

**Quote ID: 161794**



## Sales Order

### Sales Order For:

Kristyn Beschman  
 Steeplechase Elementary  
 12000 Grand National Blvd  
 Walton, Kentucky 41094  
 UNITED STATES

### Nearpod Contact:

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

**Service Start:** 08/02/2021

**Service End:** 08/01/2022

Description	Quantity	Volume List Price	Discount	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	(\$520.00)	\$2,080.00
			<b>Total</b>	(USD) \$2,080.00

## Special Terms:

First year only discount.

### Terms

This Sales Order is valid until: 07/29/2021

Service will run from 08/02/2021 until 08/01/2022, 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) \$2,080.00.

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.**

**If you are a Tax-exempt customer, please include your Sales Tax-Exempt Certificate with signed documents/proof of payment. Otherwise, applicable tax will be included in your invoice.**

#### 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](mailto:lindsey.tennyson@nearpod.com) or FAX: +1 305-655-1999

## Flocabulary® Terms of Use

For a printable copy of these Terms of Use, please click [here](#).

If you are purchasing subscriptions to Nearpod, please refer to Nearpod's Privacy Policy, [here](#).

Welcome to flocabulary.com! If you continue to browse and use this website, you are agreeing to comply with and be bound by the following terms and conditions of use, which together with our [Privacy Policy](#) govern Nearpod's relationship with you in relation to this website. When you register on Flocabulary for a trial or paid plan for a class, school or district, or as a parent, you become a "User" and the learners who use Flocabulary through you are "Students".

PLEASE READ THESE TERMS OF USE CAREFULLY. If you disagree with any part of these terms and conditions, please refrain from using our website. We may update these Terms of Use from time to time, and may condition your continued use of our website and Content on your agreeing to those revised terms.

The term "Nearpod", "us" or "we" refers to Nearpod Inc., the owner of this website (which includes both Flocabulary.com and all of its subdomains) The term "you" refers to you, as a User, Student or Viewer of our website.

### 1. General terms

- The public portions of this website are provided for potential Users.
- Only school staff and parents or guardians may become Users. Do not register for Flocabulary as a User for a trial or paid plan unless you represent a class, school or district, or are a parent or guardian of a learner.
- School staff may invite students to participate in Flocabulary directly through individual accounts under certain plans: [www.flocabulary.com/plans](http://www.flocabulary.com/plans).
- If you are a school staff member and register for Flocabulary as a User for a trial or paid plan, you represent and warrant that you have the full right, power and authority to bind all Users connected to the registered account to these Terms of Use. Any subsequent purchase of a Flocabulary service by a User connected to the originally registered account shall constitute a ratification of these terms.
- Parents and guardians are permitted to share their accounts directly with their children to the extent they see fit.
- You may need to download additional software from third parties to view aspects of our website; if so, your use of such software will be governed by your agreement with those parties.
- You must comply with any Flocabulary policies regarding the acceptable use of Flocabulary with respect to student-generated content or Student-to-Student communication (our "AUP"); however,

we may enforce our AUP in our sole discretion, and you may want to promulgate and enforce your own guidelines and policies above and beyond the Flocabulary AUP for Students and Users through your account using the content review and moderation tools provided by Flocabulary.

## 2. Student Accounts

- We comply with the Children's Online Privacy Protection Act, or "COPPA" by obtaining authorization from the applicable school or district for Students to use Flocabulary as described in these Terms and our Privacy Policy.
- If your plan includes the Student registration option and you enable it, you represent and warrant that you are authorized to give consent for us to receive the information you provide about Students and to collect the information about the Students described in our Privacy Policy (including with respect to children under the age of 16), and you authorize us to collect that information on behalf of such Students.
- Users are entirely responsible for the actions of Students. We will enable you to comply with the Family Educational Rights and Privacy Act (FERPA) by appropriately limiting how we use Student data and by following your instructions with respect to the treatment of Student data.

## 3. Commercial Terms

- The general terms of each subscription plan or free trial are available at [www.flocabulary.com/plans](http://www.flocabulary.com/plans).
- Free Trials
  - Free trials are not available to anyone under the age of 18.
  - You may only register as an individual for the 14-day Free Trial Offer once.
  - Representatives of schools and districts may request one or more trial periods as needed to evaluate Flocabulary, which will be granted in our sole discretion.
  - By registering for a free trial, you consent to our contacting you to follow up on your experience with Flocabulary and potential purchase of a paid license.
- Plans paid with a credit card:
  - By providing your credit card to pay for a paid plan, you agree to pay us the fees indicated for that plan.
  - Payments will be charged on the day you sign up for a service and will cover the use of that service for the time period specified for the requested plan.
  - Plans (other than school-wide or district plans) that are not cancelled before the end of the applicable subscription period will automatically renew and you authorize us to collect the then-applicable subscription fee for such service using any credit card or other payment mechanism we have on record for you.

- Subscription fees are non-refundable, though a subscription can be canceled anytime. If you cancel your subscription, you will have access until your next billing date and will not be billed again.
- Plans paid for with a purchase order:
  - These Terms of Use and any Flocabulary Order Form you sign with us, and not the conflicting terms of any purchase order or other communication from you, shall govern your use of the website and the Content. The terms of a Flocabulary Order Form shall control over these Terms of Use.
  - By submitting a purchase order, you agree to pay in full within 30 days of receiving an invoice from us, unless otherwise specified in a Flocabulary Order Form.

#### 4. Usage

- You may not use our website or the Content in any of the following ways:
  - for any commercial purpose without our prior express permission;
  - in a manner that could damage, disable, overburden, or impair our servers or networks;
  - by obtaining unauthorized access;
  - using any automated tools, scrapers, robots, data mining or similar data gathering or extraction tools; or
  - that infringes the rights of any third party, including the intellectual property of any third party.
- Except as expressly permitted by these Terms of Use and your plan, you may not share, post, publish or transfer usernames, passwords or any other account authentication information to anyone.
- You may not post Usernames or Passwords on any website. You may only post class codes and activation links on password protected websites accessible by only your school community. They may not be posted on public websites.
- You are responsible for ensuring that Students comply with these usage terms.
- We reserve the right to adopt and enforce other appropriate usage guidelines for Generated Content from time to time.

#### 5. Intellectual Property and License

- We provide (or may at some point provide) data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials ("Content") to you.
- As between you and us, we own the Content and any improvements to the Content.
- We make no claim to new data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials created by you or Students through this website ("Generated

Content"). You hereby grant us (for yourself and on behalf of Students) a royalty free, non-exclusive, perpetual irrevocable, worldwide license to use, copy, display, and modify the Generated Content and make the Generated Content available to other Users and Students on this website in a manner consistent with these terms and our [Privacy Policy](#).

- The plans we offer specify what Content you can access, who may access the Content through you and the number and/or type of devices you may use to access the Content.
- We grant to you (and, where applicable, your Students) a non-exclusive license to view and display the Content for only so long as we make it available to you under your plan through the website.
- With the exception of certain beats, worksheets, quizzes and lesson plans which are clearly labeled as being intended for download, under no circumstances do you acquire the right to view any of the Content other than through our website, or to download or copy the Content, no matter what plan you subscribe to. You and your Students may download your own Generated Content as provided for in our [Privacy Policy](#).
- We reserve the right to change the Content we make available to particular Users or Students at any time, at our sole discretion.
- If you provide any suggestions for Content or improvements to Content or our website, you grant us a royalty free, non-exclusive, perpetual irrevocable, worldwide non-exclusive license to use, copy, display, and modify those suggestions in any manner we choose.

#### 6. Warranty Disclaimer

- We provide the Content in the hope that it will be educational and appropriate for a wide range of learners. You must determine during your trial period and thereafter whether the Content (and which Content) meets your needs and those of your learners.
- We don't guarantee that the website will be continuously operational, and we assume no liability relating to interruptions in your use of our website or errors in the Content.
- Accordingly, this website and all Content is provided on an "as is" basis, and your use (and Students' use) of this website and the Content is at your and their own risk, without warranties of any kind, express, statutory or implied, including without limitation any implied warranties of merchantability, fitness for a particular purpose or non-infringement.
- We disclaim any warranty or liability for the accuracy, timeliness, performance, completeness or suitability of the Content and any information and materials found or offered on this website for any particular purpose. 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.

