



NEGOTIATED CONTRACT FOR GOODS AND/OR SERVICES

**ISSUED BY:** Office of Contracts and Acquisitions (OCA)  
**ADDRESS:** 1200 First Street, NE, 9<sup>th</sup> Floor, Washington, DC 20002

**CONTRACT NO:** GAGA-2022-C-0362      **SOLICITATION NO:** N/A

**PROGRAM OFFICE:** Office of Teaching and Learning

**CAPTION:** K-12 Online Interactive Lessons and Formative Assessments Platform

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The undersigned offers and agrees that, with respect to all terms and conditions, as negotiated between the offeror and DCPS, and contained herein, and the provisions of the solicitation, constitutes the Formal Contract.

**ACCOUNTING AND APPROPRIATION DATA:**

**PURCHASE ORDER NUMBER:** PO668269

<p><b>CONTRACTOR:</b> (Contractor shall not commence performance until the District of Columbia Public Schools has signed this document)</p> <p><b><u>Nearpod Inc.</u></b> Contractor's Name</p> <p>BY: <u>Jose Carrera</u> Signature of Authorized Representative</p> <p>CEO</p> <p>Title <u>09 / 29 / 2022</u> Date</p> <p><u>1855 Griffin Road, Suite A-290, Dania Beach, Florida 33004</u> Mailing Address of Contractor</p> <p><u>(305) 677-5030</u>      <u>305-655-1999</u> Telephone No.      Fax</p>	<p><b>ACCEPTANCE BY THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS:</b></p> <p><u>LaVeta Hilton</u> Contracting Officer</p> <p><u>LaVeta Hilton</u>      <u>9/30/2022</u> Type or Print Name      Date</p> <hr/> <p>The information contained in the box below is for District of Columbia Public School use only and, in the event of a discrepancy between this information and the terms of the contract, the contract terms shall take precedence.</p> <hr/> <p><b>PERIOD OF CONTRACT:</b></p> <p>From: <b>August 2, 2022 through July 31, 2023</b> <i>(Notice to Proceed issued on August 2, 2022)</i></p> <p><b>CONTRACT AMOUNT: \$249,260.00</b></p>
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**SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST**

**B.1** The District of Columbia Public Schools (“DCPS”), Contracts and Acquisitions, on behalf of the Office of Teaching and Learning (“OTL”) is entering into a contract with Nearpod Inc. (“Contractor”) to provide access to their online K-12 interactive lessons, videos, and formative assessments platform for DCPS students and teachers for school year (SY) 22-23 in accordance with the SOW and Quote No. 164875.

**B.2** The District contemplates award of a firm fixed price contract in accordance with 27 DCMR Chapter 24.

**B.3 PRICE SCHEDULE**

**B.3.1 BASE YEAR (August 2, 2022 – July 31, 2023)**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
<b>0001</b>	<p><b>Nearpod Premium Plus - District:</b>                      All staff and students have access                      Nearpod Premium Plus, including unlimited access to:</p> <ul style="list-style-type: none"> <li>• Nearpod’s lesson, video, and activity creation and delivery platform with 20+ formative assessment and media features</li> <li>• Nearpod Lesson Library with 7,500+ standards-aligned, interactive lessons for all K-12 subject areas, featuring favorite educational brands</li> <li>• Nearpod Video &amp; Activity Library with 5,000+ standards-aligned interactive videos and activities for all K-12 subject areas, featuring favorite educational brands, that can be used on their own, or added to Nearpod slides lessons</li> <li>• District features including larger class sizes, unlimited storage, School and District shared Libraries, LMS integration, and more</li> <li>• Premium Plus lesson delivery features, including Live Teacher Annotation and Co-Teaching</li> </ul>	\$242,060.00
<b>0002</b>	<p><b>Online Training:</b></p> <ul style="list-style-type: none"> <li>• Webinar: Up to 2-hour session with a Nearpod Trainer for up to 50 participants - 16 Webinar Sessions.</li> </ul>	\$7,200.00
<b>Grand Total for B.3.1</b>		<b>\$249,260.00</b>

