

EXHIBIT ____

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE
Agreement

1. **Purpose**

(a) This Exhibit supplements the BrainPOP LLC Privacy Policy and Terms of Use as posted on www.brainpop.com and as updated from time to time, ("AGREEMENT") to which it is attached, to ensure that the AGREEMENT conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of BOCES Parents Bill of Rights for Data Security and Privacy signed by BrainPOP LLC, and the Supplemental Information about the Agreement that is required to be posted on BOCES website.

(b) To the extent that any terms contained within the AGREEMENT, or any terms contained within any other Exhibits attached to and made a part of the AGREEMENT, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. . To the extent that any term of the Agreement conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. **Definitions**

Any capitalized term used within this Exhibit that is also found in the AGREEMENT will have the same definition as contained within the AGREEMENT.

In addition, as used in this Exhibit:

(a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that BRAINPOP LLC receives from a Participating Educational Agency pursuant to the AGREEMENT.

(b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that BrainPOP LLC receives from a Participating Educational Agency pursuant to the AGREEMENT.

(c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent

applicable to BrainPOP LLC's Product.

(d) "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use BrainPOP LLC's Product pursuant to the terms of the AGREEMENT.

3. **Confidentiality of Protected Data**

(a) BRAINPOP LLC acknowledges that the Protected Data it receives pursuant to the AGREEMENT may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.

(b) BRAINPOP LLC will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and BOCES policy on data security and privacy. BOCES has adopted a policy on data security and privacy and will provide BRAINPOP LLC with a copy of its policy.

4. **Data Security and Privacy Plan**

BRAINPOP LLC agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with BOCES Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by BRAINPOP LLC and is set forth below.

Additional elements of BRAINPOP LLC's Data Security and Privacy Plan are as follows:

(a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with BOCES data security and privacy policy, BRAINPOP LLC will: comply with FERPA and COPPA. For more information on our privacy and security practices, please review our privacy policy https://www.brainpop.com/about/privacy_policy/

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the AGREEMENT, BRAINPOP LLC will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the AGREEMENT:

[Data will be encrypted in transit and at rest. Servers are locked, secured, monitored, and protected by a firewall. Servers are stored in the U.S. and backed up daily. Subscribers can only access their own data.]

(c) BRAINPOP LLC will comply with all obligations set forth in BOCES "Supplemental Information about the AGREEMENT" below.

(d) For any of its officers or employees (or officers or employees of any of its

subcontractors or assignees) who have access to Protected Data, BRAINPOP LLC has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows:

[Employees receive training regarding data security and a limited number of employees are granted access to Protected Data accounts. Background checks and privacy training is company-wide for all employees.

(e) BRAINPOP LLC [*check one*] J will ___ will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the AGREEMENT. In the event that BRAINPOP LLC engages any subcontractors, assignees, or other authorized agents to perform its obligations under the AGREEMENT, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in BOCES “Supplemental Information about the AGREEMENT,” below.

(f) BRAINPOP LLC will manage data security and privacy incidents that implicate Protected Data, including identify breaches and unauthorized disclosures, and BRAINPOP LLC will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

(g) BRAINPOP LLC will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the AGREEMENT is terminated or expires, as more fully described in BOCES “Supplemental Information about the AGREEMENT,” below.

5. **Additional Statutory and Regulatory Obligations**

BRAINPOP LLC acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the AGREEMENT and the terms of this Data Sharing and Confidentiality Agreement:

(a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist BRAINPOP LLC in fulfilling one or more of its obligations under the AGREEMENT.

(c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives or subcontractors of BRAINPOP LLC using the information to carry out BRAINPOP LLC’s obligations under the AGREEMENT, unless:

- (i) the parent or eligible student has provided prior written consent; or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of

disclosure, unless such notice is expressly prohibited by the statute or court order.

(e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in BOCES "Supplemental Information about the AGREEMENT," below.

(g) Provide notification to BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by BRAINPOP LLC or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to BRAINPOP LLC or its subcontractors or assignees.

6. Notification of Breach and Unauthorized Release

(a) BRAINPOP LLC shall promptly notify BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after BRAINPOP LLC has discovered or been informed of the breach or unauthorized release.

