



Kenton County School District | *It's about ALL kids.*

Issue Paper

DATE:

November 11, 2022

AGENDA ITEM (ACTION ITEM):

Consider/Approve the software license agreement between BrainPop and River Ridge Elementary

APPLICABLE BOARD POLICY:

8.2321 Copyrighted Materials

HISTORY/BACKGROUND:

BrainPop is an online resource that supports core and supplemental instruction. It allows students to view content videos in Science, Social Studies, Reading and Math as well as social emotional learning topics. BrainPop offers several different activities and class quizzes to engage students.

FISCAL/BUDGETARY IMPACT:

\$3515.00/Title I Funds

RECOMMENDATION:


Approval of the software license agreement between BrainPop and River Ridge Elementary

CONTACT PERSON:

Jena Smiddy


Principal/Administrator


District Administrator


Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent’s mailbox.

BrainPOP

Issued By Leah Silverman
Email leahs@brainpop.com
Phone 212.574.6105

Quote Number 00029935
Quote PDF (Created 10/25/2022 Date)
Account Name River Ridge Elementary School

Bill To 1055 EATON DRIVE
FORT WRIGHT, KY 41017
USA

Contact Name Sherry Taylor Email sherry.taylor@kenton.kyschools.us

Please Note: If the person listed above is not the primary contact for your subscription, please let us know.

Product Name	Quantity	Product Description	Discount	Sales Price	Subtotal
School Combo 24/7	1.00	Unlimited 24-hour access to over one thousand standards-aligned topics to build background and deepen learning across your curriculum, SEL-themed topics, and embedded creative and computational projects on BrainPOP and BrainPOP Jr. Also includes access to BrainPOP Español and Français.	0.00%	USD 3,515.00	USD 3,515.00

Subtotal USD 3,515.00

Discount 0.00%

Grand Total USD 3,515.00

I accept the purchase of the items included herein. I understand that I will be invoiced for this order.

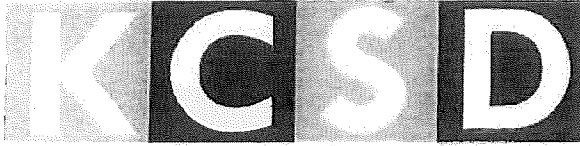
Name: _____ Authorized Signature: _____

Title: _____ Date: _____

*Please include any applicable tax exemption certificates for the school/district along with your order.

Quote valid for 90 days. All amounts listed are in USD. This subscription is governed by the Terms of Use and Privacy Policy posted on www.brainpop.com, as amended from time to time. By accepting this quote, you agree to these terms. Changes/modifications to the terms must be approved and signed by an authorized representative of BrainPOP. Terms and conditions submitted with any Purchase Order shall not apply to this subscription. If the Customer has a signed agreement with BrainPOP that is applicable to this subscription, then that agreement will apply.

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Please make all checks payable to 'BrainPOP'. Email: purchaseorders@brainpop.com



Kenton County School District | It's about ALL kids

THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: www.kenton.kyschools.us

Dr. Henry Webb, Superintendent of Schools

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and 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.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

BrainPOP LLC

Vendor Name

71 W 23rd St 17th Fl New York NY 10010

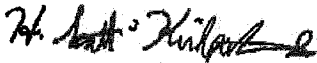
Vendor Address

212-574-8000

Vendor Telephone

legal@brainpop.com

Vendor Email Address



Signature by Vendor's Authorized Representative

H. Scott Kirkpatrick Jr.

Print Name

6/3/2022

Date

Terms of Use

Last updated on June 15, 2020

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The services are operated by BrainPOP LLC and its related companies ("we," "us"). If you have any questions concerning our Services or the respective operator(s), you may contact us at the following address:

BrainPOP
71 W 23rd St., 17th Fl.
New York, NY 10010
Phone: 212.574.6000
Email: legal@brainpop.com

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In our sole discretion and without prior notice or liability, we may discontinue, modify or alter any aspect of the Services and suspend, discontinue, delete, modify, or remove any content or functionality offered in the Services from time to time. In addition, in the future, we may charge users for certain content or functionality which may be presently available for free.

