

Sales Order

Sales Order For:

Mary Goble
NEW HAVEN ELEMENTARY SCHOOL
10854 US HIGHWAY 42
UNION, Kentucky 41091
UNITED STATES

Nearpod Contact:

Lindsey Tennyson
1855 Griffin Rd. Suite A-290
Dania Beach, FL 33004

Description	Quantity	Total
Flocabulary Site License: Unlimited access to Flocabulary including: - Access to the 600+ standards-aligned K-12 lessons, including a hip hop video and supporting activities - Access to Week in Rap lessons, added weekly during the school year to spotlight current events - Access to student accounts, enabling teachers to assign lessons and activities and view results of assessments	550 - Students	\$2,600.00
Online Training: Webinar: Up to 2-hour session with a Nearpod Trainer for up to 50 participants.	1 - Licenses	\$450.00
	Total	(USD) \$3,050.00

Special Terms:

Purchase a 12month license and receive access until 6/30/21 at no additional charge.

Terms

This Sales Order is valid until: 04/30/2021

Service will run from until , or from when customer is first provided access to the purchased service(s) for a length of time equal to the time between the Start Date and End Date, whichever is later. The agreed upon price for this timeframe is (USD) \$3,050.00.

Nearpod price quotes are confidential, unless disclosure is required by subpoena or state law. Education List Pricing is only available for PreK-12 Education customers. Please submit this price quote attachment with your Purchase Order. Tax-exempt customers should include their tax-exempt number on their Purchase Order.

This Sales Order covers the Nearpod and/or Flocabulary Services described herein and is governed by the Nearpod Terms and Conditions available online at: <https://nearpod.com/terms-conditions>, the Nearpod Privacy Policy available online at: <https://nearpod.com/privacy-policy>, the Flocabulary Terms of Use available online at: <https://flocabulary.com/terms-of-use/>, and the Flocabulary Privacy Policy available online at: <https://flocabulary.com/privacy-policy/>, as applicable.

Free Training Resources

Access to daily public webinars, on-demand webinars and how-to resources and videos can be accessed here: <http://nearpod.com/resources>

Customers providing a Purchase Order are required to remit payment within 30 days of invoicing. Otherwise, payment is required within 7 business days. Failure to remit payment may cause a disruption in service. By signing this Agreement, I certify that I am authorized to sign on behalf of the Customer and agree to the Terms and Conditions of this Sales Order and any documents incorporated herein.

Purchase Order

Please provide PO#:

Credit Card

Please provide email address
secure payment link should be
sent to:

Exp:

Name on card:

Check, ACH or Wire

Name:

Signature:

Date:

Tax Exempt #:

Purchase Orders should be addressed to:

Nearpod, Inc
1855 Griffin Rd. Suite A-290
Dania Beach, FL 33004
Email: lindsey.tennyson@nearpod.com or FAX: +1 305-655-1999

Terms and Conditions

By accessing or registering on Nearpod Inc.'s ("Nearpod", "us", "we", "our") website, or by downloading or using any of the Nearpod® mobile applications (collectively, "Nearpod® Materials"), you agree to become bound by these Terms and Conditions. If you do not agree to all the Terms and Conditions, then you may not access the Nearpod website or use any of our products or services. Please read these Terms and Conditions carefully, as they (among other things) provide that you and Nearpod will arbitrate certain claims instead of going to court and that you will not bring class action claims against Nearpod. Please only create a Nearpod account or otherwise use the Nearpod Materials if you agree to be legally bound by all terms and conditions herein. Your acceptance of these Terms and Conditions creates a legally binding contract between you and Nearpod.

IMPORTANT NOTE: Nearpod is intended for use by teachers and by educational institutions, public or private. Each Nearpod User (defined below) should have an individual account that is not to be shared with other individuals.

If you are interested in using Nearpod for either: (a) commercial or corporate purposes; or (b) for use by multiple teachers or other education users in a single school or school district, we'll be happy to discuss your options, but first you should contact us at biz@nearpod.com. Such uses may be subject to different terms and conditions than these Terms and Conditions. Unauthorized commercial, corporate or other misuse of Nearpod may result in the cancellation of your account. In the United States, Nearpod does not intend, require, or allow students to create Nearpod accounts. Nearpod has no intention of collecting personally identifiable information from students.

