

Nearpod® Privacy Policy

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

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

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

This privacy policy (the “**Privacy Policy**”) applies to the Nearpod website, or any of the Nearpod mobile applications (collectively the “Nearpod Materials”), owned and operated by “Nearpod Inc.,” “**Nearpod**,” “we,” “us,” or “our”). In this Privacy Policy, “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.

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Introduction:

We have created this Privacy Policy to tell you what information the Nearpod Materials collect, how we use that information, and who we will share that information with, if at all. Where our privacy practices for students differ from our practices compared to those of an Educator Nearpod User (defined below), we mention it separately.

Use of the Nearpod Materials is subject to this Privacy Policy, the Nearpod Terms and Conditions, and any applicable separate agreement signed between Nearpod and you.

This Privacy Policy does not address the privacy practices of any third parties that we do not own, control, or are affiliated with, even if the Nearpod Materials provide links to those third parties.

Nearpod takes privacy seriously. Nearpod is a proud signatory of the [Student Privacy Pledge](#).



Nearpod has reaffirmed its commitment to privacy, by signing Pledge 2020.



Definitions:

For purposes of this Privacy Policy, the following definitions apply:

1. **"Educator Nearpod Users"** An Educator Nearpod User is a single, named, person of legal age who can enter into a contract in the state or country in which the Nearpod User resides and in no case, are under the age of 18, and who is not a student (i.e. they can be a teacher or administrator). An Educator Nearpod User may be the individual who purchases an individual license, or an authorized user of an Institution's account.

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

2. **"Institution"** means a school, district, college, university or other education institution or education agency that adopts or uses the Nearpod Materials.
3. **"Personal Information"** means personal information of a particular User as defined by applicable law.
4. **"Student Nearpod Users"** are users who access the participation portion of the Nearpod Materials by entering a code provided by the Educator Nearpod User and accessing the lesson materials via www.nearpod.com/student but do not have an end-user account; or (for Institution accounts only) upon affirmative consent from the Institution's administrator associated with the

Nearpod Materials, student account functionality may be enabled

5. **“Terms and Conditions”** mean the Nearpod Terms and Conditions for the Nearpod Materials.
6. **“User”** means an end-user of the Nearpod Materials.
7. Capitalized terms not defined in this Privacy Policy will have the meaning set forth in our [Terms and Conditions](#).

What type of information do we collect?

The type of information Nearpod collects depends on whether you’re accessing the Nearpod Materials by visiting our website and/or app, have an account, or are accessing the Nearpod Materials as a student.

a. Website Visitors. For individuals who visit the Nearpod website but do not fill out an online form, contact us, or create (or have previously created) an account, we automatically collect IP address, a device identifier, and other non-personally identifiable information. For example, we may receive information from your device when you use Nearpod, including, but not limited to: the duration of time you spend on Nearpod, the type of device you’re using, the version of the Nearpod application on mobile devices, device event information like crashes, hardware settings, date and time information, and actions performed by you while visiting our website or application. Our website uses cookie technology (e.g. [Google Analytics](#)¹). Users and Institutions may implement browser controls to block and delete Nearpod’s use of cookies, pixels and similar technologies; however, such actions may prevent or impair required functionality and use of the Nearpod Materials.

1. STUDENT LESSON JOIN: To avoid the use of marketing cookies or similar technologies for our Student Nearpod Users, students should access the Nearpod Materials through the following landing page: www.nearpod.com/student.

b. Account Holders & those who voluntarily provide information to Nearpod. In addition to the data collected for our *Website Visitors*, if you voluntarily provide additional information to us by registering for an account, filling out an online form found on our website, or voluntarily providing us your information at a conference, we may collect additional information from you. For example, in addition to the items in the previous section you may be asked to provide some basic information such as your first and last name, email address, school, password, role, and a profile photo (optional). Additionally, Educator Nearpod Users have the option to create their own content on the Nearpod Materials, which Nearpod will store, process, and use solely for providing the Nearpod Materials to you. In HTML emails that we may send you, we may use technical methods for a number of purposes, including determining whether you have opened or forwarded those emails and/or clicked on any links in those e-mails. These technical methods may enable us to collect and use information in a form that is personally identifiable.

