are not limited to:

- a. **Passwords and Employee Access.** Contractor shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data. Contractor shall only provide access to Student Data to employees or contractors that are performing the Services.
- b. **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. Contractor shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.
- c. **Security Technology.** Contractor shall employ internet industry standard measures to protect data from unauthorized access while the data is in transit or at rest. The service security measures shall include server authentication and data encryption. Contractor shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- d. **Audit Rights.** Upon reasonable notice, and at the request of the LEA, the LEA or the LEA's designee may audit the Contractor to verify compliance with this DPA, as required by the Utah Student Data Protection Act.

2. **Data Breach.** In the event that Contractor discovers that Student Data has been accessed or obtained by an unauthorized individual, Contractor shall provide notification to LEA within a reasonable amount of time of the incident, not to exceed 72 hours.

#### ARTICLE V- GENERAL OFFER OF PRIVACY TERMS

Contractor may, by signing the attached Form of General Offer of Privacy Terms in Exhibit "E", be bound by the terms of this DPA to any other LEA who signs the acceptance on in said Exhibit.

#### ARTICLE VI: MISCELLANEOUS

1. **Term.** The Contractor shall be bound by this DPA for the duration of the Service Agreement or so long as the Contractor 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 Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement 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 Contractor shall

destroy all of LEA's data pursuant to Article III, section 5 above.

**4. Priority of Agreements.** This DPA 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 Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

**5. 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 below:

**a. Designated Representatives**

The designated representative for the LEA for this Agreement is:

Name: Troy Fernley  
Title: IT Security Manager  
  
Contact Information:  
801-302-9579  
tfernley@north-staracademy.com  
  
\_\_\_\_\_

The designated representative for the Contractor for this Agreement is:

Name: \_\_\_\_\_  
Title: Legal Department  
  
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 notice of acceptance of the General Office of Privacy Terms is:

Name: \_\_\_\_\_  
Title: Legal Department  
  
Contact Information:

**6. Entire Agreement.** This DPA constitutes 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.

**7. 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.

**8. Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS OF UTAH FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**9. Authority.** Contractor 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. Contractor agrees that any purchaser of the Contractor shall also be bound to this DPA.

**10. 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. LEA hereby waives and releases any and all claims against the Utah State Board of Education and/or its members, departments, office, and staff (collectively, "USBE"), for USBE's efforts and conduct related to the negotiations and/or formation of this DPA. The parties agree that USBE is not an agent nor a representative of LEA in the formation or execution of this DPA, and that LEA negotiated with Contractor at arm's length in the creation of this DPA. USBE is thus not responsible or liable to either party under this DPA, and owes no duty to either party under this DPA.

**11. Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Contractor 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.

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

Contractor:

BY: Avraham Kadar Date: 3/21/2019

Printed Name: Dr. Avraham Kadar Title/Position: CEO and founder

Local Education Agency:

BY: Troy Fernley Date: 03/21/2019

Printed Name: Troy Fernley Title/Position: IT Security Manager

**EXHIBIT "A"**

**DESCRIPTION OF SERVICES**

BrainPOP  
BrainPOP Jr.  
BrainPOP Espanol  
BrainPOP Francais  
BrainPOP ELL

**EXHIBIT "B"**

**SCHEDULE OF STUDENT DATA**

Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.			Place of Birth	
	Other application technology meta data-Please specify:			Gender	
Application Use Statistics	Meta data on user interaction with application	✓		Ethnicity or race	
Assessment	Standardized test scores			Language information (native, preferred or primary language spoken by student)	
	Observation data			Other demographic information-Please specify:	
	Other assessment data-Please specify:	✓ <i>Quiz Scores</i>	Student school enrollment		
Attendance	Student school (daily) attendance data		Student grade level		
	Student class attendance data		Homeroom		
Communication s	Online communications that are captured (emails, blog entries)		Guidance counselor		
			Enrollment	Specific curriculum programs	
Conduct	Conduct or behavioral data		Year of graduation		
			Other enrollment information-Please specify:		
Demographics	Date of Birth		Parent/Guardian Contact Information	Address	
			Parent/Guardian ID	Parent ID number (created	
				Email	
				Phone	

Category of Data	Elements	Check if used by your system
	to link parents to students)	
Parent/Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	
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:	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID	

Category of Data	Elements	Check if used by your system
	number	
	State ID number	
	Vendor/App assigned student ID number	
	Student app username	✓
	Student app passwords	✓
Student Name	First and/or Last	✓
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 -	✓ see exhibit B

Category of Data	Elements	Check if used by your system
	Please specify:	
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	
	Student bus card ID number	
	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	✓ See exhibit B

No Student Data Collected at this time \_\_\_\_\_.