#### 7. Limitation of Liability

- Neither Nearpod nor any of its officers, directors, employees, partners, agents, affiliates or licensors are liable to you or any other person for any indirect, incidental, special or consequential damages arising out of or relating to your use of our website or Content.

- If you are not currently a User under a paid plan with Flocabulary, your sole and exclusive remedy for our negligence or breach of these terms shall be for you to discontinue your use of our website and Content.
- If you are a User under a paid plan with Flocabulary, our maximum liability to you (for any claim whatsoever, including direct claims or claims for indemnification) shall be the aggregate amount that you paid us within the prior 12 months.
- If any of the foregoing limits are not enforceable under applicable law, then they shall be construed to provide such limits to the fullest extent permitted by applicable law.
- From time to time, this website may also include links to other websites. These links are provided for your convenience to provide further information. They do not signify that we endorse such websites and you waive all claims against us from your use of such websites.

#### 8. Indemnification

- You agree to indemnify us and our officers, directors, employees, partners, agents, affiliates and licensors from all liabilities, claims, and expenses, including attorneys' fees, that arise from your use or misuse of our website and Content. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to your indemnification, in which event you will cooperate with us in asserting any available defenses.

#### 9. Termination

- We may immediately (or as of a date specified in a notice) suspend or terminate your plan and your access to this website and the Content if you violate these Terms of Use or any of our published policies.

#### 10. Jurisdiction

- These Terms Use and your use of this website and the Content will be governed by the law of the state of Florida (except for its rules regarding conflict of laws).
- Any claim or dispute relating to these Terms of Use must be resolved exclusively by a state or federal court of applicable jurisdiction located in Broward County, Florida
- This means that you may not bring a claim anywhere else, and that claims against you may be brought in Broward County, Florida. You may not subsequently argue that Broward County, Florida is not a convenient forum for you.

#### 11. Miscellaneous

- Notices to you under these Terms of Use shall be sent to you at the email address you have registered with us.
- Notices to Nearpod should be sent to:  
Nearpod Inc.  
1855 Griffin Road, A-290  
Dania Beach, FL 33004  
  
[privacy@nearpod.com](mailto:privacy@nearpod.com)



We may assign these Terms of Use to an affiliate, pursuant to a merger or acquisition, or as part of the sale of substantially all of the assets of our business relating to these Terms of Use.

This Terms of Use document was last modified on June 1, 2021.

Effective Date: August 1st, 2021

For historical versions of these Terms, please click [here](#).

## Flocabulary® Privacy Policy

For a printable version of this Privacy Policy, please click [here](#).

If you are purchasing subscriptions to Nearpod, please refer to Nearpod's Privacy Policy, [here](#).

### 1. Flocabulary's Commitment to Privacy

We take your privacy and the privacy of your students very seriously. This Privacy Policy explains how we use and process information that can be used to directly or indirectly identify an individual ("Personal Data") collected through the use of the Flocabulary website and platform. Please read this Privacy Policy and contact us if you have any questions.

Our commitment is guided by a few major principles:

#### *We Empower Schools to Make Data Decisions*

- Schools and districts can use Flocabulary without sharing any Personal Data from students. Or they can choose to set up student accounts and use Flocabulary to track their students' progress.
- The school or district's account manager can delete or correct Personal Data from students at any time.

#### *Flocabulary is Committed to Maintaining a Safe and Compliant Platform*

- We will only share Personal Data of students in accordance with this Privacy Policy.
- We use industry standard security practices, such as TLS encryption.
- We've signed the Pledge to Safeguard Student Privacy. Learn more [here](#).
- We've reaffirmed its commitment to privacy, by signing Pledge 2020.

This Privacy Policy explains the details of how we safeguard and use the information you give us. By using this site, you agree to our Privacy Policy.

## 2. Children's Use of Flocabulary

Only parents/guardians, schools, or districts that have obtained licenses and provided consent on behalf of students can create student accounts. For all other types of subscriptions and trials, Flocabulary does not knowingly collect Personal Data from children under the age of 16.

If you are a child under the age of 16, you must get permission from your school, parent, or legal guardian to use this website. If you wish to sign up for a free trial or subscribe to Flocabulary, your school, parent, or legal guardian must register for a trial or paid subscription to grant you access to the website.

If we learn that we have inadvertently collected Personal Data from anyone younger than 16 without the appropriate consent, we will take the necessary steps to delete it.

## 3. Mobile Application

When a user with a Lite, School, or District subscription uses our mobile application, the information collected will be handled in the same way as described in this policy. When our mobile application is used in a standalone mode (meaning a user has downloaded the app but has NOT started a free trial through the Apple App Store or Google Play store), we will only collect information to identify the device used, which we will use solely to facilitate the internal operations of Flocabulary. If a free trial is started, a free trial is converted to a paid subscription, or a subscription is renewed by a parent or by a child 16 or older, we collect only the minimum information necessary (a transaction identifier and email address for the application store account holder) to verify that payment was made through the applicable application store. We will also automatically collect non-personal information in the manner described in this policy, and that non-personal information will be linkable to the transaction identifier and email address.

## 4. What Information Do We Collect and How Do We Use It?

### a. *Website Visitors.*

If you are an individual who visits our front-end website (for example [www.flocabulary.com](http://www.flocabulary.com)) only (a "Visitor") and do not log into the site, we may collect

certain information in furtherance of our legitimate interests in operating the Flocabulary services and business. Information collected automatically from Visitors may include the following:

- IP address associated with your computer;
- “clickstream data,” which includes information about your clicks on our website and which may also include information about your computer;
- web browser and operating system and information about the website you visited before coming to our site;
- mobile application information;
- identifiers such as an anonymized session identifier; and
- website traffic volume, frequency of visits, and type and time of transactions.

By collecting your IP address, which is necessary for the operation of this Site, we may indirectly collect information about your geographic location (which may be sufficient to identify the name of your city or town, and, in some cases, your street name)

*b. Logged-In Users.*

We will ask you to create a Flocabulary account to access certain portions of our site. When you create an account, we will ask for your consent to collect certain types of Personal Data. However, if you do not grant the requested consent to the processing of your Personal Data, the use of the Flocabulary website may not be possible. The Personal Data that we collect from logged-in users includes information that you voluntarily provide to us when you sign up for an account and information that is automatically collected when you are logged into the Flocabulary platform. The information collected depends on whether you are a teacher, school, parent or student. The provisions below describe what information we collect for each type of user.

*(i) From teachers and administrators*

*1. Information you voluntarily provide.*

- If you are a teacher or administrator signing up for an account on our website, we collect your first and last name, email address, role at your school, grade interests and subject interests. We'll ask you to enter the

state of your organization to select your school, and we remember the school you select so that we can properly give you access if your school has already purchased Flocabulary. Additionally, we ask you to set a password to keep your account secure. In districts that have enabled login through a third party account (such as a Google LLC or Clever Inc. account), you will connect using that account, we will use your email address registered with that third party as your username and you will not need to set a separate password.

- Your email address will be your username. We'll use your email address, as well as your school, role, grade and subject interests, to customize the updates you get about Flocabulary via email. You can always opt out of emails that you have already opted in to receive from us by clicking "unsubscribe." If you request a school trial or a consultation with our sales team, we will also ask for your phone number and job title so that a member of the Flocabulary team can get in touch with you to set up your trial or help you with a purchase.
- If you are purchasing a paid account, we will collect all the information necessary to process the order, including credit card information, billing information or shipping information (as applicable).
- Teachers and administrators with schoolwide or district accounts can invite other staff members at the school or district to create a Flocabulary account. To do this, they can enter the email addresses of the people they wish to invite or use other import mechanisms supported by Flocabulary. We only use these email addresses to send invitations, and will not send any other emails to these addresses.

2. Information we automatically collect. If you are a teacher or administrator logged into Flocabulary, we will automatically collect the same information that we collect from Visitors.

(ii) From parents

1. Information you voluntarily provide.

- If you are a parent, you may access the website by (1) creating an account using our mobile app or (2) purchasing an individual subscription. If you activate a school subscription, we will collect the same information from you as if you were a teacher or administrator. If you are a parent signing up for an account through our mobile app or an individual subscription, we collect the information you voluntarily provide to create an account. Only parents who have activated school subscriptions may invite others to create a Flocabulary account.

2. Information we automatically collect.

- If you are a parent logged into Flocabulary, we will automatically collect the same information that we collect from teachers or administrators.