Outside the US, if you are under the age of majority in your country of residence, you must review these Terms and Conditions with your parent or guardian to make sure that you and your parent or guardian understand it.

Nearpod and the Nearpod Materials comply with applicable law, including the Family Educational Rights and Privacy Act (FERPA) and Children's Online Privacy Protection Act (COPPA). We do not intentionally collect any personally

identifiable information from individuals under the age of 13. If you are a parent or guardian or teacher and believe that your child or student under the age of 13 has provided Nearpod with personally identifiable information, please notify privacy@nearpod.com so that we can immediately delete the information from our servers. For more information about our privacy policy, please click [here](#).

1. In order to access the Nearpod Materials, you may be required to provide certain information (such as name, e-mail, etc.). You agree that any information you provide will always be accurate and complete, and you agree to update any such information if it changes.
2. The Nearpod Materials may contain material that is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance, and graphics. Reproduction of such material outside the Nearpod Materials is prohibited.
3. Nearpod owns all legal right, title, and interest in and to the Nearpod Materials, including any intellectual property rights, whether those rights are registered or not, and wherever in the world those rights may exist. Attempting to license, sublicense, copy, duplicate, distribute, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, reproduce, sell, trade, or resell the Nearpod Materials (including, without limitation, the reproduction, sale, trading or resale of Nearpod Materials customized by other Nearpod users) is strictly prohibited without our prior written agreement. Notwithstanding the foregoing, the Nearpod Materials may include functionality that will allow you to create new content slides, delete slides and certain other editing functionality. These activities are permitted to the extent enabled within the Nearpod Materials, provided that such edited content is used solely for private educational purposes. Unauthorized use of the Nearpod Materials may give rise to a claim for damages and be a criminal offense. Nearpod reserves the right to modify or discontinue the Nearpod Materials or any version(s) thereof at any time in its sole discretion, with or without notice.
4. Moreover, the Nearpod Materials may include content created by Nearpod users that can be shared to third-parties. You acknowledge and agree that

Nearpod is not responsible and shall have no liability for the content of such third-party sites and services, products or services made available through them, or your use of or interaction with them.

5. Use of Nearpod's mobile applications requires usage of data and messaging services provided by your wireless service carrier. You acknowledge and agree that you are solely responsible for data usage fees, messaging fees and any other fees that your wireless service carrier may charge in connection with your use of the Nearpod Materials.

6. As a condition of your use of the Nearpod Materials, you will not use the Nearpod Materials for any purpose that is unlawful or prohibited by these Terms and Conditions. You may not use the Nearpod Materials in any manner that in our sole discretion could damage, disable, overburden, impair or interfere with any other party's use of them. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Nearpod Materials. You agree not to scrape or otherwise use automated means to access or gather information from the Nearpod Materials, and agree not to bypass any robot exclusion measures we may put into place. In addition, you agree not to use false or misleading information in connection with your user account, and acknowledge that we reserve the right to disable any user account with a profile which we believe (in our sole discretion) is false or misleading (including a profile that impersonates a third party).

7. By using the Nearpod Materials, you may provide contents and any other materials, information, ideas, concepts, and know-how ("Content"). Under no circumstances will Nearpod become liable for any payment to you for any information that you provide. You, and not Nearpod, are solely responsible for any Content you make available through your use of the Nearpod Materials. Nearpod does not control the Content hosted via the service, nor does it guarantee the accuracy, integrity or quality of such Content. Except as expressly set forth in these Terms and Conditions, users shall retain all rights, including intellectual property rights, for user-generated Content that they create with their Nearpod account, unless they enter a publishing agreement with Nearpod. You acknowledge that all posted Content is stored on and made available through the

Nearpod Materials by Nearpod's servers and not on your device. You understand that all Content is provided to you through the Nearpod Materials only on an "as-available" basis and Nearpod does not guarantee that the availability of Content will be uninterrupted or bug free.

8. In connection with your Content, you further agree that you will not: (i) use material that is subject to third party intellectual property or proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant Nearpod all of the license rights granted herein; (ii) use material that is unlawful, defamatory, libelous, threatening, pornographic, obscene, harassing, hateful, racially or ethnically offensive or encourages conduct that would be considered a criminal offense, violate any law or is otherwise inappropriate; or (iii) post advertisements or marketing content or solicitations of business, or any content of a commercial nature.