PRIVACY POLICY

Please review our privacy policy ("Privacy Policy"), which is incorporated into, and considered part of, these Terms of Use. The Privacy Policy explains our privacy practices for the Services. By visiting our Services, you also consent to our Privacy Policy, so please read them carefully.

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Adult-facing pages of our Services websites may also provide links to social plugins and third party sites that have separate privacy policies and procedures; by clicking through to them, you are subject to their rules and policies. The use of these social media plugins is optional and leads to user-generated content. We are not responsible for information, content, terms of use, or privacy policies at these social networks or third party sites.

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USER CONTENT

Student Records:

Student Records are records that are directly related to a student and maintained by BrainPOP on behalf of a school or district subscriber. 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(s) appointed by the school or district can create, update, review, modify, and delete individual accounts, and monitor logins within the individual accounts. We will solely use the Student Records for the purpose of providing and enhancing teacher and student use of the Services.

For more information about Student Records, see our [Privacy Policy](#).

Other User Content:

Certain functionalities within adult-facing pages of our Services may allow you to submit, upload, post, or create (collectively "submit") certain types of content ("User Content"). Except for Student Records as defined in our Privacy Policy, you acknowledge and agree that we do not guarantee any confidentiality with respect to any User Content you submit. You shall retain all ownership rights to and shall be solely responsible for your own User Content and the consequences of submitting and publishing such User Content. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to create and publish any User Content you submit. You may not upload or post any User Content on our Services that infringes the copyright, trademark or other intellectual property rights of a third party nor may you upload User Content that violates any third party's right of privacy or right of publicity. You may upload only User Content that you are permitted to upload by the owner or by law.

By submitting any User Content other than Student Records as defined in our Privacy Policy, you grant us a worldwide, perpetual, non-exclusive, royalty-free, sub-licensable and freely transferable license to use, publish, reproduce, distribute, disseminate, copy, prepare derivative works of, and display, in whole or in part, the User Content, without additional approval or consideration, in any form, media, or technology now known or later developed for the full term of any rights that may exist in such User Content, and you hereby waive any claim to the contrary. You acknowledge and agree that such User Content may be utilized by our users in various ways over which we do not have any control and you expressly release us from any claims with respect to any use of User Content by any third parties.

We do not endorse any User Content submitted to our Services and expressly disclaim any and all liability in connection with such User Content. We reserve the right to remove or modify any User Content in any manner, at any time and without prior notice. If you find any inappropriate Content on our Services, we encourage you to report such inappropriate content to: legal@brainpop.com.

USER CONTENT RESTRICTIONS

We strictly prohibit the use of our Services for offensive, illegal or harming purposes. You agree not to use our Services (i) to create, edit, post or share any content that is harmful, unlawful, obscene, libelous, racist, hateful, or criminal or that violates the privacy of others, or any other illegal, offensive or inappropriate content, or (ii) for purposes that are illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise objectionable, as determined in our sole and absolute discretion.

You further agree not to use our Services in a manner that (i) is unlawful, fraudulent, deceptive, or impersonates any person or entity; (ii) uses technology or other means to access unauthorized content or non-public spaces or reverse engineer any functionalities of our Services; (iii) uses any type of automated system or process, including without limitation, "bots," "spiders," or "crawlers," to access unauthorized content or non-public spaces; (iv) introduces or attempts to introduce viruses or any other harmful computer code or programs that interrupt, destroy or limit the functionality of our Services or related servers and networks; (v) attempts to gain unauthorized access to our Service's users' accounts; (vi) constitutes a criminal offense or otherwise encourages criminal conduct; (vii) gives rise to civil liability; (viii) violates these Terms of Use in any manner; (ix) fails to comply with the Terms of Use applicable to Third Party Content; or (x) uses our Services for creating, sharing and sending unsolicited commercial messages.