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

OTHER: Use this box, if more space needed

## EXHIBIT B – “OTHER”

### **We collect the following types of information:**

**Information collected during subscription process:** During the registration process for any of our subscription types, we ask the subscriber to provide us with a name, email address, school or district affiliation (when applicable), phone number, and billing information. We use the contact information to send users service-related announcements. For instance, we may send emails about routine maintenance or new feature launches. We may also use this contact information to request feedback on our products and services, to inform future customer service and product improvements. All such communications include an opt-out feature.

**Username and password:** Subscribers may create a username and password during the registration process, or, if they prefer, we can assign these credentials. We use subscribers' usernames and passwords to authenticate log-ins; allow access to the paid content; and monitor subscription compliance. The username is also used to authenticate users when they request technical support. Passwords are all encrypted when stored. For more information on our security practices, see "How We Store and Process Your Information" below.

**Information collected automatically:** We automatically receive and record information on our server logs from a user's browser, including the user's IP address. We use IP addresses to maintain a user's session, and we do not store them after the user's session has ended. We also use the IP address to see whether a user is located outside of the United States, where a country-wide log-in option is activated. We do not store this information beyond the initial page load, and we do not otherwise combine this information with other PII.

We also use cookies, a standard feature found in browser software, in order to establish and authenticate user sessions, enable access to paid content, and monitor potential account misuse. We do not use cookies to collect personally identifiable information and we do not combine such general information with other PII to identify a user. Disabling our cookies will prevent access to paid content and limit some of the functionalities within our website(s) or app(s). To learn more about browser cookies, including how to manage or delete them, look in the Tools or Help section of your Web browser, or visit [allaboutcookies.org](http://allaboutcookies.org).

We do not collect users' web search history across third party websites or search engines. However, if a user navigates to our website via a web search, their web browser may automatically provide us with the web search term they used in order to find us. Our website does not honor "do not track" signals transmitted by users' web browsers, so we encourage you to visit the following link if you would like to opt out of certain tracking:  
<http://www.networkadvertising.org/choices> or <http://www.aboutads.info/choices/>. Note that if you wish to opt out, you will need to do so separately for each of your devices and for each web browser you use (such as Internet Explorer®, Firefox®, Safari®).

**Third parties:** We may use a variety of third party service providers, such as analytics companies, to understand usage of our services. We may allow those providers to place and read their own cookies, electronic images known as web beacons or single-pixel gifs and similar technologies, to help us measure how users interact with our services. This technical information is collected directly and automatically by these third parties. If you wish to opt out of third party cookies, you may do so through your browser, as mentioned above in Information collected automatically.

**Information collected when using My BrainPOP®:** School, district, and homeschool subscriptions include the option of using My BrainPOP, our individual accounts system, which allows students and their teachers to keep track of learning. Student and teacher accounts are organized into classrooms created by the teachers of the subscribing school. For these accounts, we ask teachers to enter their first and last name and their students'; their username; the class with which they are associated; and a security question for use if they need to reset their password. We also require the teachers' email for password recovery and for sending notifications or messaging about new features, product use recommendations, efficiency testing, backup schedules, survey and research participation invitations, and more (messaging may not be available in all jurisdictions). An opt-out link will be included at the bottom of messages that are not solely operational. The only Personally Identifiable Information collected about students is their name, class, graduation year, and work associated with the account (student records). If a student uses the Make-a-Movie™ feature, his or her recorded voice may also be collected as part of the movie file that will be saved. We do NOT collect students' emails or addresses. We store the data created in each student account ("Student Records"), such as the history of BrainPOP movies they've watched, the quizzes and activities they've completed, Snapshots they've taken on certain GameUp® games, movies they've created using Make-a-Movie, and feedback provided by the teacher to the student through My BrainPOP. We do so for the purpose of enhancing teacher and student use of the website. Please see the Using My BrainPOP® section below for additional privacy and security information pertaining to My BrainPOP.

**We Do NOT Collect or Use Information As Follows:**

Certain activity pages and quizzes allow users to enter their names prior to printing or emailing (to a teacher, for example). We do not collect or store this information. A user may enter his or her name when taking a quiz on an app, but we do not collect it. That information is only stored on the user's device.