9. We are not responsible or liable in any way for any Content provided by others. You hereby acknowledge that you may be exposed to Content from other users that is inaccurate, offensive, obscene, indecent, or objectionable when using the Nearpod Materials, and further acknowledge that Nearpod does not have any obligation to monitor such Content for any purpose. However, we reserve the right at all times to determine whether Content is appropriate and in compliance with these Terms and Conditions, and may pre-screen and remove Content at any time if such Content is found to be in violation of these Terms and Conditions or is otherwise objectionable.

Copyright Claims (Digital Millennium Copyright Act)

10. Nearpod respects the intellectual property rights of others and requires that the people who use the Sites do the same. It is our policy to respond promptly to claims of intellectual property misuse. Our procedures for responding to alleged copyright infringement are consistent with the form suggested by the United States Digital Millennium Copyright Act, the text of which can be found at the U.S. Copyright Office web site <http://www.copyright.gov/legislation/dmca.pdf>. Please note that you will be liable for damages (including costs and attorneys'

fees) if you make any material misrepresentations when making or countering a copyright infringement claim.

11. If you believe that your work has been copied and is accessible on this site in a way that constitutes copyright infringement, you may notify us by providing our copyright agent with the following information in writing:

- a. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- b. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Nearpod to locate the material (e.g., URL).
- c. Information reasonably sufficient to permit Nearpod to contact you, such as name, postal address, telephone number, and, if available, an email address at which you may be contacted.
- d. Include the following statement: "I have a good faith belief that use of the material described above in the manner complained of is not authorized by the copyright owner, its agent, or the law."
- e. Include the following statement: "The information in the notification is accurate, and under penalty of perjury, I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."
- f. A physical, electronic or digital signature, in a form reasonably acceptable to Nearpod, of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- g. Send written communication to the following contact:
1855 Griffin Rd., A290
Dania Beach, FL 33004
- h. Send electronically-signed communication to dmca@nearpod.com.

12. DMCA Counter-Notification Procedure: After receiving a notification of alleged infringement, Nearpod will remove or disable access to the material claimed to be infringing or claimed to be the subject of infringing activity. At the same time, Nearpod will provide the provider of affected material with a copy of the notice. The provider of affected material may make a counter notification pursuant to sections 512(g)(2) and (3) of the Digital Millennium Copyright Act. Please be advised that you may be held liable for damages if you make material misrepresentations pursuant to federal law in the counter notification. When we receive a counter notification, we may reinstate the material in question. To file a counter notification with us, the provider of affected material must provide a written communication (by postal mail, overnight mail, or, when digitally-signed, by email) that sets forth the items specified below. To expedite our ability to process your counter notification, please use the following format (including section numbers):

- a. Identify the material that Nearpod has removed or to which Nearpod has disabled access and the location at which the material appeared before it was removed or access to it was disabled.
- b. Provide your name, postal address, telephone number, email address, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in Miami, Florida (if your address is outside of the United States, for any judicial district in which Nearpod may be found), and that you will accept service of process from the person who provided the initial notification of infringement or an agent of such person.
- c. Include the following statement: "I swear, under penalty of perjury, that I have a good faith belief that the removed material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled."
- d. Sign the paper or affix an electronic or digital signature to the communication in a form reasonably acceptable to Nearpod.
- e. Send written communication to the following address:

1855 Griffin Rd., A290
Dania Beach, FL 33004

f. Send electronically- or digitally-signed communication to copyright@nearpod.com. Upon receipt of a counter notification in substantial compliance with the DMCA, Nearpod will provide the person who provided the initial notification of claimed infringement with a copy of the counter notification promptly. After receipt of the counter notification, Nearpod will generally replace the removed material and cease disabling access to it, unless Nearpod's designated agent first receives notice from the person who submitted the initial notification that such person has filed an action seeking a court order regarding the removed material.

13. Nearpod is generally unable to evaluate the merits of trademark disputes because trademark rights may be based on registration or common law use, exist only for certain categories of goods or services and may differ internationally. Therefore, Nearpod expects you to resolve trademark disputes directly with the individual rather than utilizing Nearpod as an intermediary.