Display of User Content on our Services does not constitute our approval or endorsement thereof. We reserve the right to remove any content that we deem to be illegal, offensive or inappropriate, in our sole discretion, and we reserve the right to take action against the user submitting such User Content, including, but not limited to, suspending any or all use of our Services, in any way or manner, or terminating such user's account.

USER ACCOUNT

Certain content and functionalities of the Services require registration in order to be able to enjoy such content and functionalities. We reserve the right to decide which content and functionalities require registration or will require registration in the future. You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You agree to notify us immediately in the event of any known or suspected unauthorized use of your user account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your or anyone else's password. You are entirely responsible for any and all activities which occur under your user account. You agree to immediately notify us of any unauthorized use of your user account or any other breach of security known to you.

If you provide any information that is untrue, inaccurate, or incomplete (including but not limited to falsely self-identifying), or we have reasonable grounds to suspect that such is the case, we reserve the right to suspend or terminate your user account and refuse any and all current or future use of our Services.

In the course of the registration process to certain features or products in our Services, you may be entitled to upload a profile picture to your account. The profile picture you upload may not contain nudity, obscenity, sexually explicit material or contain images of people which have not given you a prior written permission to use their image.

STUDENT ACCOUNTS

Our individual accounts system allows you to create student accounts. If you are an educator, you warrant and represent that you are authorized to use our Services with your students on behalf of your school and/or district.

If you are a school, a district or an educator using the individual accounts on behalf of your students, including in a free trial, you warrant and represent that you are authorized to act on parents'/guardians' behalf or that you have obtained consent from parents or guardians of your students in accordance to the laws governing your jurisdiction.

APPLICATIONS

Our Services may allow you to download certain applications to be used on mobile devices, such as smartphones or tablets ("Application" or "Applications"). The download and use of the Applications is governed by these Terms of Use and by any Terms of Use applicable to the Applications at the time you download onto your mobile device ("Mobile Terms of Use"). Any conflicts between these Terms of Use and the Mobile Terms of Use with respect to Applications shall be resolved in favor of the Mobile Terms of Use.

If you are downloading or accessing an Application via an application store operated by a third party (for example, App Store®), you acknowledge that such third party is not a party to and has not agreed to these Terms of Use or, otherwise, does not sponsor, endorse or have any affiliation with our Services. Your download of Applications through such third parties is subject to their respective terms of use (e.g. App Store® usage rules)

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fees charged for the Applications, we will not provide any type of price protection, refunds or promotional pricing for any reason. Use of the Applications may be subject to standard messaging, data and other fees that may be charged by your mobile carrier. Your carrier may also prohibit or restrict the Applications and the Applications may be incompatible with your carrier or mobile device. If you have any questions concerning this, please contact your carrier to obtain further information.

Please note that our Applications are not available if your school is using a single sign on service.

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2. A description of the copyrighted work or other intellectual property that you claim has been infringed;
3. A description of where the material that you claim is infringing can be found on our Services;
4. Your address, telephone number, and email address;
5. A statement that you believe that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. A statement by you at the bottom of your notification exactly as follows: "I hereby declare, under penalty of perjury, that the above information is accurate and that I am the copyright or intellectual property owner or authorized to act on behalf of the copyright or intellectual property owner."

Send the notification to us as follows:

BrainPOP
71 W 23rd St., 17th Fl.
New York, NY 10010
Phone: 212.574.6000
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AFFILIATES, AGENTS, SUPPLIERS, CUSTOMERS OR LICENSEES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

INDEMNITY

You agree to indemnify, hold us harmless and, at our option, defend us and our affiliates, and our officers, directors, employees, stockholders, agents and representatives from any and all third party claims, liability, damages and/or costs (including, but not limited to, reasonable attorneys' fees and expenses) arising from your improper use of the Services or our products or offerings, your violation of these Terms of Use, or your infringement, or the infringement or use by any other user of your account, of any intellectual property or other right of any person or entity. We reserve the right, at your expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim.

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Any waiver of any provision of the Terms of Use will be effective only if in writing and signed by the waiving party.