(iii) From students

1. Students can't create accounts on their own.

- Unless a school or district has obtained a license, provided consent on behalf of students and chosen to allow for student account creation, we collect no personally identifiable information or Personal Data from students (other than parent or teacher selected usernames for certain legacy accounts). In cases where a school or district purchases Flocabulary, the first step is for teachers or administrators to create classes. Students can only sign up for Flocabulary after their school or district imports student roster information into Flocabulary or their teacher enters class information and instructs students to create an account with a provided code. Students cannot sign up and create a Flocabulary account unaffiliated with a class or a schoolwide or district license.

2. Student accounts created by teachers or administrators.

- Flocabulary is not offered directly to students on any basis, and school districts, teachers or parents must first sign up for primary accounts and then invite students to use Flocabulary through student accounts. When students create a student account on Flocabulary, they'll enter a code which will associate them with their school and teacher. These codes may only be generated by teachers or administrators and no student may create an account without a valid class code. To the extent not

already imported by teachers or administrators (either manually or using a third-party tool such as Google), we'll then collect the student's first and last name, and the student will set a username and password. In districts that have enabled login through a third party account (such as a Google or Clever account), the student will connect using that account, we will use the student's email address registered with that third party as the username and the student will not have a separate password. We collect the first and last name so that teachers can identify students on their class roster in the My Classes section of Flocabulary.com and administrators can identify students in the school management section. We collect the username so students can easily log in, as well as have unique identification for the website. Because the first and last name are for teachers' class management, they can instruct students to enter an initial or nickname instead of a first or last name, or another form of identification, if they'd prefer. The student's username and first and last name will not be shared with any Flocabulary users or third parties other than their teacher(s) and the account manager(s) at their school or district.

### 3. Student accounts created by parents.

- Only parents who activate a school subscription may invite students to use Flocabulary through the student account sign up process mentioned above. If a parent signs up for Flocabulary through the mobile app or an individual account, no additional sign up process is necessary. We may, however, ask for the grade level of a parent's child and other general information to customize the user experience on the mobile app or individual account. If you are a parent who has created an account through our mobile app, you may also limit your child's usage of the app by toggling "on" the Parental Controls. Toggling on the Parental Controls in the mobile app will hide all content dealing with mature subjects (including, but not limited to: violence, sex and tragedy) and restrict visible content to lessons deemed inappropriate for K-5 students.

### 4. How student accounts are used.

- When students have accounts, teachers will be able to assign multiple choice quizzes and other assignments to students in their classes. Students' quiz results and completed assignments or other

student-created work will be stored so that the student who took the quiz or completed the assignment and the teacher can review the results. Students will be able to review the results of their quizzes at any time. Flocabulary provides students with the ability to download an archive of the work they have created. Students may also generate their own content using Flocabulary applications. For example, in Vocab Cards, students write and draw in response to prompts about a specific vocabulary word. Further, in Lyric Lab, they write their own rap or poem about a lesson topic. Flocabulary may add additional applications from time to time and some of the content submitted through such applications may contain student-created work that includes personal information (such as voice recordings or video). Flocabulary will retain all student generated content in accordance with the security measures described in this Privacy Policy and may only be shared within the classroom to the extent authorized by a Teacher. Students may use the Flocabulary applications mentioned above with or without an assignment from their teacher. When the student is assigned the activity and submits their work, their teacher can see and review it. Otherwise the student who created the work is the only one who can view it. Certain legacy Flocabulary accounts may also include shared student usernames. These usernames are linked to information we collect about students' usage of the Flocabulary site, such as units visited and videos viewed.

5. Limits on collection of Personal Data from student accounts.

- We do not ask or require students to provide Personal Data beyond that which is reasonably necessary to use Flocabulary. We do not share any student login information with any third party and information collected from students is never used or disclosed for any third-party advertising or any kind of behaviorally targeted advertising.

6. Information we automatically collect.

- If a student is logged into Flocabulary, we will automatically collect the same information that we collect from Visitors.

7. Deleting Student Accounts.



- Flocabulary will promptly correct or delete student information at the request of a parent or an authorized representative of the student's school or district. You can send a deletion request to [privacy@nearpod.com](mailto:privacy@nearpod.com)

*c. How we automatically collect information.*

We use the following tools to collect and track the automatically collected information described above, including:

(i) Cookies and Similar Technologies.

- To provide you with a continuous experience on our site, we may automatically collect your information using cookies and similar technologies. A cookie is a data file sent to your browser from a web server and stored on your computer's hard drive that allows us to recognize your browser when you return to our website, to remember your preferences and to provide you with content that may be of interest to you based on your progress within our site. To the extent any automatically collected information from cookies and similar technologies is combined with Personal Data, it will be treated as Personal Data and protected accordingly under the terms of this Privacy Policy.
- To learn more about browser cookies, including how to manage or delete them, look in the Tools, Help or similar section of your browser, or Click [Here](#).
- Additionally, our video player may store local shared objects, also known as Flash cookies, on your computer. Local shared objects cannot be managed in the same way as browser cookies. Visit this [link](#) for information on managing Flash cookies.
- We may use the technologies described above in connection with the advertising of our services to parents, teachers and administrators on other websites and tracking the results from such advertising. We don't allow these third parties to advertise directly on our website.

(ii) Analytics.

- We use third-party analytics service providers to assist us in collecting and understanding website usage information. We use information from these services to help us improve our website and the services we provide to our users.

(iii) Email.

- We place a tiny image, also known as a pixel tag, in the emails we send, and this tells us when you have opened the email. Our team uses this information to improve emails we send to you, and best tailor them to your needs.

By using our website, you agree to our use of these tracking technologies.

We do not track our users across third party websites. As a result, we do not currently honor “do not track” signals transmitted by users' web browsers. To learn more, Click [Here](#).

d. *Anonymized Data.*

We frequently aggregate Personal Data in a way that makes it impracticable to use that data to identify a particular person; we also sometimes maintain individual data records with personal identifiers removed, and maintain it in a manner in which it is impracticable to relink it to any particular individual. In this Privacy Policy, we refer to such data as “Anonymized Data” and do not consider it to be Personal Data.

## 5. How We Use Your Information

We use Personal Data and any other information collected through the website for the following reasons:

- administer the site;
- improve the quality and types of services that we deliver;
- communicate with parents, teachers and school districts by responding to your requests, comments and questions;
- diagnose technical problems;

- send users emails regarding service, technical and other administrative matters. These communications may also include information regarding changes in services, new service offerings and important service-related notices, such as security and fraud notices. Such communications will only be delivered to parents, teachers and school districts and will never be delivered to the site's student users.
- send users alerts to notify them about upcoming assignments and Flocabulary services related to their activity on the site "Notification Alerts". These Notification Alerts may be sent to all users of the site, excluding students.
- billing, account management and other administrative matters; and
- as required by applicable law or regulation.

We use this information to help us diagnose technical problems, administer the site and improve the quality and types of services that we deliver. We may also collect, track and analyze information in aggregate form that does not personally identify users.

#### 6. How We Share Your Information

We will not sell or rent any of your or your students' information to any third-party for any purpose, and we do not track users outside of our website. There is no third-party advertising on Flocabulary.com.

We will not share your information in any way not outlined in this Privacy Policy. Except as noted below, we do not share any Personal Data with third parties for advertising, marketing or other purposes.

We share information that we collect in the following circumstances:

- as instructed by a school administrator, school or district in relation to information about their users, for example to let administrators know which teachers are using Flocabulary;

- with teachers who are the managers of a class so they can see information about the students in that class;
- with our service providers (including hosting, customer communication and analytics providers) so they have access to the data they need to help us to operate the website effectively and communicate with you — they must comply with confidentiality and data security provisions consistent with this Privacy Policy as necessary to protect our rights or property or that of others, protect the safety of our users, investigate fraud or respond to a government, judicial or other legal request, or to comply with the law. These service providers do not have the right to use Personal Data we share with them beyond what is necessary to assist us.
- with third party products specifically configured by schools or districts to interoperate with Flocabulary;
- when any user logs into Flocabulary with a third-party account (such as a Google or Clever account), that third party will learn that that user has visited Flocabulary, and that information will be subject to that third party's privacy policy and practices;
- if we believe in good faith that it is necessary to disclose the information under any applicable law or regulation, such as complying with a subpoena or legal process;
- if the information is Anonymized Data;
- with our corporate affiliates and/or parents; and
- other circumstances that you expressly consent to.