14. You are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Nearpod Materials and you are responsible for all activities that occur under your account(s). You are solely responsible for any consequences, losses, or damages that we may directly or indirectly incur or suffer due to any unauthorized activities conducted by you. If you become aware of any unauthorized use of your password or of your account, you agree to notify Nearpod immediately at privacy@nearpod.com

15. Nearpod's Privacy Policy, at <https://nearpod.com/privacy-policy> (the "Privacy Policy"), describes the collection, use and disclosure of data and information (including location and usage data) by Nearpod in connection with the Nearpod Materials. The Privacy Policy, as may be updated by Nearpod from time to time in accordance with its terms, is hereby incorporated into these Terms and Conditions, and you hereby agree to the collection, use and disclose practices set forth therein.

16. We may provide various open communication tools on the Nearpod Materials, such as blog comments, blog posts, chat forums, message boards, and the like. By posting information or otherwise using any open communication tools as mentioned, you agree that you will not upload, post, share, or otherwise

distribute any content that: (i). is illegal, threatening, defamatory, harassing, degrading, intimidating, fraudulent, racist, and pornographic or contains any type of inappropriate or explicit language; (ii). infringes any trademark, copyright, trade secret, or other proprietary right of any party; or (iii). attempts any type of unauthorized advertising.

17. We reserve the right to anonymously track and report a user's activity inside of the Nearpod Materials using non-personally identifiable information as more fully discussed in our [Privacy Policy](#). We will not advertise or market to students who use Nearpod, nor will any student information collected by Nearpod be shared with third parties for advertising and marketing purposes.

18. We may, at our sole discretion, suspend or terminate your access to all or part of the Nearpod Materials with or without notice and for any reason, including, without limitation, breach of these Terms and Conditions.

Data Ownership

19. Although the Nearpod account owner is and remains the owner of any data, including student Content, submitted through the Nearpod Materials, you grant us a perpetual, irrevocable, worldwide, sublicensable and transferable right and license to use, reproduce, publish, display, modify, make derivative works of, transmit and copy your anonymized Content and to additionally distribute and publicly perform your Content in connection with the Nearpod Materials and Nearpod's (and its successor's) business, in any media formats and through any media channels. You also hereby grant to each user of the Nearpod Materials a non-exclusive license to access and view your anonymized Content as permitted by the functionality of the Nearpod Materials and these Terms and Conditions. For the avoidance of doubt, such anonymized Content shall not include any personally identifiable information.

Pricing Terms and Conditions

20. In case you decide to upgrade to a Nearpod paid account and to provide Nearpod with your payment account information, you hereby agree to the following payment terms and conditions:

Paid Accounts

21. Nearpod offers you the option of upgrading your account to increase your storage and enjoy additional features for a fee. If you choose to upgrade, your account will be converted to a Paid Account and will not be subject to some of the restrictions placed on Free Accounts as described at <https://nearpod.com/pricing>.

22. Nearpod accepts credit cards and certain other specified payment methods and will automatically charge your payment instrument on file before upgrading your account. In the event we are not able to charge your payment instrument for applicable charges, we may suspend your account until due amounts are paid. Additionally, if your Nearpod balance is not paid within seven (7) days after Nearpod provides you with notification that your account is in arrears, Nearpod reserves the right to use our discretion to delete some or all of your files so as to reduce your storage space and to convert your Nearpod Paid Account back to a Free Account.

Billing

23. The fees for your Paid Account will be billed from the date you convert to a Paid Account and on each renewal thereafter unless and until you cancel your account. Nearpod will automatically bill your credit card on the calendar day corresponding to the commencement of your Paid Account. All fees and charges are pre-paid and nonrefundable, and there are no refunds or credits for partially used periods. If payment is not received from the credit card issuer, you agree to pay all amounts due upon demand. You must provide current, complete and accurate billing and credit card information, and you agree to pay all costs of collection, including attorney's fees and costs, on any outstanding balance. In certain instances, the issuer of the credit card may charge a foreign transaction fee or related charges, which you shall be responsible to pay.

Cancelling Your Account

24. You may cancel your Nearpod Paid Account at any time, and cancellation will be effective immediately. Your Nearpod Paid Account will continue in effect unless and until you cancel your Nearpod Paid Account or we terminate it. You must cancel your Paid Account before it renews in order to avoid billing of the

next period's fees to your credit card. Should you elect to cancel your Paid Account, please note that you will not be issued a refund for any previous payments.