Other than in the places and for the purposes explicitly disclosed in this policy, we do not knowingly collect Personally Identifiable Information directly from users under the age of 13. If we learn that we have inadvertently collected any Personally Identifiable Information from a user under 13, we will take steps to promptly delete it. If you believe we have inadvertently collected personally identifiable information from a user under 13, please contact us at [privacy@brainpop.com](mailto:privacy@brainpop.com).

We do not collect, use or share Personally Identifiable Information other than as described in our privacy policy, or with the consent of a parent or legal guardian as authorized by law, or otherwise as directed by an applicable district or school or as required by contract or by law.

In no event shall we use, share or sell any student Personally Identifiable Information for advertising or marketing purposes.

### **How We Share Your Information**

We may provide Personally Identifiable Information to our partners, business affiliates, and third party service providers who work for BrainPOP and operate some of its functionalities - these may include hosting, streaming, and credit card processing services. A current list of these third parties is available upon request through [privacy@brainpop.com](mailto:privacy@brainpop.com). These third parties are well-known, established and/or vetted providers, who are bound contractually to practice adequate security measures and to use your information solely as it pertains to the provision of their services. They do not have the independent right to share your personally identifiable information. We share anonymous or de-identified information about our users when they are using third party web analytical tools, for tracking analytical information. We may use or share anonymous or aggregate and de-identified information for educational research purposes, to evaluate, inform, or show the efficacy of our services.

We will NOT share any personally identifiable information for marketing or advertising purposes.

## **EXHIBIT “C”**

### DEFINITIONS

**Contractor:** For purposes of the Service Agreement, the term “Contractor” means Contractor 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 “Contractor” includes the term “Third Party Contractor” as used in the Student Data Protection Act and “Operator” as used in COPPA.

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

**Education 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, Education Records are referred to as Student Data.

**Personally Identifiable Information (PII):** The terms “Personally Identifiable Information” or “PII” has the same meaning as that found in U.C.A § 53E-9-301, and includes both direct identifiers (such as a student’s or other family member’s name, address, student number, or biometric number) and indirect identifiers (such as a student’s date of birth, place of birth, or mother’s maiden name). Indirect identifiers that constitute PII also include metadata or other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

**Student Generated Content:** The term “student-generated content” means materials or content created by a student 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 student content.

**R277-487, Public School Data Confidentiality and Disclosure:** The implementing Rule authorized by Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board, and further authorizes the Board to make rules to establish student data protection standards for public education, pursuant to Subsection 53E-9-302(1) of the Utah Student Data Protection Act.

**Service Agreement:** Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

**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 Education Records.

**Student Data:** Student Data means personally identifiable information, whether gathered by Contractor or provided by LEA or its users, students, or students' parents/guardians, 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 Education Records for the purposes of this Agreement, and for the purposes of Utah and federal laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Contractor 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 Contractor's services.

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

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

**Targeted Advertising:** means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or student data. Targeted advertising does not include advertising to a student (i) at an online location based upon that student's current visit to that location; or (ii) in response to that student's request for information or feedback, without retention of that student's online activities over time for the purpose of targeting subsequent ads.

**Utah Student Data Protection Act (Utah Title 53E-9-301 through 53E-9-310):** Means the applicable Utah regulations regarding student data, as further implemented by the Superintendent pursuant to R277-487.

**EXHIBIT "D"**

**DIRECTIVE FOR DISPOSITION OF STUDENT DATA**

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

<p><b><u>Extent of Disposition</u></b></p> <p>Disposition shall be:</p>	<p>_____ Partial. The categories of data to be disposed of are as follows:</p> <p>_____ Complete. Disposition extends to all categories of data.</p>
<p><b><u>Nature of Disposition</u></b></p> <p>Disposition shall be by:</p>	<p>_____ Destruction or deletion of data.</p> <p>_____ 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, Contractor shall destroy or delete all applicable data.</p>
<p><b><u>Timing of Disposition</u></b></p> <p>Data shall be disposed of by the following date:</p>	<p>_____ As soon as commercially practicable</p> <p>_____ By (Insert Date) _____</p> <p>[Insert or attach special instructions]</p>

\_\_\_\_\_  
Authorized Representative of LEA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Verification of Disposition of Data  
by Authorized Representative of Contractor

\_\_\_\_\_  
Date

**EXHIBIT "E"**

**GENERAL OFFER OF PRIVACY TERMS  
North Star Academy**

**1. Offer of Terms**

Contractor offers the same privacy protections found in this DPA including the Additional Terms/Deviations between it and North Star Academy and which is dated March 21, 2019 to any other LEA ("Subscribing LEA") who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Contractor's signature shall not necessarily bind Contractor to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Contractor and the other LEA may also agree to change the data provided by LEA to the Contractor in Exhibit "B" to suit the unique needs of the LEA. The Contractor may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; or (2) a material change in the services and products subject listed in the Originating Service Agreement. Contractor shall notify the Utah State Board of Education (privacy@schools.utah.gov) in the event it withdraws Exhibit E so that the withdrawal may be disseminated to the LEAs.