DISPUTES AND APPLICABLE LAW

You agree that the laws of the State of New York, without regard to principles of conflicts of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and us. Any dispute relating to or arising from your use of the Services shall be solely adjudicated in the Supreme Court of the State of New York or in the U.S. Federal District Court located in New York County, New York, and you consent and submit to exclusive jurisdiction and venue in such courts and agree to accept service of process by electronic mail.

Without derogating from the above, any claim that you may have in connection with these Terms of Use must first, and before taking any other legal action, be submitted to us in the form of a complaint to legal@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, or if any other claim or dispute in connection with these terms arises, it shall be resolved in the exclusive jurisdiction and venue as specified above. Notwithstanding the foregoing, we may seek injunctive or other equitable relief to protect our intellectual property rights in any court of competent jurisdiction at any time.

CHANGES AND SEVERABILITY

You agree to check the Terms of Use periodically for new information and terms that govern your use of our Services. We reserve the right to make changes to our Services, our policies, and these Terms of Use at any time. Posting the modified Terms of Use on our Services will give effect to the revised terms. Your continued use of our Services indicates your acceptance of any revised terms. If you do not agree to the revised terms, stop using our Services immediately. If any of the terms or conditions in these Terms of Use shall be deemed invalid, void, or for any reason unenforceable, that condition shall be deemed severable and shall not affect the validity and enforceability of any remaining condition.

COMMUNICATION WITH US

You agree to receive communications from us electronically regarding your account, these Terms of Use and the Services, and such communications sent from us shall be considered sufficient means of notice, whether applicable law requires written notice or not. You further agree that your electronic communications, except for communications regarding subscriptions, are not confidential.

Please click on this link to view the previous version of our Terms of Use, in effect before June 15, 2020.

Translations

These Terms of Use are also available in Spanish, French, and Mandarin. Please note that the English version shall prevail in the case of any conflict between them.

ADDENDUM TO THE TERMS OF USE

This Addendum is entered on August 29, 2022, by and between BrainPOP LLC, with its address at 71 W 23rd Street, 17th Floor, New York, New York 10010 (the "Company") and Kenton County Board of Education, with its address at 1055 Eaton Drive Fort Wright, KY 41017 (the "District").

WHEREAS, the District wishes to purchase from the Company one year School Combo 24/7 subscriptions for BrainPOP in accordance to the Quote attached hereto as Exhibit A (the "Subscription"); and

WHEREAS, the Subscription is subject to the Terms of Use and Privacy Policy posted on http://www.brainpop.com/about/terms_of_use/, as updated from time to time ("Terms of Use"); and

WHEREAS, the parties wish to amend certain terms of the Terms of Use only as it applies to the Subscription; and

WHEREAS, the parties wish that except as expressly set forth below, all other terms and conditions of the Terms of Use shall apply (mutatis mutandis), all as set forth herein below.

THEREFORE, it is mutually agreed as follows:

1. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Terms of Use.
2. All indemnities set forth in the Terms of Use shall be applicable only to the extent permitted by the laws of Kentucky.
3. The parties agree that any dispute relating to the terms in this Addendum shall be submitted to the exclusive jurisdiction and venue of the courts in Kenton County, Kentucky. Without derogating from the above, any claim that the District may have must first, and before taking any other legal action, be submitted to the Company in the form of a complaint (to: legal@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 Company may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction. Notwithstanding the foregoing, the Company may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.
4. This Addendum will form an integral part of the Terms of Use for the District during the term of the Subscription. 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.
5. In any contradiction or discrepancy between the terms of this Addendum to those of the Terms of Use, as updated from time to time, the terms of this Addendum shall prevail for the term of the Subscription.

IN WITNESS WHEREOF, the parties have executed this Addendum by their duly authorized representatives.

[SIGNATURE PAGE FOLLOWS]

BrainPOP LLC

By: H. Scott Kirkpatrick Jr.
[signature]

Name: H. Scott Kirkpatrick Jr

Title: CEO

Date: 9/13/2022

Kenton County Board of Education

By: _____
[signature]

Name: _____

Title: _____

Date: _____