Disclaimer of Warranties

25. THE NEARPOD MATERIALS ARE PROVIDED "AS IS." NEARPOD AND ITS LICENSORS, SERVICE PROVIDERS AND PARTNERS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NEARPOD DOES NOT MAKE ANY WARRANTY THAT THE NEARPOD MATERIALS WILL BE ERROR-FREE OR THAT ACCESS THERETO WILL BE CONTINUOUS OR UNINTERRUPTED, OR THAT THE NEARPOD MATERIALS OR THE SERVERS THAT MAKE AVAILABLE THE FEATURES AND FUNCTIONALITY THEREOF ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

26. YOU UNDERSTAND THAT YOU USE THE NEARPOD MATERIALS AT YOUR OWN DISCRETION AND RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER OR OTHER DEVICES AND FOR ANY LOSS OF DATA THAT MAY RESULT FROM THE DOWNLOAD OF SUCH CONTENT. WE DO NOT PROVIDE ANY WARRANTY OR GUARANTEE AS TO THE ACCURACY, PERFORMANCE, COMPLETENESS, OR SUITABILITY OF THE INFORMATION AND MATERIALS FOUND OR OFFERED ON THE NEARPOD MATERIALS. YOU ACKNOWLEDGE THAT SUCH INFORMATION AND MATERIALS MAY CONTAIN INACCURACIES OR ERRORS AND WE EXPRESSLY EXCLUDE LIABILITY FOR ANY SUCH INACCURACIES OR ERRORS TO THE FULLEST EXTENT PERMITTED BY LAW. NEARPOD DOES NOT GUARANTEE OR WARRANT THAT ANY CONTENT YOU MAY STORE OR ACCESS THROUGH THE NEARPOD SERVICE WILL NOT BE SUBJECT TO INADVERTENT DAMAGE, LOSS OR REMOVAL. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE FOREGOING DISCLAIMERS,

EXCLUSIONS, OR LIMITATION MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

27. It is your responsibility to maintain appropriate alternate backup of your information and data.

Limitation of Liability

28. IN NO EVENT, EVEN IF NEARPOD OR A NEARPOD-AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WILL NEARPOD OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, OR THIRD PARTY PARTNERS, LICENSORS OR SERVICE PROVIDERS BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THESE TERMS AND CONDITIONS (INCLUDING YOUR INTERACTIONS WITH OTHER USERS) UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; (II) THE COST OF PROCUREMENT FOR SUBSTITUTE PRODUCTS OR SERVICES; (III) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (IV) FOR ANY AMOUNTS THAT EXCEED THE FEES PAID BY YOU TO NEARPOD. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU, IN WHICH CASE NEARPOD'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

Representations and Warranties

29. You represent and warrant that, in connection with these Terms and Conditions or the Nearpod Materials: your use of the Nearpod Materials will be in strict accordance with these Terms and Conditions and with all applicable laws and regulations (including, without limitation, any local laws or regulations in your country, state, city, or other governmental area, regarding online conduct and acceptable content); (ii) your Content and your use of the Nearpod Materials will not infringe or misappropriate the intellectual property rights of any third party; (iii) you will not and will not attempt to re-join or attempt to use the Nearpod Materials

if Nearpod has banned or suspended you; (iv) you will not and will not attempt to defraud Nearpod or another user; and (v) you will not and will not attempt to use another user's account or allow another person to use your user account. A Nearpod User is a single, named, individual person over the age of 18 (or the age of majority in the country where they are located if different) and who is not a student. Districts and/or Schools represent and warrant that it and its members, employees, contractors, permitted successors, permitted assigns, administrators permitted legal representatives will not share accounts between two or more Users. User accounts may be reassigned to accommodate District's users changes, such as employee turnover, upon notice to Nearpod during the Subscription Period.

30. Any illegal activities undertaken in connection with the Nearpod Materials may be referred to the authorities.

Indemnification

31. You agree to indemnify and hold harmless Nearpod, its contractors, and its licensors, and their respective directors, officers, employees, and agents from and against any and all claims, losses, damages, liabilities, costs and expenses, including attorneys' fees (any of the foregoing, a "Claim"), arising out of or relating to your use or misuse of the Nearpod Materials, including but not limited to your breach of these Terms and Conditions or infringement, misappropriation or violation of the intellectual property or other rights of any other person or entity, provided that the foregoing does not obligate you to the extent the Claim arises out of Nearpod's willful misconduct or gross negligence. Nearpod reserves the right, at our own expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us and you agree to cooperate with our defense of these Claims.