(b) BRAINPOP LLC will provide such notification to BOCES by contacting the BOCES Data Protection Officer (DPO) directly by calling (518) 862-4940 (office).

(c) BRAINPOP LLC will cooperate with BOCES and provide as much information as possible directly to the DPO or designee about the incident, if applicable, including but not limited to: a description of the incident, the date of the incident, the date BRAINPOP LLC discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the BRAINPOP LLC has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for BRAINPOP LLC representatives who can assist affected individuals that may have additional questions.

(d) BRAINPOP LLC acknowledges that upon initial notification from BRAINPOP LLC, BOCES, as the educational agency with which BRAINPOP LLC contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department (“CPO”). BRAINPOP LLC shall not provide this notification to the CPO directly. In the event the CPO contacts BRAINPOP LLC directly or requests more information from BRAINPOP LLC regarding the incident after having been initially informed of the incident by BOCES, BRAINPOP LLC will promptly inform the DPO or designees.

(e) BRAINPOP LLC will consult directly with the DPO or designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.

EXHIBIT ____ (CONTINUED)

PARENTS' BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Albany-Schoharie-Schenectady-Saratoga BOCES (BOCES) is committed to protecting the privacy and security of personally identifiable information about students who attend BOCES instructional programs in accordance with applicable law, including New York State Education Law Section 2-d.

To further these goals, BOCES wishes to inform parents of the following:

(1) A student's personally identifiable information cannot be sold or released for any commercial purposes except those agreed to under the Agreement.

(2) Parents have the right to inspect and review the complete contents of their child's education record.

(3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.

(4) A complete list of all student data elements collected by the State is available for public review at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

(5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints may be directed to the NYS Chief Privacy Officer by writing to the New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be directed to the Chief Privacy Officer via email at: CPO@mail.nysed.gov.

BY THE BRAINPOP LLC:



Signature

CEO

Title

5/22/2020

Date

EXHIBIT ____ (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE AGREEMENT BETWEEN Albany-Schoharie-Schenectady- Saratoga BOCES AND BRAINPOP LLC

BOCES has entered into An Agreement (“AGREEMENT”) with BRAINPOP LLC (“BRAINPOP LLC”), which governs the availability to Participating Educational Agencies of the following Product(s):

BrainPOP LLC Exams

Pursuant to the AGREEMENT, Participating Educational Agencies may provide to BRAINPOP LLC, and BRAINPOP LLC will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used:

To be completed by BRAINPOP LLC:

The exclusive purpose for which BRAINPOP LLC is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. BRAINPOP LLC agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the AGREEMENT. Protected Data received by BRAINPOP LLC, or any of BRAINPOP LLC’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that BRAINPOP LLC engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the AGREEMENT (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of BRAINPOP LLC under the AGREEMENT and applicable state and federal law. BRAINPOP LLC will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: vetting and contracting with all third party service providers requiring adequate privacy and security provisions.

Duration of AGREEMENT and Protected Data Upon Expiration:

- The AGREEMENT commences on [date] and expires on [date]. Upon expiration of the AGREEMENT without renewal, or upon termination of the AGREEMENT prior to expiration, the Participating Educational Agency will delete any and all Protected Data remaining in the possession of BRAINPOP LLC or its assignees or subcontractors. The Participating Educational Agency is in full control over the data at all times. Once deleted by the Participating Educational Agency, the data will be purged from BrainPOP’s servers within two weeks. If requested by a Participating Educational Agency, BRAINPOP LLC will assist that entity in exporting all Protected Data previously received for its own use, prior to deletion.

- At BOCES request, BRAINPOP LLC will cooperate with BOCES as necessary in order to transition Protected Data to any successor BRAINPOP LLC(s) prior to deletion.
- BRAINPOP LLC agrees that neither it nor its subcontractors, assignees, or other authorized agents will retain any copy, summary or extract of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, BRAINPOP LLC and/or its subcontractors, assignees, or other authorized agents will provide a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to BRAINPOP LLC, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to BRAINPOP LLC by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data BRAINPOP LLC receives will be stored on systems maintained by BRAINPOP LLC, or by a subcontractor under the direct control of BRAINPOP LLC, in a secure data center facility located within the United States. The measures that BRAINPOP LLC will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: BRAINPOP LLC (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.