*\*Should DCPS decide to exercise its unilateral option rights for any option year pursuant to section F.2 of this contract, the parties agree that prices for each option year will be negotiated and finalized each year at ninety days prior to the expiration of the contract; Although option year prices will be negotiated, in no way shall the option year prices result in prices higher than the contractor’s list price.*

**B.3.2 OPTION YEAR ONE (August 1, 2023 – July 31, 2024)**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
<b>1001</b>	<b>Nearpod Premium Plus - District</b>	
<b>1002</b>	<b>Online Training</b>	
<b>Grand Total for B.3.2</b>		<b>TBD</b>

**B.3.3 OPTION YEAR TWO (August 1, 2024 – July 31, 2025)**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
<b>2001</b>	<b>Nearpod Premium Plus - District</b>	
<b>2002</b>	<b>Online Training</b>	
<b>Grand Total for B.3.3</b>		<b>TBD</b>

**SECTION C: SPECIFICATIONS/WORK STATEMENT****C.1 SCOPE:**

The District of Columbia Public Schools, Office of Teaching and Learning (“OTL”) has an immediate need to purchase an interactive lessons platform to assist the district and schools in meeting instructional goals. The contractor shall provide access to a K-12 interactive lessons, videos, and formative assessments platform which supports teachers in delivering engaging lessons and formative assessments to students in a virtual, in person, or hybrid learning environment for school year (SY) 22-23.

## **C.2 BACKGROUND**

The Education Technology team located in the Office of Teaching and Learning is responsible for identifying and securing platforms and software to assist the district and schools in meeting instructional goals. The district needs a K-12 interactive online lesson platform to support teachers in delivering engaging lessons and formative assessments to students in a virtual, in person, or hybrid learning environment. Nearpod was Identified by the Ed tech team as the premier application to meet the need.

## **C.3 REQUIREMENTS**

**C.3.1** The contractor shall provide Nearpod Premium plus licenses with unlimited access to:

- Online lessons within its application that include video, and activity creation and delivery platform with 20+ formative assessment and media features
- Nearpod Lesson Library with 7,500+ standards-aligned, interactive lessons for all K-12 subject areas, featuring favorite educational brands is included in the application.
- Nearpod Video & Activity Library with 5,000+ standards-aligned interactive videos and activities for all K-12 subject areas, featuring favorite educational brands, that can be used on their own, or added to Nearpod slides lessons.
- District features including larger class sizes, unlimited storage, School and District shared Libraries, LMS integration, and more
- Premium Plus lesson delivery features, including Live Teacher Annotation and Co-Teaching

**C.3.2** The contractor shall provide up to 2-hours webinar session with a Nearpod Trainer for up to 50 DCPS participants.

**C.3.3** The contractor shall provide synchronous training on mutually agreed upon dates and asynchronous training available on contractor sponsored sites and pages, which may be linked to on DCPS PD sites.

**C.3.4** The contractor shall create accounts for staff using the daily feed from DCPS' SIS (Aspen) to Clever. Students will access Nearpod via Clever or Canvas as directed by teachers. Nearpod will also be integrated with Canvas LMS for daily use by teachers in their courses.

**C.3.5** The contractor shall provide Teachers with access to premium plus account and features. Instructors can access Nearpod via Microsoft Teams, Clever, or Canvas. They may also go directly to nearpod.com. The devices used must be wifi or data enabled to access.

### **C.3.6 Customer Support**

The contractor shall appoint an account manager to triage all customer support requests from DCPS.

## **C.4 DCPS RESPONSIBILITIES**

### **C.4.1 District Administrator**

DCPS will provide District-wide visibility and management capabilities for all schools. DCPS will have administrator accounts for central office teams who need to adjust access or support teachers. The EdTech and internal IT teams will have this access.

**C.4.1.1** DCPS will provide the contractor with a list of users who should have admin access as part of the clever feed.