¹ You can review Google’s Privacy Policy [here](#); and update or revoke your Google Permissions [here](#).

c. *Students.* We empower educators and Institutions to decide how students engage with the Nearpod Materials.

1. *Student Accounts.* For Institution account holders, the administrator of the account has the ability to enable the creation and rostering of student accounts (each a “Student Account”). If an Institution opts in to this functionality (the default configuration is to opt-out), the following information shall be collected from students in addition to the information listed in 4(a), above (except for tracking and marketing cookies): First Name, Last Name, Email Address, the name of the Institution that the student belongs to, reference account number, and profile photo (optional). For non-Institution accounts, we do not offer the option to create a student account.
2. *No Student Accounts.* For those users with Silver, Gold, and Platinum accounts and those Institution accounts where the admin opts out of the student account feature there is a participation portion of our Nearpod Materials wherein teachers and educators can share an alphanumeric code with their students to “join” a lesson. For identification to the teacher, we recommend students enter a first name and last initial, or a nickname, when accessing a Nearpod presentation. If you opted in to Nearpod’s verified names feature, then a student’s name (as shown on the applicable identity provider) and a reference account number will be provided to us. Furthermore, if an Institution chooses to assign lessons found in the Services to Student Users through a third-party learning management system (LMS), the student name (as shown on the LMS) together with a reference account number will be collected during that session.
3. *All Student Nearpod Users.* In addition to the information that is collected from all website visitors, and the data listed in section c(2) or c(3), respectively, Nearpod will also collect all student-generated data and content that is created as a result of a student’s interaction with the platform. Some lessons will also have an interactive feature that allows students to record audio and, depending on the device used, to take photos of themselves to be uploaded onto the platform; which can subsequently only be viewed by their teacher, any Nearpod account administrator associated with the teacher account, and the other students who were given access by the Educator Nearpod User, and who joined that lesson. Finally, if a Student Nearpod User elects to save any of their notes upon completion of a lesson by emailing them to him or herself, the email will be collected in order to generate and send the email containing the notes. If you are a parent or guardian or teacher and believe that your child or student has provided Nearpod with personally identifiable information by creating an account, you should notify us at privacy@nearpod.com so that we may delete the information from our servers.

d. *Payment Information.* When a customer (either teacher or an Institution on behalf of its educators) purchases the Nearpod Materials, Nearpod will collect information needed to process the order, including order details, name, institution name and address (if applicable), email address, phone number, billing address, credit/debit card information, and any instructions. Payment data submitted by the customer will

be disclosed to the customer's financial institution and Nearpod's payment processing vendor for the purpose of processing payment for the Nearpod Materials ordered.

Basis for Processing Information:

Authorization is given to Nearpod and its processors to collect, process and otherwise handle Personal Information under this Privacy Policy and the Nearpod Terms and Conditions when an Educator Nearpod User or Institution purchases the Nearpod Materials, as well as when an Educator Nearpod User establishes an end-user account and registers to use the Nearpod Materials.

Further authorization is given to collect, process, and otherwise handle Personal Information of a Student Nearpod User under this Privacy Policy and the Terms and Conditions when an Educator generates an access code through use of the Nearpod Materials and provides the access code to a Student Nearpod User or when an Institution elects to opt in to Student Accounts. Educator Nearpod Users and their Institutions are responsible to obtain any additional legally required consents for Student Nearpod Users.

Compliance with Privacy Laws:

FERPA

Nearpod and the Nearpod Materials comply with and are designed to allow responsible parties to comply with applicable law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, 34 CFR Part 99 (FERPA) in receiving and handling personally identifiable information from education records as a "school official" under FERPA.

COPPA:

Nearpod relies on the Institution's consent in lieu of a parent in collecting verifiable consent of students under the age of 13.

CCPA:

California state residents may have additional rights under the California Consumer Privacy Act of 2018 (CCPA). For more information, please see our [California State Privacy Policy Supplement](#).