If there are changes to the Policy, you will have the opportunity to consent to them prior to additional information being collected or to cease using the Flocabulary site and content.

If a portion or all of Flocabulary's assets are acquired by or merged with a third party, your information may be one of the assets acquired by the third party. You'll still be

protected under this Privacy Policy, and your information will only be available to the third-party per the terms of this Privacy Policy. We will let you know if there is an acquisition by posting on our home page or emailing you or our contact at your school or district. If, at this point, you do not want your Personal Data shared with a new company, you can request its deletion. If Flocabulary goes out of business or files for bankruptcy, we will not sell your Personal Data to any third parties who do not agree to continue to meet the protections spelled out in this privacy policy.

We may also obtain information, including Personal Data, from certain third parties (such as Clever). Any Personal Data received from these third parties will be handled in accordance with this Privacy Policy. We sometimes combine information we receive from third parties with the Personal Data we collect through the site. Any such combined information will be treated as Personal Data in accordance with this Privacy Policy.

Please also note that our service providers may be able to combine the data we share with them with the data they collect on their own. For example, if we share information with Clever, Clever may combine such information with the data they have already collected about you through their website. We are not responsible for such combinations of data and we encourage you to learn about their privacy and security policies before you use this site or provide our service providers with your personal information.

#### 7. Links to Third-Party Sites

We occasionally link to other websites from our website to provide relevant content to our users. For example, we include links to news stories along with The Week in Rap, or will sometimes link to other educational websites to supplement a lesson plan. We are not responsible for the practices of these third-party websites or services that we link to, and they are not covered under this Privacy Policy. These websites have their own privacy policies, and we encourage you to review them.

#### 8. How Flocabulary Protects and Secures Your Information

Each account created on the Flocabulary website is protected with a password. Make sure that you and any students associated with your account keep these passwords a secret at all times to prevent unauthorized access to your account. You are responsible for any activity that occurs while you or any students associated with your account are logged in to Flocabulary, whether or not that access is authorized by you. If you think

that someone has gained unauthorized access to your account, please contact us immediately.

We have industry-standard security policies and procedures in place, and take reasonable measures to protect the confidentiality, security and integrity of Personal Data collected on our website. This includes the use of encryption to protect sensitive information transmitted online, firewalls and other security technologies to prevent access to the data from unauthorized parties. All connections between users and Flocabulary are secured via encryption communication technology (TLS). All Flocabulary passwords are salted and hashed using the practices recommended by NIST (National Institute of Standards and Technology). Flocabulary utilizes industry-standard application hosting providers who agree to perform frequent diagnostics, operating system updates, and network security monitoring. Our engineering team is committed to creating and maintaining systems to protect your Personal Data.

Our policy is that only employees who need to access user information in order to perform a specific job (for example, billing or customer service) are granted access to that information. Our partners, including our outside shipping company and our credit card processing company may only use the information to provide specific services. These companies do not retain, share, store or use personally identifiable information for any secondary purposes beyond filling your order.

While we have taken all steps to protect your information, and continuously work to keep our systems at or above industry standard security, no system is 100% fail proof and secure. If we believe that the security of your Personal Data may have been compromised, we will seek to notify you as soon as possible by email.

For information regarding our internal security audits, please contact us at [privacy@flocabulary.com](mailto:privacy@flocabulary.com).

## 9. Your Choices Related to Your Privacy

### a. *Withdraw Consent or Object.*

- In order to process your Personal Data, we rely on your consent or our legitimate interests to process to process your data. You may withdraw your consent or object to the use of our Personal Data at any time, but you will no longer be able to access Flocabulary.

b. *You can edit your information.*

(i) Editing your information.

- If you have an account on our website, you can edit your information in the account section of the website. If you are unable to do this on the website, you can contact us and we'll help you make changes. We will ask you to verify your identity before we provide you with access to your information.
- You have the right to opt out of emails from us by clicking unsubscribe. You may still receive transactional emails from us related to purchases, account expiration, or other necessary communication.

(ii) Editing a student's information.

- If you are the manager of a school or district subscription, you can add, edit or delete teacher and student users of your account. You may edit student usernames and passwords if your students provided them. If your students sign in with a third party product specifically configured by schools or districts to interoperate with Flocabulary, such as Google, Microsoft Inc.'s Office 365, Clever, or a learning management system that is integrated via *Learning Tools Interoperability (LTI)*, you or the student will need to contact the third party or your School/District IT Administrator to change name, email address or password.
- If you are a parent who has purchased a school subscription, you may delete, edit or add accounts in the same manner as the manager of a school or district. If a parent joins a school subscription, they will have the same information editing rights as a teacher.
- If you are a parent, guardian or student, the law allows you access to certain information that may have been provided to Flocabulary by your school or district. If you would like to obtain such access, please contact your school or district.

c. *You have the right to delete your information.*

- If you are a parent, teacher or administrator, you can contact us to delete your account. Parents, teachers and administrators can delete student accounts or contact us and we can delete them for you. After a

parent, school or district account termination and subsequent removal of student data, we may retain securely stored backups in accordance with applicable law, our agreement with the school or district and our data retention policy, after which point it will be deleted.

- Please note that any information you share with others on the website or content other users may have copied, is not a part of your account and may not be deleted when you delete your account. If we share your data with one of our service providers, we will use our best efforts to cause such third party to delete such data when you delete your account.

*d. How we retain and delete your data.*

- We will retain Personal Data collected in connection with free trial or subscription accounts only for as long as is necessary to provide the services to the account holder, as required by applicable laws or regulations or otherwise per the terms or a contract with a school or district.
- We may maintain Anonymized Data, including usage data, for analytics purposes.

*e. Certain Rights for EEA Persons.*

- Individuals in certain countries, such as the European Economic Area (the “EEA”), have certain statutory rights in relation to their Personal Data. These rights include the right to request access to Personal Data, as well as to seek to update, delete or correct their Personal Data. You may exercise these rights by following the steps explained above, which for holders of student accounts means making such a request to a school, teacher or parent. If you have any problems exercising your rights or if you have any additional questions about our use of your Personal Data, please contact us at [privacy@flocabulary.com](mailto:privacy@flocabulary.com) for additional information.
- You also have the right to (i) restrict Flocabulary’s use of information that constitutes your Personal Data, which will cause you to lose access



to Flocabulary and (ii) lodge a complaint with your local data protection authority. Or you may contact the Office of the Data Protection Commissioner. Canal House, Station Road, Portarlinton, Co. Laois, R32 AP23, Ireland; email: [info@dataprotection.ie](mailto:info@dataprotection.ie).

#### 10. Identifying the Data Controller and Processor

- We endeavor to be fully compliant with the General Data Protection Regulation (GDPR), effective as of May 25th, 2018. We may act, depending on the circumstances, as either or both a Controller and a Processor of Personal Data (as these terms are defined in the GDPR). We act as the Controller of information that we ask you to provide to create an account and information that we automatically collect when you use the site. When acting as the Data Controller, for purposes of Article 14(2) of the GDPR, Flocabulary relies on the following lawful basis for processing Personal Data: consent, compliance with law, and legitimate interest.

#### 11. Location of Data and Processing

- This website is owned and operated by Flocabulary, Inc., located at 1855 Griffin Road, A290, Dania Beach, FL 33004. If you are located outside of the United States, please note that Personal Data will be processed in the cloud by our cloud service provider (currently Amazon Web Services), which offers sufficient guarantees to implement appropriate technical and organizational safeguards that meet the GDPR's standards. We have a data processing agreement in place with our cloud service provider, ensuring compliance with the GDPR and, in the event of any unauthorized access to, or use of, Personal Data, the appropriate authorities will be notified. All information is transmitted to us by our cloud service provider, will be processed in the United States, and will be handled and protected under the terms of this Privacy Policy and applicable U.S. laws, which may not be as protective as the laws in your country. By using the site, you agree to this.

#### 12. Changes to the Privacy Policy

We may occasionally update this Privacy Policy. You can see when it was last updated by looking at the last updated date at the bottom of this page.

