

Flocabulary School and District Terms and Conditions (“Terms”)

By agreeing to use the Flocabulary Services, tools to create and curate interactive multimedia lessons that can contain quizzes, polls, videos, images, and web content (“Content Tool”), access reports with student answers, assessments and activities (“Reporting Tool”) and manage individual users, share presentations and obtain usage statistics (“Admin Tool”), you (“Customer”) agree to the Terms below. Flocabulary and Customer shall be referred to collectively as the Parties.

If your state laws require additional privacy addendums/forms, please email privacy@nearpod.com.

1. Grant of Rights

1.1 Flocabulary grants to Customer a limited, non-sublicensable, non-transferable license and right to use, reproduce, distribute, publicly perform, and display the Flocabulary Services for the number of users set forth in the Sales Order. In addition, Customer may create derivative works as described in Section 1.2 below. Flocabulary hereby reserves all rights in and to the Flocabulary Services not expressly granted in this Agreement.

1.2 Customer’s users can use the Content Tool to create customized interactive multimedia lessons for use with the Reporting Tool and Admin Tool (“Customer Content”).

1.3 Flocabulary may provide physical items, such as hardware items, marketing materials, t-shirts and other tangible goods to the Customer (“Physical Goods”). There are no fees associated with the Physical Goods. Physical Goods are provided solely for

promotional purposes and Flocabulary is not under any obligation to support, maintain, repair or replace such Physical Goods.

2. Customer Obligations and Restrictions

2.1 Customer will not (i) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Flocabulary Services are compiled or interpreted, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such code; (ii) create any derivative product from any of the foregoing, except as expressly provided in Section 1.2 or with the prior written consent of Flocabulary; (iii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights hereunder; (iv) remove any title, trademark, copyright or restricted rights notices or labels from the Flocabulary Services or related documentation and (v) share accounts or passwords with anyone. Flocabulary takes privacy seriously. As such, if a Customer administrator learns that the users are sharing accounts, Customer 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, Customer must notify Flocabulary

at privacy@nearpod.com within twenty-four (24) business hours.

Allocated accounts may be reassigned to accommodate Customer's users changes upon notice to Flocabulary during the Subscription Period.

2.2 Customer shall be responsible for (i) internet connectivity needed to access the Flocabulary Services, (ii) its users' compliance with this Agreement and the Flocabulary Privacy Policy

(www.nearpod.com/privacy-policy) and (iii) be responsible for Customer Content. Customer will not (w) use the Flocabulary Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (x) use the Flocabulary Services to store or transmit malicious code, (y) interfere with or disrupt the integrity or performance of the Flocabulary Services or third party data contained therein, or (z) attempt to gain unauthorized access to the Flocabulary Service or its related systems or networks.

3. Pricing and Payment Terms

3.1 Payment. Customer agrees to pay Flocabulary fees in accordance with the amounts and dates specified on the Sales Order. Fees paid are non-refundable. If a credit card is used to make a purchase for more than \$5,000.00 dollars, a credit card fee will be assessed.

3.2 Taxes. If Flocabulary has the legal obligation to pay or collect taxes for which Customer 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 Flocabulary performance under this Agreement, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Flocabulary with a valid tax exemption certificate authorized by the appropriate taxing authority.

3.3 Suspension of Services. If any amount owed by Customer is thirty (30) days or more overdue, Flocabulary may, with ten (10) business days' prior written notice to Customer, without limiting Flocabulary's other rights and remedies, suspend access to the Flocabulary Services until such amounts are paid in full.

4. Rights to Data

4.1 As between Flocabulary and Customer, Customer owns all right, title and interest in and to Customer Content and Customer's Confidential Information. Customer grants Flocabulary the irrevocable, perpetual, worldwide, sub-licensable, transferable, right to use Customer information solely on an aggregated and anonymized basis ("Aggregated Data"). Flocabulary represents and warrants it will not use personal information for third party marketing.

4.2 Flocabulary will use commercially reasonable efforts to keep Customer data confidential and maintain a security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against unauthorized access or use through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.

4.3 Customer designates Flocabulary a "school official" within the meaning of FERPA. Flocabulary will be under the direction of Customer with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined by FERPA, and Flocabulary may use personally identifiable information and education records only as set forth under the Agreement.

5. Warranty

5.1 Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that the execution and performance of this Agreement will not conflict with

or violate any provision of any law having applicability to such Party; (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms and

(iv) it will comply with all applicable laws, statutes, regulations or rules, without limitation, the Family Educational Rights and Privacy Act ("FERPA") and the Protection of Pupil Rights Amendment ("PPRA") (collectively, "Laws").

5.2 EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 5, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE NEARPOD SERVICE, THE DOCUMENTATION, PHYSICAL ITEMS AND ALL SERVICES PERFORMED BY NEARPOD ARE PROVIDED "AS IS," AND NEARPOD DISCLAIMS ANY AND ALL OTHER PROMISES, INDEMNITIES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND DATA ACCURACY. NEARPOD DOES NOT WARRANT THAT THE NEARPOD SERVICE OR ANY OTHER SERVICES PROVIDED BY FLOCABULARY WILL MEET Customer'S

REQUIREMENTS OR THAT THE OPERATION OF THE NEARPOD SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

6. Indemnity.

6.1 Flocabulary shall indemnify defend and hold Customer harmless from any third party claim that the Flocabulary Products infringe the

intellectual property rights of any third party.

6.2 Customer shall indemnify defend and hold Flocabulary harmless from any third party claim that the Customer Content infringe the intellectual property rights of any third party.

6.3 The indemnified party will: (i) provide the indemnifying party with reasonably prompt notice of any claims; (ii) provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend any claims at the indemnifying party's expense. Any indemnified party will have the right to employ separate counsel at its own expense.

7. Confidentially.

7.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

7.2 Mutual Confidentiality Obligations. Each Party agrees as follows: (i) to use Confidential Information disclosed by the other Party only for the purposes described herein; (ii) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (iii) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and consultants, if

any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (iv) to the extent practicable, return, or destroy, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement.

7.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 7.1 and 7.2 will not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction.

Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that, to the extent permitted by law, the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

8. Limitation of Liability.

FLOCABULARY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST INCOME, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION, DAMAGES FOR GOODWILL, PROCUREMENT OF SUBSTITUTE SERVICES, ARISING OUT OR IN ANY WAY RELATED TO THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE FLOCABULARY SERVICES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH CLAIM. THESE LIMITATIONS WILL APPLY DESPITE THE FAILURE OF ESSENTIAL PURPOSE.

9. Termination.

9.1. This Agreement shall commence on the Effective Date and continue in effect for the period set forth on the Sales Order (“Initial Term”) unless terminated pursuant to Section 9.2. Thereafter, this Agreement may be renewed for another year upon mutual agreement.

9.2 This Agreement may be terminated by either Party if the other party fails to cure a material breach of the Agreement within thirty (30) days after receipt of written notice of such breach. If the Customer has experienced a reduction in its budget allocated to classroom services, it may terminate this Agreement, provided: (a) the Customer may terminate any current Year; and (b) the Customer must provide Flocabulary with written evidence of the budget reduction. In such instance, Flocabulary, in its sole discretion, may enter into negotiations with the Customer to revise this Agreement.

9.3 Effect of Termination. Upon expiration or termination of this

Agreement, (i) all rights to use the Flocabulary Services shall cease, (ii) Flocabulary shall discontinue the provision of the Flocabulary Services, and (iii) Customer shall immediately pay any outstanding invoices. In addition, Sections 2, 3, 4, 7, 8, 9 and 10 will survive any termination or expiration of this Agreement.

10. MISCELLANEOUS.

10.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes and merges all prior and contemporaneous oral and written agreements, discussions and understandings between the Parties with respect to the subject matter of this Agreement, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for in this Agreement.

10.2 Independent Contractors. In making and performing this Agreement, Customer and Flocabulary act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of the other Party.

10.3 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a

PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. The contact information used on the Sales Order will be used for notice purposes to the Customer. For notice to Flocabulary please contact:

10.4 Amendments; Modifications. This Agreement may not be amended or modified except as mutually agreed by authorized representatives of both Parties.

- Flocabulary:
- Nearpod Inc.
- Attn: Legal Department
- 1855 Griffin Rd., A290
- Dania Beach, FL 33004
- notices@nearpod.com

10.5 Assignment; Delegation. Customer shall not assign any of its rights or delegate any of its duties under this Agreement, including by operation of law or otherwise, without the express, prior written consent of Flocabulary, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect provided that Flocabulary may subcontract with third parties for the performance of the Services.

10.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or

entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

10.7 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.

10.8 Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

10.9 Force Majeure. Except with respect to payment obligations hereunder, if a Party is prevented or delayed in the performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, but not limitation, Acts of God, war, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be

performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

10.10 Governing Law. This Agreement and any dispute hereunder will be governed by and interpreted in accordance with the laws of the State of **Utah**, without regard to conflicts of law principles thereof. The parties agree to the exclusive jurisdiction for any dispute arising hereunder shall be the state and federal courts located in **Utah**. The parties acknowledge that a breach of this Agreement by either Party may cause irreparable injury to the other for which monetary damages would not be an adequate remedy and, therefore, will entitle the aggrieved party to seek injunctive relief (including specific performance). The rights and remedies provided to each party in this Agreement are cumulative and in addition to any other rights and remedies available to such party at law or in equity.

10.11 Publicity. Flocabulary may advertise, publicly announce, or provide to any other person, information relating to the existence of this Agreement or use Customer's name and logo in any format for any promotion, publicity, or marketing of the Flocabulary Services.

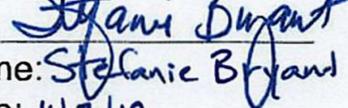
10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

In Witness whereof, this agreement was executed on the date last signed below:

Nearpod, Inc.

By: 
Name: Felipe Sommer, Co-Coo
Date:

Provo City School District

By: 
Name: Stefanie Bryant
Date: 11/7/19