**C.4.2 IT Administrator**

DCPS will provide Clever and Canvas login to teachers and students regular synchronization of student accounts, teacher accounts, and class sections reflect in the Canvas platform based on a nightly feed from Aspen to Clever and then to Canvas.

**C.4.3** DCPS will assign a Central Office Staff as the point of contact to provide insight, logistics, and facilitate connections as required for successful implementation of the program.

**C.4.4** DCPS will have administrator accounts for central office EdTech and internal IT teams who need to adjust access or support teachers.

**C.4.5** DCPS will coordinate and provide training dates for various subsets of users.

**C.4.6** DCPS will coordinate and ensure all employees receive training during pre-service week.

**C.4.7** DCPS Ed Tech Cluster team will provide support to new users during Cluster office hours.

**C.4.8** DCPS will provide nightly feed from SIS to Clever for integration with Nearpod.

**SECTION D: RESERVED**

**SECTION E: INSPECTION AND ACCEPTANCE**

**E.1** The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

**SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES**

**F.1 TERM OF CONTRACT**

The term of the contract shall be for a period of one year from August 2, 2022 to July 31, 2023 specified on the cover page of this contract. The notice to proceed issued on August 2, 2022 shall merge with the definitive contract.

**F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT**

**F.2.1** The District may extend the term of this contract for a period of two (2) *one-year* option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise

of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

**F.2.2** If the District exercises this option, the extended contract shall be considered to include this option provision.

**F.2.3** The price for the option period shall be as specified in the Section B of the contract.

**F.2.4** The total duration of this contract, including the exercise of any options under this clause, shall not exceed three (3) years.

### **F.3 DELIVERABLES**

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the Contract Administrator (CA) identified in section G.9 in accordance with the following:

<b>Item No.</b>	<b>Deliverable</b>	<b>Quantity</b>	<b>Format/Method of Delivery</b>	<b>Due Date</b>
1	Provide access to Nearpod Premium Plus - District	49000	Virtual	Upon Award
2	Provide 2-hour webinar session with a Nearpod Trainer for up to 50 DCPS participants.	50	Webinar	Date TBD

## **SECTION G: CONTRACT ADMINISTRATION**

### **G.1 INVOICE PAYMENT**

**G.1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

**G.1.2** The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

### **G.2 INVOICE SUBMITTAL**

**G.2.1** The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>

**G.2.2** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4.

**G.2.3** To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

### **G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT – NOT APPLICABLE**

**G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

**G.3.2** The District shall not make final payment to the Contractor until the agency CFO has received the CO's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

### **G.4 PAYMENT**

Payment shall be based upon Section B-Price Schedules and Section F-Deliverables

### **G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

**G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

**G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

**G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated \_\_\_\_\_, make payment of this invoice to (name and address of assignee).”

### **G.6 THE QUICK PAYMENT ACT**

#### **G.6.1 Interest Penalties to Contractors**

**G.6.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq.*, as amended, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the required payment date. The required payment date shall be:

**G.6.1.1.1** The date on which payment is due under the terms of the contract;

**G.6.1.1.2** Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;

**G.6.1.1.3** Not later than 10 calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or

**G.6.1.1.4** 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.

**G.6.1.2** No interest penalty shall be due to the Contractor if payment for the completed delivery of goods or services is made on or after:

**G.6.1.2.1** 3<sup>rd</sup> day after the required payment date for meat or a meat food product;

**G.6.1.2.2** 5<sup>th</sup> day after the required payment date for an agricultural commodity; or

**G.6.1.2.3** 15<sup>th</sup> day after any other required payment date.

**G.6.1.3** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

**G.6.2 Payments to Subcontractors – N/A**

**G.6.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under the contract:

**G.6.2.1.1** Pay the subcontractor(s) for the proportionate share of the total payment received from the District that is attributable to the subcontractor(s) for work performed under the contract; or

**G.6.2.1.2** Notify the CO and the subcontractor(s), in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**G.6.2.2** The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before the:

