

Kishwaukee County School District | It's about ALL kids.

## Issue Paper

**DATE:**

**08.11.22**

**AGENDA ITEM (ACTION ITEM):**

**Consider/Approve** The sales contract with NearPod, Inc., Inc for Summit View Academy to purchase an annual teacher membership renewal License.

**APPLICABLE BOARD POLICY:**

**01.1 – Legal Status of the Board**

**HISTORY/BACKGROUND:**

NearPod allows teachers to identify student's current academic achievement levels and supplement classroom instruction in all content areas. This program is able to be differentiated to students' current level of achievement to target specific skills to close gaps and focus on growth. This agreement will allow for renewal of a one year license for students at all grade levels K-8

**FISCAL/BUDGETARY IMPACT:**


**\$397 – ESSER FUNDS**

**RECOMMENDATION:**


**Approval** The sales contract with NearPod, Inc., for Summit View Academy to purchase the annual renewal of the teacher membership license.

**CONTACT PERSON:**

**Alex Fangman**

  
Principal/Administrator

  
District Administrator

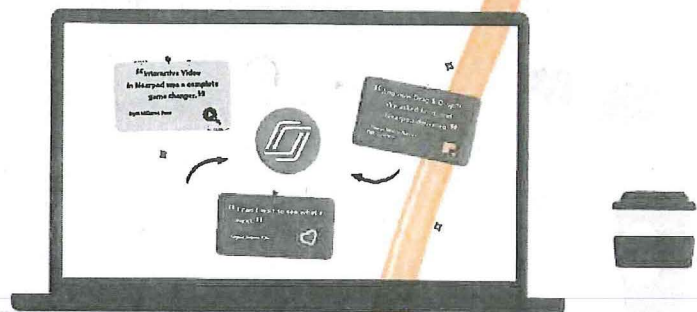
  
Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.  
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*

My Nearpod

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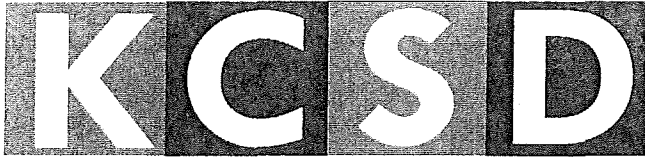
USD/year\*

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

**THE KENTON COUNTY BOARD OF EDUCATION**

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

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

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

*Dr. Henry Webb, Superintendent of Schools*

**VENDOR ASSURANCES REGARDING PROTECTION OF  
PERSONAL AND CONFIDENTIAL INFORMATION**

**Data Security and Breach Protocols**

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

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

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

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

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

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

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

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

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

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

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

### **Student Data Security**

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

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

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

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

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

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

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

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

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

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

Nearpod Inc.

Vendor Name

1855 Griffin Road, A290, Dania Beach, FL 33004

Vendor Address

305.677.5030

Vendor Telephone

vendorforms@nearpod.com

Vendor Email Address

*Jose Carrera*

Signature by Vendor's Authorized Representative

Jose Carrera

Print Name

09 / 07 / 2022

Date

# 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](#).

If you are purchasing subscriptions (or piloting) to Nearpod in the UK via Renaissance Learning, UK Ltd., please refer to the terms [here](#).

***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 or scan our systems.

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.

### ***Individual Accounts.***

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

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***School Accounts.***

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. [scienceteachers@abcschool.com](mailto:scienceteachers@abcschool.com) is not a permissible use and a violation of these Terms).

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***District Accounts.***

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 license (e.g. scienceteachers@abcschool.com is not a permissible use and a violation of these Terms).

***Higher Education Licenses.***

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).

***Enterprise Nearpod Licenses.***

Enterprise Licenses are available to

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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).

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***Student Accounts.***

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.

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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. *Canceling 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. 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. *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.

#### **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,

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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) scan our systems without written authorization; (iv) create any derivative product from of the foregoing, without our prior consent; (v) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, or pledge as security or otherwise encumber, your rights under these Terms; (vi) remove any title, trademark, copyright, or restricted rights notices or labels from the Nearpod Materials or related documentation; or (vii) 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<sup>1</sup>), or you leave our Services to view the

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<sup>1</sup> You can review Youtube's Privacy Policy [here](#); and update or revoke your Google Permissions [here](#).

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.

i. 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 NearpodMaterials 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 multiplecopyrighted 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 ofinfringing 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 materialdescribed 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, andunder 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 toNearpod, 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~~ Kenton County, Kentucky. 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 ~~Kentucky~~ 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

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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 Kentucky, 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 Kenton County, Kentucky (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: