

## **AMENDMENT TO AGREEMENT BETWEEN THE BOARD OF EDUCATION OF LINCOLNWOOD SCHOOL DISTRICT 74 AND NEARPOD INC.**

This Amendment is entered into as of November 1, 2021, by and between the Board of Education of Lincolnwood School District No. 74 (“School District”) and Nearpod Inc. (“Nearpod”) pursuant to the Sales Order with Quote ID: 174982, attached hereto and incorporated herein by reference, and the Flocabulary Terms of Use (collectively, the “Agreement”), and shall continue in force for any extensions of the Agreement or subsequent renewals or order forms, unless otherwise agreed by the Parties.

1. **Terms and Conditions.** This Amendment modifies the Agreement entered into by the Parties. Terms and conditions not amended herein shall have the same meaning as in the Agreement. If there is conflict between this Amendment and the Agreement, the terms of this Amendment will prevail. Nearpod shall not materially modify or amend the Flocabulary Terms of Use or Flocabulary Privacy Policy (see <https://www.flocabulary.com/>) during the term of this Agreement or any extension thereof, without providing written notice.

2. **Auto-Renewal.** The term of the Agreement between the parties shall not automatically renew. Subsequent extensions of the Agreement shall require notice to and approval of the School District.

3. **FOIA/OMA.** School District shall not be required to make any claim of privilege that may be applicable to prevent disclosure in response to, and will not be required to notify Nearpod prior to any disclosure in response to, a valid FOIA request for information that is not confidential or proprietary.

4. **Governing Law/Venue.** This Agreement will be governed and construed in accordance with the laws of the State of Illinois, without regard to any conflicts of law provisions. Venue for all actions between the parties shall lie solely in the Circuit Court of Cook County, Illinois, and Nearpod hereby submits to the jurisdiction of that court. Any references to binding arbitration shall be deleted from the Agreement.

5. **Illinois Student Privacy Laws.** In addition to its obligation to maintain student data in accordance with applicable federal laws, Nearpod shall also maintain all student data obtained from School District in accordance with any applicable Illinois laws, including (without limitation, and only to the extent applicable) the *Illinois School Student Records Act* (105 ILCS 10/1 *et seq.*); and the *Illinois Student Online Personal Protection Act* (105 ILCS 85/1 *et seq.*) (herein “SOPPA”). In accordance with SOPPA, Nearpod and the School District agree as follows:

- a. The categories or types of SOPPA-covered information, as defined in Section 5 of SOPPA, to be provided to Nearpod pursuant to this Agreement may include:
  - i. Information created by or provided to Nearpod by a student or application for K through 12 school purposes;

- ii. Information created by or provided to Nearpod by an employee or agent of School District for school purposes; or
  - iii. Information gathered by Nearpod through the operation of its site, service, or application for K through 12 school purposes and which personally identifies a student, including, but not limited to, information in the student's electronic mail, first and last name, electronic mail address, student identifiers, search activity, photos, or voice recordings.
- b. The products or services being provided to School District by Nearpod are as described in the documents that comprise this Agreement.
- c. Pursuant to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), Nearpod is acting as a school official with a legitimate educational interest, is performing an institutional service or function for which the school would otherwise use employees, under the direct control of the school, with respect to the use and maintenance of covered information, and is using the covered information only for an authorized purpose and may not re-disclose it to third parties or affiliates (except contracted sub-processors needed to provide the contracted services), unless otherwise permitted under SOPPA, without permission from the school or parent, or pursuant to court order.
- d. If a breach is attributed to Nearpod under SOPPA, any and all costs and expenses incurred by School District in investigating and remediating the breach will be allocated to Nearpod, except for the cost of School District personnel. The costs and expenses may include, but are not limited to, all items described in Section 15(4)(D) of SOPPA, as now written or as may be amended from time to time. Nearpod shall indemnify and defend School District, and its individual Board members, officers, employees, agents, and successors against third-party claims, charges, causes of action, and liability of any kind, including but not limited to attorney's fees, arising directly and specifically from any security or privacy breach involving SOPPA-covered information as a result of negligent or intentional acts or omissions of Nearpod, and any damages limitations in the Agreement shall not apply to School District in this regard.
- e. Nearpod must delete or transfer to School District all SOPPA-covered information within ninety (90) days if the information is no longer needed for the purposes of this Agreement. Nearpod must delete, within a reasonable time period, a student's SOPPA-covered information if the School District requests deletion in writing, unless the student or student's parent consents to the maintenance of the SOPPA-covered information.
- f. Because School District maintains a website, SOPPA requires that School District must publish a copy of this Agreement on the website.

- g. In case of any breach, within the most expedient time possible and without unreasonable delay, but no later than 30 calendar days after the determination that a breach has occurred, Nearpod shall notify the Superintendent of Schools of any breach of the students' SOPPA-covered information.
- h. Nearpod shall provide to School District a list of any third parties or affiliates to whom Nearpod is currently disclosing SOPPA-covered information or has disclosed SOPPA-covered information. This list must, at a minimum, be updated and provided to the school by the beginning of each fiscal year and at the beginning of each calendar year.

6. **Insurance.** During the term of this Agreement and any renewal thereof, Nearpod shall maintain a cyber-liability insurance policy insuring against data breaches. School District shall be named as an additional insured on such policy. Any damages limitations in this Agreement shall not apply to School District in its capacity as an additional insured.

7. **Authority to Execute.** Each signatory hereto represents and warrants that he or she has the proper corporate authority to execute this Amendment and bind his or her entity to the terms and conditions hereof.

**WHEREAS**, this Amendment and its terms and conditions are agreed upon by the Parties on the date set forth above.

**BOARD OF EDUCATION OF  
LINCOLNWOOD SCHOOL DISTRICT 74**

By: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 Date: \_\_\_\_\_

**NEARPOD INC.**

DocuSigned by:  
*Jose Carrera*  
 By: \_\_\_\_\_  
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 Chief Executive Officer  
 Its: \_\_\_\_\_  
 Date: 11/8/2021  
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