Nevada SB 220:

Nevada state residents may have additional rights under the Senate Bill 220. If you have any questions regarding your rights, please do not hesitate to contact us at: privacy@nearpod.com.

GDPR

Privacy Shield:

Nearpod complies with the EU-US Privacy Shield Framework and the Swiss-US Privacy Shield Framework as set forth by the US Department of Commerce and the provisions of the European General Data Protection Regulation ("GDPR") regarding the collection, use, and retention of personal information from European Union, Switzerland, and the United Kingdom to the United States. If there is any conflict

between the terms of this privacy policy and the Privacy Shield Principles, the Privacy Shield Principles shall govern. Nearpod has certified to the Department of Commerce that it adheres to these Privacy Shield Privacy Principles. To learn more about the Privacy Shield program, and to view Nearpod's certification, visit www.privacyshield.gov. With respect to personal data received or transferred pursuant to the Privacy Shield Framework, Nearpod is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission. For purposes of Article 14(2) of the GDPR, Nearpod relies on the following lawful basis for processing Personal Data: consent, compliance with law and legitimate interest.

On request from our customers, Nearpod will execute Standard Contractual Clauses ("SCC") as set forth by the provisions of the European General Data Protection Regulation ("GDPR") regarding the collection, use, and retention of personal information from European Union, Switzerland, and the United Kingdom to the United States; additionally, as required by GDPR, Nearpod has executed SCCs with our subcontractors who process our customer's personal data in response to the *Schrems II* case decision. If there is any conflict between the terms of this privacy policy and the SCC, SCC shall govern.

Personal Information may be transmitted, stored, and processed in a country other than the one in which the User resides, or the Institution is located. **The authorization for Nearpod to collect, process and otherwise handle Personal Information under this Privacy Policy includes authorization for the User's Personal Information to be transferred and stored in countries outside of their residence, which may include the United States and the United Kingdom, as well as any country where the Educator or Institution may be located or the User may visit.**

LGDP:

Nearpod complies with the provisions of the Brazilian General Data Protection Law ("LGDP") regarding the collection, use, and retention of personal information from Brazil to the United States.

OTHER PRIVACY LAWS:

Nearpod is committed to complying with all other data protection laws applicable to its delivery of the Nearpod Materials.

Does Nearpod share information with third parties?

All accounts and users.

Nearpod shares the information it collects, including Personal Information, with its third-party sub-processors in order to provide the services to you. Nearpod shall ensure that a contract is in place between it and any third-party entity or agent that participates in an onward transfer of personally identifiable information. The contracts specify that such personally identifiable information may only be processed for limited and specified purposes consistent with the consent provided by the individual, applicable laws, and that the recipient will provide the same level of protection as stated in this Privacy Policy. Nearpod remains liable for the acts and omissions of its third-party agents. These sub-processors are used to provide hosting services of User data, improve our offerings, advise Educator Nearpod Users of new offerings, and to provide you with the best possible experience on Nearpod.

A list of these sub-processors will be provided upon request to privacy@nearpod.com.

We may also share your personally identifiable information with law enforcement officials, or other third-parties, when we are compelled to do so by a subpoena, court order, or similar legal procedure. If there is a separate agreement in place with an Institution, and the terms of that agreement require notice to them of the governmental request for information, such notice will be given (so long as legally permitted to do so). If there is no separate agreement, then no notice will be given to the affected User.

In addition, we may share personally identifiable information if we believe in good faith that the disclosure of such information is necessary to prevent physical harm or financial loss, as permitted by applicable law, to report suspected illegal activity, to investigate violations of our [Terms and Conditions](#) or to the extent necessary to meet national security requirements.