**G.6.2.2.1** 3<sup>rd</sup> day after the required payment date for meat or a meat product;

**G.6.2.2.2** 5<sup>th</sup> day after the required payment date for an agricultural commodity; or

**G.6.2.2.3** 15<sup>th</sup> day after any other required payment date.

**G.6.2.3** Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

**G.6.2.4** A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

**G.6.3 Subcontract requirements.** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code § 2-221.02(d).



## **G.7 CONTRACTING OFFICER (CO)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

**LaVeta Hilton**  
**Contracts and Acquisitions**  
**Office of Resource and Strategy**  
**District of Columbia Public Schools**  
**1200 First Street, NE**  
**Washington, DC 20002**  
**Tele: 202-442-5111**  
**E-mail: [LaVeta.Hilton@k12.dc.gov](mailto:LaVeta.Hilton@k12.dc.gov)**

## **G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

**G.8.1** The CO is the only person authorized to approve changes in any of the requirements of this contract.

**G.8.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

**G.8.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

## **G.9 CONTRACT ADMINSTRATOR (CA)**

**G.9.1** The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

**G.9.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

**G.9.1.2** Coordinating site entry for Contractor personnel, if applicable;

**G.9.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

**G.9.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

**G.9.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.9.2** The address and telephone number of the CA is:

**Sakon Kieh**  
**Director, Educational Technology**  
**Office of Teaching and Learning**  
**District of Columbia Public Schools**  
**1200 First Street, NE**  
**Washington, DC 20002**  
**C: 202.997.4712**  
**E: [sakon.kieh@k12.dc.gov](mailto:sakon.kieh@k12.dc.gov)**

**G.9.3** The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

**G.9.4** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

## **SECTION H: SPECIAL CONTRACT REQUIREMENTS**

### **H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES – N/A**

**H.1.1** For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

**H.1.1.1** At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council. **H.1.2** The Contractor shall negotiate an Employment Agreement with the Department of Employment Services (DOES) for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

## **H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

The Contractor shall be bound by the Wage Determination No. 2015-4281 Revision 24 dated June 27, 2022, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. § 351 *et seq.*, and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with **clause 24 of the SCP**. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

## **H.3 PREGNANT WORKERS FAIRNESS**

**H.3.1** The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

**H.3.2** The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

(1) Pay;

(2) Accumulated seniority and retirement;

(3) Benefits; and

(4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

**H.3.3** The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

**H.3.4** The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

**H.3.5** Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

#### **H.4 UNEMPLOYED ANTI-DISCRIMINATION**

**H.4.1** The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

**H.4.2** The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

**H.4.3** Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

#### **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

Delete Article 35, 51% District Residents New Hires Requirements and First Source Employment Agreement, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Section **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT** in its place:

#### **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT – NOT APPLICABLE**

**H.5.1** For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* (First Source Act).

**H.5.2** The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

- (a) **The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and**
- (b) **The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.**

**H.5.3** The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

**H.5.4** The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

**H.5.5** The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

**H.5.6** The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

**H.5.7** If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

**H.5.8** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

**H.5.9** The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in **clause 14 of the SCP, Disputes**.

**H.5.10** The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

**H.6** **RESERVED**

**H.7** **RESERVED**

**H.8** **RESERVED**

**H.9** **SUBCONTRACTING REQUIREMENTS – NOT APPLICABLE**

**H.9.1** **Mandatory Subcontracting Requirements**

**H.9.1.1** For all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).

**H.9.1.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified

business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

- H.9.1.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.
- H.9.1.4** Except as provided in H.9.1.5 and H.9.1.7, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- H.9.1.5** If the prime contractor is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, the CBE member of the certified joint venture shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. If the CBE member of the certified joint venture prime contractor performs less than 5% of the contracting effort, the certified joint venture shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- H.9.1.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- H.9.1.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the on-site work with its own organization and resources if the contract is \$1 million or less.

## **H.9.2 Subcontracting Plan**

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9.1 of this clause. The plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

## **H.9.3 Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, CA, District of Columbia Auditor and the Director of DSLBD.