If we make any significant changes we'll post them prominently on our website or notify you by other means as required by law. Your continued use of the website after a revision to the Privacy Policy indicates your acceptance and agreement to the current Privacy Policy. We recommend that you periodically review the Privacy Policy to make sure you understand and are up-to-date on how we're keeping your information safe. If you don't agree with any future changes to the Privacy Policy, please contact us to terminate your account.

### 13. Complaints/Contact Us

In compliance with the Privacy Shield Principles and GDPR, Flocabulary commits to resolve complaints about our collection or use of your personal information. EEA Persons with inquiries or complaints regarding our Privacy Policy should first contact Nearpod at:

Nearpod Inc.

Attn: Legal Department

1855 Griffin Road, A290

Dania Beach, FL 33004

[privacy@flocabulary.com](mailto:privacy@flocabulary.com)

If an issue cannot be resolved by Flocabulary's internal dispute resolution mechanism, Flocabulary has chosen JAMS to be its independent recourse mechanism for Privacy Shield. Flocabulary agrees to be bound by any decision of JAMS. Individuals may contact JAMS at <https://www.jamsadr.com/eu-us-privacy-shield> to address complaints. More information about JAMS is available at <https://www.jamsadr.com>. Further, If Flocabulary does not resolve the complaint, you can submit the matter to binding arbitration to a single arbitrator of the Privacy Shield Panel. The remedies from this arbitration are limited to individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the individual's data in question) necessary to remedy the violation of the Principles only with respect to the individual.

If you'd like to reach us by mail, write us at:

Nearpod Inc.

Attn: Legal Department

1855 Griffin Road, A290

Dania Beach, FL 33004

For California Residents Only:  
California Consumer Privacy Act (CCPA)

a. *Your Rights.* California residents have the right under the California Consumer Privacy Act of 2018 (CCPA) and certain other California and Federal privacy and data protection laws, as applicable, to exercise free of charge:

- *Disclosure of Personal Information We Collect About You.* You have the right to know:
  - The categories of personal information we have collected about you (as more particularly described in section b., below);
  - The categories of sources from which the personal information is collected (as more particularly described in section b., below);
  - Our business or commercial purpose for collecting or selling personal information (as more particularly described in section b., below);
  - The categories of third parties with whom we share personal information, if any (as more particularly described in section b., below); and
  - The specific pieces of personal information we have collected about you.
- Please note that we are not required to:
  - Retain any personal information about you that was collected for a single one-time transaction if, in the ordinary course of business, that information about you is not retained;
  - Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information; or

- Provide the personal information to you more than twice in a 12-month period.
- *Disclosure of Personal Information Sold or Used for a Business Purpose.* We do not sell your personal information.
- *Right to Deletion.* Subject to certain exceptions set out below, we will:
  - Delete your personal information from our records; and
  - Direct any service providers to delete your personal information from their records.
  - In order to request deletion of your personal information, you must make the request from the email address associated with your Flocabulary account.
  - Please note that we may not delete your personal information if it is necessary to:
    - Otherwise use your personal information, internally, in a lawful manner that is compatible with the context in which you provided the information.
    - Comply with an existing legal obligation; or
    - Enable solely internal uses that are reasonably aligned with your expectations based on the your relationship with us;
    - Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when our deletion of the information is likely to render impossible or seriously impair the achievement of such research, provided we have obtained your informed consent;
    - Comply with the California Electronic Communications Privacy Act;

- Exercise free speech, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law;
- Debug to identify and repair errors that impair existing intended functionality;
- Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity;
- Complete the transaction for which the personal information was collected, provide a good or service requested by you, or reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform a contract between you and us;
- *Protection Against Discrimination.*
  - You have the right to not be discriminated against by us because you exercised any of your rights under the CCPA. Flocabulary does not differentiate how we treat our users whether they exercise their rights under the CCPA. This means we do not, among other things:
    - Deny goods or services to you;
    - Charge different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;
    - Provide a different level or quality of goods or services to you; or
    - Suggest that you will receive a different price or rate for goods or services or a different level or quality of goods or services.

b. *Disclosure of Personal Information Collected.*

- *Information We Collect About You.* We may collect and use the following personal information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household:

Categories of Personal Information Specific Types of Personal Information Collected  
Identifiers (e.g., a real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, social security number, driver's license number, passport number, or other similar identifiers)  
For Educator Flocabulary Users:

- First and Last Name, Email Address, IP Address

For Student Flocabulary Users:

- First name and first initial of last name OR Nickname, IP Address

Information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information  
For Educator Flocabulary Users:

- First and Last Name, District of employment and School assignment, title/position (e.g. admin or teacher);
- [If you are the account administrator]: Address where to send Invoices, Telephone number; and
- [If using a paid account]: to the extent applicable, the name and last four digits of the credit/debit card used to pay for the services.

For Student Flocabulary Users:

- First name and first initial of last name

Commercial information (e.g., records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies)  
For Educator Flocabulary Users:

- Prior Flocabulary Materials purchases and/or prior Flocabulary purchases

For Student Flocabulary Users:

- N/A

Internet or other electronic network activity information (e.g., browsing history, search history, and information regarding a consumer's interaction with an Internet Web site, application, or advertisement)For Educator Flocabulary Users:

- Click-stream data, IP address

For Student Flocabulary Users:

- User-generated content

Audio, electronic, visual, thermal, olfactory, or similar informationFor Educator Flocabulary Users:

- To the extent the feature is used, voice recording.

For Student Flocabulary Users:

- To the extent enabled by the Educator Flocabulary User: student voice recording.

Professional or employment-related informationFor Educator Flocabulary Users:

- District of employment and School assignment, title/position (e.g. admin or teacher).

For Student Flocabulary Users:

- N/A
- *How Your Personal Information is Collected.* We collect most of this personal information directly from you in person, by telephone or email and/or via our website and apps. However, we may also collect information:
  - from publicly accessible sources (e.g., school websites);

- from a third party with your consent (e.g., your bank);
  - from cookies on our website; and
  - via our IT systems, including: communications systems, email and instant messaging systems.
- *Why We Use Your Personal Information.* We use your personal information for the following reasons:
    - Providing access and services of the Flocabulary Materials;
    - Auditing related to a current interaction with the consumer and concurrent transactions, including, but not limited to, counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards;
    - Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity;
    - Debugging to identify and repair errors that impair existing intended functionality;
    - Short-term, transient use, provided the personal information that is not disclosed to another third party and is not used to build a profile about a consumer or otherwise alter an individual consumer's experience outside the current interaction, including, but not limited to, the contextual customization of ads shown as part of the same interaction;
    - Performing services on behalf of the business or service provider, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing advertising or marketing services, providing analytic



services, or providing similar services on behalf of the business or service provider;

- Undertaking internal research for technological development and demonstration; and
- Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business.
- *Who We Share Your Personal Information With.* We routinely share personal information with:
  - our affiliates, including companies within the Flocabulary group;
  - service providers we use to help deliver our services to you, such as payment service providers, warehouses and delivery companies;
  - other third parties we use to help us run our business, such as customer relationship managers or website hosts;
  - third parties approved by you, including social media sites you choose to link your account to or third-party payment providers;
  - credit reporting agencies;
  - our insurers and brokers; and
  - our banks.

c. *How to Exercise Your Rights.* If you would like to exercise any of your rights as described in this Privacy Policy, please email us at [privacy@Flocabulary.com](mailto:privacy@Flocabulary.com). Please note that you may only make a data access or data portability disclosure request twice within a 12-month period.

e. Please note, Flocabulary does not sell, lease, or rent your data to any third-party.

*This Privacy Policy was last modified June 15, 2021. Effective date: August 1, 2021.*

# Nearpod® Terms and Conditions

For the previous version of these terms, please [click here](#).

For a printable version of these terms, please [click here](#).

If you are purchasing subscriptions to Flocabulary, please refer to Flocabulary's Terms, [here](#).

***By clicking "I accept" or "I agree" to these Terms and Conditions ("Terms") or using, accessing, or registering for Nearpod Inc.'s (collectively, "we," "us," or "Nearpod") website, Nearpod mobile applications, or any other websites, applications, or online services that link to these Terms (collectively the "Nearpod Materials"), you are agreeing to these Terms, which is a binding contract with Nearpod Inc. for the benefit of itself and its affiliates.***

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## 1. Introduction

Please read these Terms carefully as they 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. It is important to us that the Nearpod Materials provide you with a helpful and reliable experience. To protect our rights and yours, these Terms govern all uses of the Nearpod Materials.