For teachers and other administrative educators only (i.e. not for students), Nearpod and Nearpod Materials may offer conversation pages, chat rooms, social community environments, profile pages, as well as other interactive features in which you may provide us with your submissions. If you provide personally identifiable information when you use any of these features, that personal information shall be posted on the Nearpod Materials. You are responsible for your communications and are responsible for the consequences of their posting. Further, during the registration process, Nearpod will ask you to create a “username” to be used to access your account and Nearpod features, and Nearpod Materials. Should you choose to post to the Nearpod Materials, make comments, give feedback, or provide us with other types of submissions (“collectively, “Submissions”), Nearpod may use your username to identify or credit you as the source of such Submissions.

Nearpod may use and disclose Personal Information, as authorized by an Institution or by an applicable governmental educational agency or authority, for administrative, audit and evaluation purposes, such as to evaluate the educational efficacy and effectiveness of the Nearpod Materials.

Accounts provided to you as part of a School or District License.

Nearpod uses the Personal Information to deliver the Nearpod Materials for educational purposes. In delivering the Nearpod Materials, Nearpod may provide and disclose Student Nearpod User Personal Information to the Student User’s Educator and Institution and as otherwise directed by the Institution or the Educator. Educators and Institutions may export grade book information and other Course Data from the Services for the purpose of maintaining educational records. Nearpod may also provide and disclose Educator User Personal Information to the Educator’s Institution.

If your Nearpod Educator User Account was provided to you by your Institution, then your account may be managed by a school or district administrator who may have access to all of your Nearpod account

information including – but not limited to – all your presentations and reports (including any student information associated with your account). In addition, your school or district administrator may be able to:

1. Change your password.
2. Suspend or terminate access to your account.
3. View statistics regarding the use of your account.
4. Access, delete, or copy your presentations and reports and any other information stored as part of your account.

Additionally, if you register as an Education Nearpod User using an email address owned by your Institution of employment, your account may subsequently be added to the Institution's account, in the event that the Institution purchases the Nearpod Materials and asks that all current users whose email is under the Institution's domain be added.

Other Circumstances

Personal Information collected under this Privacy Policy may be (i) disclosed or used with the User's consent, or (ii) if we sell or otherwise transfer part or all of our business or assets to another organization, such as in the course of an acquisition, merger, bankruptcy, or liquidation, we may transfer your personally identifiable information. In such an event, we will endeavor to require the buyer or transferee to agree to our commitments provided in this Privacy Policy. Notice of such transfer may be provided in accordance with our [Terms and Conditions](#) or via a public press release. This notice may be given either before or after the transfer occurred, in our sole discretion. Should user information be transferred to a third-party, said user may request the third-party to delete the information.

Nearpod will not use any personally identifiable information to advertise or market third-party services to its users and does not sell or rent such information.

Nearpod does not share student personally identifiable information nor share student information as "Directory Information" under FERPA.

Marketing tools are not present in the student facing, participation portion of the platform.

How does Nearpod protect information you provide to us?

We have implemented and maintain information technology security measures designed to protect personally identifiable information from unauthorized disclosure to or access by a third-party. Your account and associated information are protected by a password, which you should keep secret at all times. We encrypt password information stored in our databases. Additionally, all interactions with Nearpod's application are encrypted in transit with TLS 1.2 grade encryption or better. Although we make concerted efforts to protect personally identifiable information and maintain security, it is not 100% guaranteed.

Outages, attacks, unauthorized use, or other factors may compromise the security of user information at any time. In the event of a security breach of your data, we will notify you by posting on the Nearpod website or notifying you by email using the email address on your account. For EU residents, notification to the Nearpod Supervisory Authority shall be made within 72 hours of Nearpod becoming aware of such breach.

Data Ownership

The Nearpod account owner is the owner of any data, including student content, submitted through the Nearpod Materials. Nearpod retains a perpetual, irrevocable, worldwide, sublicensable and transferable right to use, publish, display, modify, and copy anonymized Content solely for the purpose of providing the Nearpod Materials and services to you. For the avoidance of doubt, such anonymized content shall not include any personally identifiable information.

Newsletters

Nearpod may offer email newsletters to the user in charge of implementing Nearpod. By registering for Nearpod, you may receive occasional emails about your account or about updates to the platform. You may unsubscribe from these emails at any time by contacting privacy@nearpod.com. We will respond to all requests promptly but no later than 14 days.