Arbitration

32. This Section is referred to herein as the "Arbitration Agreement." The parties that any and all controversies, claims, or disputes between you and Nearpod arising out of, relating to, or resulting from these Terms and Conditions, shall be subject to binding arbitration pursuant to the terms and conditions of this

Arbitration Agreement, and not any court action (other than a small claims court action to the extent the claim qualifies). The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

33. THIS PARAGRAPH IS REFERRED TO AS THE “CLASS ACTION WAIVER.” THE PARTIES AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH PARTIES AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON’S OR PARTY’S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY’S INDIVIDUAL CLAIM(S).

34. Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association’s (“AAA”) rules and procedures (the “AAA Rules”), as modified by this Arbitration Agreement. If there is any inconsistency between the AAA Rules and this Arbitration Agreement, the terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms and Conditions as a court would, including without limitation, the limitation of liability provisions above. You may visit <http://www.adr.org> for information on the AAA and <http://www.adr.org/fileacase> for information on how to file a claim against Nearpod.

35. The arbitration shall be held in Miami-Dade County, Florida. If the value of the relief sought is \$10,000 or less, you or Nearpod may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on each party, but subject to the arbitrator’s discretion to require an in-person hearing if the circumstances warrant. Attendance at any in-

person hearing may be made by telephone by either or both parties unless the arbitrator requires otherwise.

36. The arbitrator will decide the substance of all claims in accordance with the laws of the state of Florida, without regard to its conflicts of laws rules, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different Nearpod Materials users, but is bound by rulings in prior arbitrations involving you to the extent required by applicable law.

37. Payment of all filing, administration, and arbitrator fees (collectively, the “Arbitration Fees”) will be governed by the AAA’s Rules. Each party will be responsible for all other fees it incurs in connection with the arbitration, including without limitation, all attorney fees.

38. All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential for the benefit of all parties.

39. If a court decides that any term or provision of this Arbitration Agreement other than the Class Action Waiver is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court decides that any of the provisions of the Class Action Waiver is invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void. The remainder of these Terms and Conditions will continue to apply.

Miscellaneous

40. Nearpod may make modifications, deletions and/or additions to these Terms and Conditions (“Changes”) at any time. Changes will be effective: (i) thirty (30) days after Nearpod provides notice of the Changes, whether such notice is posted to Nearpod, is sent to the e-mail address associated with your account or otherwise; or (ii) when you opt-in or otherwise expressly agree to the Changes or a version of these Terms and Conditions incorporating the Changes, whichever comes first. Under these Terms and Conditions, you consent to receive

communications from Nearpod electronically. Except to the extent that applicable law, if any, provides otherwise, these Terms and Conditions and any access to or use of the Nearpod Materials will be governed by the laws of the state of Florida, U.S.A. You agree that any action at law or in equity arising out of or relating to these Terms and Conditions or the Nearpod Materials that is not subject to arbitration under the Arbitration Section shall be filed only in the state or federal courts in Miami-Dade County, Florida (or a small claims court of the above-referenced jurisdiction) and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. The failure of any party at any time to require performance of any provision of these Terms and Conditions shall in no manner affect such party's right at a later time to enforce the same. A waiver of any breach of any provision of these Terms and Conditions shall not be construed as a continuing waiver of other breaches of the same or other provisions of these Terms and Conditions. If any provision of these Terms and Conditions shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and Conditions and shall not affect the validity and enforceability of any remaining provisions. These Terms and Conditions, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Nearpod without restriction. This is the entire agreement between us relating to the subject matter herein and shall not be modified except in a writing, signed by both parties, or by a change to these Terms and Conditions made by Nearpod as set forth above.

Contact Information:

- 1855 Griffin Rd., A290
- Dania Beach, FL 33004

If you have any questions or comments about these Terms and Conditions or our [Privacy Policy](#), you can contact us at: privacy@nearpod.com

For the previous version of our terms and conditions, effective from Nov, 12, 2016 - March 1, 2019, please click [here](#).

Posted Date: January 16, 2019

Effective: March 2, 2019