Access or use of the Nearpod Materials for which you have registered or enrolled constitutes acceptance of these Terms as a binding agreement. By using the Nearpod Materials, you represent that you: (1) you are an adult (according to the rules of the country where you are located), (2) have read and understood these Terms; (2) agree to use the Nearpod Materials in compliance with applicable laws and these Terms; (3) are an authorized user; and (4) that you will be responsible for ensuring that any user authorized by you to use and access the Nearpod Materials does so in accordance with these Terms. If

you are a holder of a Nearpod for Higher Education or Nearpod Enterprise Edition account, for commercial purposes, then these Terms, to the extent applicable, apply to you too.

Furthermore, if you are an Educator Nearpod User, regardless of teaching at a private or public Institution, you represent and warrant to us that you are (i) authorized to agree to these Terms on behalf of your organization and (ii) provide consent on behalf of your Student Nearpod Users to use and access the Nearpod Materials. Additionally, as an educator, you represent and warrant that Nearpod shall be considered a School Official, as defined by FERPA, with a legitimate educational interest, and performing services otherwise provided by the educator.

If you do not agree to these Terms, then please do not purchase a subscription, create an account, or use the services.

Additional terms and conditions may apply to some services offered on the Nearpod Materials if we post such terms within such services or if we sign a separate agreement with you. Please contact [privacy@nearpod.com](mailto:privacy@nearpod.com) if you have questions about these Terms. Nearpod is a registered trademark of Nearpod Inc.

Unauthorized commercial, corporate or other misuse of Nearpod may result in the cancellation of your account. Nearpod empowers educators to choose how much student personal information students input into the Nearpod Materials. While some Nearpod features may request student personal information, such as first name, first initial of student's last name, a nickname or student voice, it is ultimately in the Educator Nearpod User/District Administrator's discretion as to what information is actually provided.

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

Nearpod and the Nearpod Materials comply with (and facilitate compliance with) applicable law, including the Family Educational Rights and Privacy Act (FERPA) and Children's Online Privacy Protection Act (COPPA). We rely on consent by the Educator Nearpod User as the basis for collecting this information via the participation portion of the Nearpod Materials or through the activation of the Student Account feature. If you are a parent, guardian, or teacher and believe that your child or student under the age of 16 has provided Nearpod with personally identifiable information without your consent, please notify [privacy@nearpod.com](mailto:privacy@nearpod.com) so that we can promptly delete the information from our servers. For more information about our privacy policy, please read [here](#).

If you have any questions about how to use the Nearpod Materials, please contact us at: Nearpod Support.

The section headings and highlights contained below are for your convenience only, and do not have any legal meaning or effect.

## 2. Definitions

For purposes of these Terms:

- **“Admin Nearpod User”** means a User who has administrator access to the Nearpod Materials for an Institution.
- **“Educator Nearpod User”** means a single, named, person of legal age who can enter into a contract in the state or country in which the User resides and in no case, is under the age of 18, and who is an instructor or school administrator who has an end-user account to use the Nearpod Materials and is not a student.
- **“Institution”** is defined as: a school, district, college, university or other education institution or education agency, whether public or private, that adopts or uses the Nearpod Materials.
- **“Nearpod, “we” or “us”**” means Nearpod Inc., who provides the platform through which the Nearpod Materials are delivered.
- **“Nearpod Materials”** means the Nearpod website, Nearpod mobile applications, or any other websites, applications, or online services that link to these Terms.
- **“Student Nearpod Users”** means those Nearpod users who participate in the participant portion of the Nearpod Materials by entering a code provided by the Educator Nearpod User and accessing the lesson materials or only obtain access to a Student Account (available only in School or District License Editions) if the administrator on that account enables the Nearpod Materials the ability to do so.
- **“You”** refers to an Educator Nearpod User (defined below) of the Nearpod Materials in the event that an individual Nearpod license is used (e.g. Silver, Gold, or Platinum) or the **Institution** (e.g. School or District), as context may require. In the event that you’re entering into these Terms as a representative of an Institution, then the Institution agrees that it will take all reasonable steps to ensure that its authorized users adhere to these Terms.

### *Highlights*

The following are some of the key points to our Terms; however these aren’t legally binding and are meant for reference only. You should read these entire Terms along with our [Privacy Policy](#) and Privacy FAQ (the terms of which are incorporated by reference into these Terms):

1. These terms, in addition to our [Privacy Policy](#), are the contract between you and Nearpod. If you don’t agree to these terms, don’t use Nearpod. If you break these rules, we reserve the right to cancel your subscription.
2. There may be other terms that apply to you (e.g. if we sign a separate agreement with you).
3. Regardless of the type of account you have, there are two kinds of users: Teachers (i.e. presenters) and Students (i.e. those who join lessons via codes or via a Student Account provisioned by their school/district administrator). By registering for Nearpod you’re representing

that you're an adult, that you have the ability to and, in fact, do provide consent for the child(ren) to use Nearpod, and that any child(ren) who uses Nearpod at your direction will follow the rules.

4. Nearpod does not intend for students and/or minors to sign up to the Nearpod Materials on their own; rather, Nearpod's features permit administrator holders of School or District licenses to enable the creation of student accounts.
5. You're promising that if you're representing a school or district, you're able to agree to these terms on behalf of your organization and provide consent on behalf of students. You're designating us a school official as defined by FERPA. We base our COPPA required verifiable consent from teachers.
6. We give teachers the power to decide what personal information students enter into the platform.
7. If you're a minor outside the US, you should review these terms with your parent or guardian.
8. If you think a student accidentally created an account in a way not intended for student use, email us at [privacy@nearpod.com](mailto:privacy@nearpod.com) and we'll delete it.
9. For Silver, Gold, or Platinum Accounts: These are individual accounts for teachers. You can only sign up for these if: you're an adult, currently employed by a school or district and remain employed by school or district during the term of your license. You can only use the account for access to students if you have the right to do so by your school.
10. You cannot share accounts between two or more educators.
11. You cannot share your password.
12. We own all the Nearpod Materials, or have the right to use third-party materials that we license. Using, sharing, distributing, or otherwise accessing the Nearpod Materials in a way that is not allowed by Nearpod's functionalities is a violation of these Terms.
13. When you pay for or otherwise sign up to use the Nearpod Materials, you do not own the Nearpod Materials. Rather, we grant you a license to use the Nearpod Materials for the term of your agreement.
14. While using Nearpod you may create content. You will own the content subject to the license you grant us for the content. We're not responsible for the content that you post. We don't guarantee the availability of your content through the platform. Similarly, we are not responsible for content provided by third parties, even if Nearpod links to the third-party.
15. You won't try to sell or reverse engineer the Nearpod materials. Additionally, you agree not to try and scrape our website or use external forces to try and interfere with our platform.
16. You won't infringe on other people's IP with the material you post; won't advertise or market for business; or, use defamatory, obscene, violent, or otherwise inappropriate language.

### *Terms*

#### **3. Accounts, Passwords, and Payments**

A. *Accounts.* Nearpod has two types of accounts: individual accounts (e.g. Silver, Gold, or Platinum) or Institution accounts (e.g. School or District) as more particularly described below. All of these accounts are meant for Educator Nearpod Users. Students do not need accounts to access the Nearpod Materials; however, administrators of Institution accounts will have the option to enable the Student Account feature

(as more particularly explained below). Additionally, Nearpod offers non-education related accounts for enterprise customers. Nearpod reserves the right to change, add, or remove the types of accounts offered and/or how they're named at any time.