How you can access, change, or delete personally identifiable information?

Deletion of data. Nearpod will store the information you provide to us for so long as you have an account with Nearpod or when you inform us in writing that the data are no longer necessary to complete the purpose for which they were collected, whichever is later. Please contact privacy@nearpod.com to delete your account by using the email associated with the Nearpod Materials. We will respond to all requests promptly but no later than 14 days. If your Educator Nearpod Account is part of a school or district account managed by an Institution administrator, then the request should be made to the Institution administrator to delete the account.

Accessing and correcting personal information. You can contact us to access or correct any personally identifiable information that we have collected from you by sending an e-mail to privacy@nearpod.com. Please include your username and e-mail address so that we can better assist you with your inquiry or request. Please be advised that: (i) requesting the removal of, or not providing personally identifiable information may result in the termination, removal, or blocking of your account, registration, or access to the Nearpod Materials; and (ii) changing personally identifiable information may affect your use of the Nearpod Materials including the correctness of any results. Once you request a change of your personally identifiable information or your account, we can give you no assurances that such information or account may be retrieved or reopened in the future. We will respond to all requests promptly but no later than 14 days.

Institution deletion of data. For Institution users, if an Institution account ceases to exist, the individual teacher accounts will be disassociated with the master account and downgraded to a Nearpod Silver account. Any lessons stored in the user's "My Library" will be deleted if they take up more than the allocated storage space provided to Silver users. Additionally, all student reports associated with lessons will be deleted. Additionally, Institution account administrators have the ability to impersonate an individual Educator Nearpod User account under their master account and are able to download the reports if the teacher user is no longer a member of the school or district.

How to access your data. Teacher-users (or admins for the associated accounts) can access their data by either (i) sending an email to privacy@nearpod.com; or (ii) logging into their Nearpod account and downloading the reports from each lesson launched as a PDF or CSV file.

How do we enforce this Policy?

Nearpod conducts self-assessed compliance audits of its relevant privacy practices to verify adherence to this Privacy Policy. Any employee that Nearpod determines is in violation of this policy will be subject to disciplinary action. In compliance with the GDPR, Nearpod commits to resolve complaints about our collection or use of your personal information. EU and UK residents with inquiries or complaints regarding our Privacy Policies should first contact Nearpod at:

Chief Privacy Officer: Daniel Green

1855 Griffin Road, A-290

Dania Beach, FL 33004

privacy@nearpod.com

If an issue cannot be resolved by Nearpod's internal dispute resolution mechanism, Nearpod has chosen JAMS to be its independent recourse mechanism for Privacy Shield. Nearpod 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 Nearpod does not resolve the complaint, you may 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. In addition, you may contact our European Data Supervisory Authority: Ireland Data Protection Commissioner; Canal House, Station Road, Portarlington. R32 AP23. www.dataprotection.ie

Will there be changes to our Privacy Policy?

We expect to amend our Privacy Policy from time to time as we change the registration procedure, possibly introduce or alter our offerings, change levels of user participation, change the type of data we collect, how we may use the data we collect, or release new features. We will notify you of any updates by posting on Nearpod an updated policy. Changes will be effective: (i) ten (10) 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 this Privacy Policy incorporating the changes, whichever comes first.

Nearpod retains the right in its sole discretion to remove or delete, temporarily or permanently, any and all information, including personally identifiable and non-personally identifiable profile and registration information, Submissions, and any other information collected from or provided by you during and after installing Nearpod. Please note that, at all times, you should update your personal information to provide us with current email addresses.

How to Contact Us

You can contact us with any questions by sending an email to privacy@nearpod.com or at the following address: Chief Privacy Officer: Daniel Green, 1855 Griffin Road, A-290, Dania Beach, FL 33004

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

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.

Posted Date: 06/14/21

Effective Date: 06/14/21



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 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 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 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.

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 .
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 is not a permissible use and a violation of these Terms).
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 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).
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.

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.

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 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); 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.

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.

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. 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.

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.

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