Contractor  
BY: Abraham Kadar Date: 3/21/2019  
Printed Name: Dr. Abraham Kadar Title/Position: CEO and founder

**2. Subscribing LEA**

A Subscribing LEA, by signing a separate Service Agreement with Contractor, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Contractor shall therefore be bound by the same terms of this DPA.

Subscribing LEA:

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Title/Position: \_\_\_\_\_

**TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

## **ADDITIONAL TERMS AND DEVIATIONS TO THE UTAH STUDENT DATA PRIVACY AGREEMENT**

### **Article II: Data Ownership and Authorized Access**

Section 1, Student Data Property of LEA - Add: "Student Data and Pupil Records shall not include anonymous or de-identified information."

Section 4, Subprocessors: delete "whereby the subprocessors agree to protect Student Data in a manner consistent with the terms of this DPA" and replace with "whereby the subprocessors agree to protect Student Data in a manner consistent with the Terms of Use." [see definition of **Terms of Use** below]

### **Article III: Duties of Contractor**

Section 2, Authorized Use – Add: "unless expressly stated in this Agreement or the Terms of Use. Contractor may provide personally identifiable information to Contractor's partners, business affiliates, and third party service providers who work for BrainPOP and operate some of its internal functionalities – these may include hosting, streaming and credit card processing services. Contractor may share anonymous or de-identified information about its users when they are using third party web analytical tools, for tracking analytical information."

Section 4, Use of De-identified information – Add: "De-identified and anonymous information may also be used and shared with third party web analytical tools for tracking analytical information and for educational research purposes."

Section 5, Disposition of Data- Delete and add the following: "Each school or District has access to a user-friendly administrator dashboard that allows direct control over the Student Records at all times. The administrator can create, update, review, modify and delete individual accounts, and monitor logins in the individual accounts. "Administrators" are only those individuals explicitly designated by the school or the District. District 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. Teachers may also choose to archive the classroom they created. My BrainPOP classrooms that have been archived are retained for a period of two years. After such period, all information is automatically disposed and deleted; first it is deleted from the server and two weeks thereafter it is deleted from any backup server and cannot be restored. All student data will be deleted after a period of two years after expiration or termination of the applicable subscription. "

### **Article IV: Data Provisions**

Section 1(a) Passwords and Employee Access – Delete “at a level by Article 4.3 of NIST 800-63-3.” And replace with “industry standards”.

Section 1(d) Audits – add the following: “The right to audit shall be subject to the following: District’s right to audit shall only apply to Provider’s books, records and documents that are directly related to the contract or to the District and the number of audits shall be limited to no more than once per year.”

#### **Article VI – Miscellaneous**

Section 1 – Delete the second sentence and replace with the following: “Provider agrees to be bound by the terms and obligations of this DPA for the duration of the applicable subscription.”

Section 2 Termination – Delete “Service Agreement” and replace with “the applicable subscription”

Section 6, Entire Agreement – Add after “This DPA...”: “and the Terms of Use”

Section 8, Governing Law; Venue and Jurisdiction – Add: “Notwithstanding the foregoing, any claim in connection with this Agreement must first, and before taking any other legal action, be submitted to Vendor in the form of a complaint (to: [info@brainpop.com](mailto:info@brainpop.com)), to enable the parties to resolve the claim in a friendly and effective manner. Notwithstanding the foregoing, LEA may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.”

#### **Additional Terms to DPA:**

The use of the BrainPOP Products shall be governed by the Terms of Use and the Privacy Policy, as posted on the website [www.brainpop.com](http://www.brainpop.com) and as updated from time to time (the “Terms of Use”). This Agreement will form an integral part of the Terms of Use for the District and the schools subscribing. Unless expressly changed herein, all other terms and conditions of the Terms of Use, as updated from time to time, shall not be affected, and shall remain in full force and effect. In any contradiction or discrepancy between the terms of this Agreement to those of the Terms of Use, as updated from time to time, the terms of this Agreement shall prevail for the term of the applicable subscription.