<b>Individual Accounts.</b>	<p>The Silver, Gold, and Platinum Accounts are meant for individual users, collectively or individually, as the context may require, they are referred to as “Individual Accounts”. They each have different features, however the following terms are the same for all Individual Accounts. Individuals may only register for an Individual Account if (i) they are an adult (according to the rules of the country where they are located) and (ii) are currently employed by a school (public or private), a school district, or other licensed educational institution. To be eligible for an Individual Account, the Educator Nearpod User must be employed at an educational institution at all times during the subscription period. Furthermore, your employment status must be independently verifiable and you may only use the Teacher Account to provide access for students if you have authorization to do so and ability to provide consent on their behalf for purposes of COPPA. By registering for an Individual Account, you represent and warrant that (i) you have the authorization to enter into these Terms on behalf of the educational institution in which you are employed and to use the Nearpod Materials as part of your learning activities; (ii) that you have the authorization to use the Nearpod Materials in accordance with any requirements you and your educational institution have under applicable laws, including, but not limited to FERPA. If at any time you are no longer employed at, or no longer have permission to use the Nearpod Materials, you agree that you will notify us immediately at: <a href="mailto:privacy@nearpod.com">privacy@nearpod.com</a>.</p>
<b>School Accounts.</b>	<p>School accounts are available to elementary and secondary educational Institutions to be used exclusively by the purchasing Institution, its employees, and its students. A school will be given access for the number of Educator Nearpod User licenses purchased for its educators and administrators. Each license must be assigned to an individual teacher within the purchasing school using their school provided email address. Shared access to a license (e.g. <a href="mailto:scienceteachers@abcschool.com">scienceteachers@abcschool.com</a> is not a permissible use and a violation of these Terms).</p>
<b>District Accounts.</b>	<p>District accounts are available to public school districts to be used exclusively by the purchasing district's employees and its students. A district will be given access for the number of Educator Nearpod User licenses purchased for its educators and administrators. Each license must be assigned to an individual teacher within the purchasing school using their school provided email address. Shared access to a</p>

	license (e.g. scienceteachers@abcschool.com is not a permissible use and a violation of these Terms).
<b>Higher Education Licenses.</b>	Higher Education Licenses are available to institutions of higher education to be used exclusively by the purchasing institutions' employees and its students. A higher education institution will be given access for the number of Educator Nearpod User licenses purchased for its educators and administrators. Each license must be assigned to an individual teacher within the purchasing school using their institution-provided email address. Shared access to a license (e.g. scienceteachers@abcschool.com is not a permissible use and a violation of these Terms).
<b>Enterprise Nearpod Licenses.</b>	Enterprise Licenses are available to companies to be used exclusively by the purchasing company's employees. A company will be given access for the number of licenses purchased for its users and administrators, just like the Educator Nearpod Users. Each license must be assigned to an individual user within the purchasing company using their company-provided email address. Shared access to a license (e.g. scienceteachers@abccompany.com is not a permissible use and a violation of these Terms).
<b>Student Accounts.</b>	Administrators of an Institutional Account shall have the ability to opt in to this feature. The default of this feature shall be an opt-out. Should an administrator opt out of Student Accounts, then Student Nearpod Users will be able to continue use of the Nearpod Materials through the participation portion of the platform by entering a "join" code.

The following refers to Educator Nearpod Users and those who are provisioned with a Student Account only. In order to access the Nearpod Materials, you may be required to provide certain information (such as name, email, etc.) as more particularly described in our [Privacy Policy](#). You agree that any information you provide will always be accurate and complete, and you agree to update any such information if it changes.

**B. Passwords.** Accounts -- whether an educator account or a student account -- cannot be shared. 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). Furthermore, 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](mailto:privacy@nearpod.com).

**C. Payments.**

i. For Individual Licenses that are "Paid Accounts" (i.e. Gold or Platinum):

1. Nearpod offers you the option of upgrading your Individual account to a Paid Account which would increase your storage and enable 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>. We may change our subscription fee at any time, at our sole discretion, at the end of your subscription period as long as we notify you first by either emailing you to the address associated with your account or by posting on our website.
2. Nearpod accepts credit cards and will automatically charge your payment instrument on file before upgrading your account, if available; or request the necessary information if we do not. 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) calendar 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.
3. The fees for your Paid Account will be billed from the date you convert to a Paid Account and on each year 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 and annually thereafter. All fees and charges are prepaid 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.
4. *Cancelling your account.* You may cancel your Nearpod Paid Account at any time, and cancellation will be effective upon expiration of your then-current subscription term by contacting support@nearpod.com. Your Paid Account will continue until you cancel your Paid Account or we terminate it, according to the terms above. 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.
5. *Taxes.* If Nearpod has the legal obligation to pay or collect taxes for which you are responsible, including but not limited to, sales, use, transfer, privilege, excise, and all other taxes and duties that are levied or imposed by reason of Nearpod's performance under these Terms, the appropriate amount shall be invoiced to and paid by you, unless



you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority.

ii. For Institution Accounts and Enterprise Accounts:

1.

1. Educational institutions are charged directly for the services. Nearpod accepts credit cards and certain other specified payment methods. This Agreement shall be renewed automatically for successive periods of one (1) year unless you provide Nearpod with a written notice to the contrary ninety (90) days prior to the end of each renewal term. Each Renewal Term shall incorporate and be governed by Nearpod's then current pricing.
2. If a credit card is used to make a purchase for more than Five Thousand Dollars (\$5,000.00), an additional fee may be assessed.
3. All fees and charges are prepaid and nonrefundable, and there are no refunds or credits for partially used periods.

**4. Nearpod Materials and Content Ownership and License.**

*a. Nearpod's Ownership.* The Nearpod Materials (including past, present, and future versions) contain Content that is owned by or licensed to us. **Content** means all the text, graphics, user interfaces, visual interfaces, photographs, logos, sounds, music, artwork, activities, assessments, printables, pictures, video, animation, characters, audio clips, trademarks, trade names, service marks, computer code displayed on or available through the Nearpod Materials; the design, layout, look, appearance, structure, selection, coordination, expression, arrangement and graphics of such materials, all materials and other items relating to the Nearpod Materials, the Nearpod services and the Nearpod products; and any and all other forms of intellectual property. Reproduction of the Nearpod Materials or Content outside the Nearpod Materials' functionality is prohibited. Nearpod owns all legal rights, title, and interest in and to the Nearpod Materials or Content, including any intellectual property rights, whether those rights are registered or not, and wherever in the world those rights may exist, subject to the rights of third-parties from whom Nearpod licenses Content.

*b. License.* Subject to your strict compliance with these Terms, our [Privacy Policy](#), any additional terms that may be mutually agreed, and your payment of any applicable subscription fees, we grant you a limited, non-exclusive, non-sublicensable, non-transferable, revocable, and non-assignable license and right to access, use, reproduce, distribute, publicly perform, and display the Nearpod Materials and Content. The license does not give you any ownership or interest in any intellectual property of the Nearpod Materials or Content and you cannot otherwise use the Content or Nearpod Materials, without our express, prior, written consent. Nearpod and/or our licensors hereby reserve all rights in and to the Nearpod Services or Content (as the context may require) not expressly granted in these Terms. Except as expressly permitted in these Terms or with Nearpod prior express written consent, no part of the Nearpod Materials or Content may be used, copied, reproduced, distributed, uploaded, posted, publicly displayed, translated, transmitted, sold, licensed, or otherwise used for any reason whatsoever.

*c. User-Generated Content.*

i. By using the Nearpod Materials, you may provide or create contents and any other materials, information, ideas, concepts, and know-how (“User-generated 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 User-Generated Content you make available through your use of the Nearpod Materials. Nearpod does not control the User-Generated Content hosted via the Nearpod Materials, nor does it guarantee the accuracy, integrity or quality of such User-Generated Content. Except as expressly set forth in these Terms, 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 User-Generated Content is stored on and made available through the Nearpod Materials by Nearpod’s servers and not on your device. You understand that all User-Generated Content is provided to you through the Nearpod Materials only on an “as-available” basis and Nearpod does not guarantee that the availability of the User-Generated Content will be uninterrupted or error free.

ii. Although the Nearpod account owner is and remains the owner of any User-Generated Content, and data, including student content and data, submitted through the Nearpod Materials, you grant us a perpetual, irrevocable, worldwide, sub-licensable, royalty-free, 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 for the purposes of delivering the services to you. Additionally, You grant Nearpod the irrevocable, perpetual, worldwide, sublicensable, transferrable, right to use your information solely on an aggregated and anonymized basis (“Aggregated Data”). Nearpod represents and warrants it will not use student personal information for third party marketing. Finally, You also hereby grant to each user of the Nearpod Materials a non-exclusive license to access and view your anonymized User-Generated Content as permitted by the functionality of the Nearpod Materials and these Terms. Notwithstanding the immediately preceding sentence, or anything else to the contrary, the Nearpod Materials only make your content available to others if you choose to allow it. For the avoidance of doubt, such anonymized User-Generated Content shall not include any personally identifiable information.

*d. Nearpod Materials, Content Use Restrictions, and Customer Obligations.*

i. You will not and will not attempt to: (i) 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 or Content (including, without limitation, the

reproduction, sale, trading or resale of Nearpod Materials or Content customized by other Nearpod users) without our prior written agreement; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Nearpod Materials are compiled or interpreted, and you acknowledge that nothing in these Terms will be construed to grant you any right to obtain or use such code; (iii) create any derivative product from of the foregoing, without our prior consent; (iv) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, or pledge as security or otherwise encumber, your rights under these Terms; (v) remove any title, trademark, copyright, or restricted rights notices or labels from the Nearpod Materials or related documentation; or (vi) share accounts. **We take privacy seriously. As such, if you (or in the case of a school, district, or multi-seat license account, as administrator) learn that the license users are sharing accounts, you must notify the user that they are not to share accounts or passwords. If the user continues to share their account or password with someone else, you must notify us at [privacy@nearpod.com](mailto:privacy@nearpod.com) within twenty-four (24) hours.** Notwithstanding anything to the contrary in this section or otherwise, 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 of the user. 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.

ii. You will be responsible for (i) internet connectivity needed to access the Nearpod Materials; (ii) your (and in the case of a school, district, or multiple user seat license your employees, agents, members, contractors, or representatives') compliance with these Terms and our Privacy Policy ([www.nearpod.com/privacy-policy](http://www.nearpod.com/privacy-policy)); and (iii) your User-Generated Content (and in the case of a school, district, or multiple user seat license) your employees, agents, members, contractors, or representatives' user-generated content, as more particularly described above.

iii. 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 in 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).

iv. In connection with your User-Generated 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.

v. We may provide various open communication tools on the Nearpod Materials for Educator Nearpod Users, 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; (iii) attempts any type of unauthorized advertising; or (iv) violates any applicable law or regulation.

*e. Content created by Third-Parties.*

i. The Nearpod Materials provide the ability for Educator Nearpod Users to create their own content that can be shared to third-parties (never directly with students, unless the creator is the students' educator). You acknowledge and agree that Nearpod is not responsible and shall have no liability for the content created by Nearpod Educator Users. 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. Furthermore, as a teacher and/or educator, you hereby acknowledge that you will review content that others may provide or share with you, prior to sharing or showing it to your students. However, we reserve the right at all times to determine whether content is appropriate and in compliance with these Terms, 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.

ii. Additionally, the Nearpod Materials may access third-party services through API's or links to third-party providers. You acknowledge and agree that Nearpod is not responsible and shall have no liability for such third-party sites and services, products or services made available through them, or your use of or interaction with them. Whether the third-party content appears within our Services (such as in an embedded video player, including but not limited to [YouTube](#)), or you leave our Services to view the content on another website, the third party is in control of and independently produces, maintains, and monitors the content and third-party sites. When you

watch third-party content that is made available through the Services or navigate to such third-party sites, you become subject to the third party's terms of use and privacy policies. You should review the privacy policies of these third-party sites for their policies and practices regarding the collection and use of your information as their policies may differ from ours. We do not accept any responsibility or liability for the privacy practices of third parties.

*f. Wireless Features.* 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.

*g. Rights to Process Data.* You represent and warrant that you have the proper authority to designate and, as a result of engaging with the Nearpod Materials do hereby designate Nearpod a "school official" within the meaning of FERPA. Nearpod will be under your direction with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined by FERPA, and we may use personally identifiable information and education records only as set forth under these Terms.

*h.* Please note: if an Institutional Account requires additional privacy agreements to be executed, please email: [vendorforms@nearpod.com](mailto:vendorforms@nearpod.com).

## **5. Copyright Claims (Digital Millennium Copyright Act).**

a. Nearpod respects the intellectual property rights of others and requires that the people who use the Nearpod Materials 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.

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

i. 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.

ii. 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).

iii. 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.

iv. 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."

v. 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."

vi. 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.

vii. Send written communication to the following contact: **Nearpod Inc., Attn: Legal Department, 1855 Griffin Rd., A290, Dania Beach, FL 33004**

viii. Send electronically-signed communication to [legal@nearpod.com](mailto:legal@nearpod.com).

c. 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):

i. 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.

ii. 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.

iii. 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."

iv. Sign the paper or affix an electronic or digital signature to the communication in a form reasonably acceptable to Nearpod.

v. Send written communication to the following address: **Nearpod Inc., Attn: Legal Department, 1855 Griffin Rd., A290, Dania Beach, FL 33004.**

vi. Send electronically- or digitally-signed communication to [notices@nearpod.com](mailto:notices@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.

d. 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.

## **6. Collection of Data.**

a. 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.

b. 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. For teachers, Nearpod may send marketing emails to the address associated with the account. In addition, Nearpod may use targeted advertising on third party sites. Moreover, Nearpod will send out emails to teacher-users who may be eligible for a contest, sweepstakes, survey, or similar promotion that Nearpod may host. Nearpod does not run these types of promotions for students.

## **7. Termination and Suspension of Services.**

a. 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.

## **8. Representations, Warranties and Disclaimers.**

### *a. Representations and Warranties by You.*

i. You represent and warrant that, in connection with these Terms and Conditions or the Nearpod Materials: (i) 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 User-Generated 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; (v) that you, to the extent applicable, are duly organized, validly existing and in good standing under the laws of the jurisdiction of your incorporation or organization; (vi) that the execution or performance of these Terms will not conflict with or violate any provision of any law applicable to you; (vii) that by purchasing a subscription, creating an account, or otherwise using the Nearpod Materials you agree (and in the case of a school, district, or multi-seat license you agree on behalf of your accounts' users) to be bound by these Terms, that these terms will constitute a valid and binding obligation on you (and in the case of a school, district, or multi-seat license you agree on behalf of your accounts' users), and will be enforceable against you in accordance with the terms herein; (viii) you will comply with all applicable laws, statutes, regulations, or rules, without limitation, the Family Educational Rights and Privacy Act ("FERPA"), Children's Online Privacy Protection Act ("COPPA") and the Protection of Pupil Rights Amendment ("PPRA")(collectively "Laws"); and (ix) you will not and will not attempt to use another user's account or allow another person to use your user account. In addition to the representations and warranties above, Districts and/or Schools further represent and warrant that it and its members, employees, contractors, permitted successors, permitted assigns, permitted administrators, and 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.



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

*b. Disclaimer of Warranties by Nearpod.*

i. 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.

ii. 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 LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

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

**9. Limitation of Liability.**

a. 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.

#### **10. Indemnification.**

a. 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.

#### **11. Arbitration.**

a. 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.

b. 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).

c. 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.

d. The arbitration shall be held in Broward 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.

e. 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.

f. 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.

g. 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.

h. 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.

## **12. General Terms.**

*a. Changes to these Terms and Conditions.* 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 email

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.

*b. Communications by Us.* Under these Terms and Conditions, you consent to receive communications from Nearpod electronically.

*c. Feedback.* You may, under certain circumstances, share feedback or ideas with us regarding the Nearpod Materials or Content. If you choose to share your feedback with us, you understand that (i) we are not required to take any action based on your feedback, or (ii) if we do take action based on your feedback, (x) you will have no expectation of review, approval, payment, or consideration of any type for any such feedback or ideas and (y) Nearpod will be free to use and exploit the feedback or ideas in our sole and absolute discretion.

*d. Publicity.* We may advertise, publicly announce, or provide to any other person, information relating to the existence of this agreement or use your (and in the case of your school or district its) name or logo, in any format for any promotion, publicity, or marketing of the Nearpod Materials.

*e. Governing Law and Jurisdiction.* 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 Broward 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 purpose of litigating any such action.

*f. Waiver.* 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.

*g. Severability.* If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

*h. Assignment.* 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.

*i. Entire Understanding & Amendments.* 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.

*j. Headings.* The section headings contained in this agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.

*k. Drafting.* You agree that these Terms and Conditions will not be construed against us because we drafted them.

*l. Contact Information:* Nearpod Inc., 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](mailto:privacy@nearpod.com).

For the previous versions of our terms and conditions, please click [here](#).

Posted Date: 6/15/2021

Effective: 8/1/21

If you are a Pearson Powered by Nearpod User, these terms and conditions do not apply to you; rather a different set of terms and conditions found [here](#) apply instead.

\* You can review Youtube's Privacy Policy [here](#); and update or revoke your Google Permissions [here](#).