#### **H.9.4 Subcontracting Plan Compliance Reporting**

- H.9.4.1** If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:
- (A) The price that the prime contractor will pay each subcontractor under the subcontract;
  - (B) A description of the goods procured or the services subcontracted for;
  - (C) The amount paid by the prime contractor under the subcontract; and
  - (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- H.9.4.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

#### **H.9.5 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

#### **H.9.6 Notices**

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

#### **H.9.7 Enforcement and Penalties for Breach of Subcontracting Plan**

- H.9.7.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- H.9.7.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.
- H.9.7.3** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **clause 8 of the SCP, Default**.

#### **H.10 FAIR CRIMINAL RECORD SCREENING**

- H.10.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the "Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.
- H.10.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to

reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

**H.10.3** After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

**H.10.4** The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

**H.10.5** This section and the provisions of the Act shall not apply:

(a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;

(b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;

(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

**H.10.6** A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

## **H.11 DISTRICT RESPONSIBILITIES**

*[See Section C]*

## **H.12 CONTRACTOR RESPONSIBILITIES**

*[See Section C]*

## **H.13 CRIMINAL BACKGROUND AND TRAFFIC RECORDS CHECKS FOR CONTRACTORS THAT PROVIDE DIRECT SERVICES TO CHILDREN OR YOUTH**

**H.13.1** A contractor that provides services as a covered child or youth services provider, as defined in section 202(3) of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*), as amended (in this section, the "Act"), shall obtain criminal history records to investigate persons applying for employment, in either a compensated or an unsupervised volunteer position, as well as its current employees and unsupervised volunteers. The Contractor shall request criminal background checks for the following positions:

**(a) Contractor staff accessing DCPS locations;**

**(b) Contractor staff with direct contact to DCPS students**

**H.13.2** The Contractor shall also obtain traffic records to investigate persons applying for employment, as well as current employees and volunteers, when that person will be required to drive a motor vehicle to transport children in the course of performing his or her duties. The Contractor shall request traffic records for the following positions:



**(a) Not Applicable, as no Contractor staff via this contract is authorized to transport students.**

**H.13.3** The Contractor shall inform all applicants requiring a criminal background check that a criminal background check must be conducted on the applicant before the applicant may be offered a compensated position or an unsupervised volunteer position.

**H.13.4** The Contractor shall inform all applicants requiring a traffic records check that a traffic records check must be conducted on the applicant before the applicant may be offered a compensated position or a volunteer position.

**H.13.5** The Contractor shall obtain from each applicant, employee and unsupervised volunteer:

- (A) a written authorization which authorizes the District to conduct a criminal background check;
- (B) a written confirmation stating that the Contractor has informed him or her that the District is authorized to conduct a criminal background check;
- (C) a signed affirmation stating whether or not they have been convicted of a crime, pleaded nolo contendere, are on probation before judgment or placement of a case upon a stet docket, or have been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in any other state or territory:
  - (i) Murder, attempted murder, manslaughter, or arson;
  - (ii) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, or threats to do bodily harm;
  - (iii) Burglary;
  - (iv) Robbery;
  - (v) Kidnapping;
  - (vi) Illegal use or possession of a firearm;
  - (vii) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
  - (viii) Child abuse or cruelty to children; or
  - (ix) Unlawful distribution of or possession with intent to distribute a controlled substance;
- (D) a written acknowledgement stating that the Contractor has notified them that they are entitled to receive a copy of the criminal background check and to challenge the accuracy and completeness of the report; and
- (E) a written acknowledgement stating that the Contractor has notified them that they may be denied employment or a volunteer position, or may be terminated as an employee or volunteer based on the results of the criminal background check.

**H.13.6** The Contractor shall inform each applicant, employee and unsupervised volunteer that a false statement may subject them to criminal penalties.

**H.13.7** Prior to requesting a criminal background check, the Contractor shall provide each applicant, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:

- (A) To authorize the Metropolitan Police Department (MPD), or designee, to conduct the criminal background check and confirm that the applicant, employee, or unsupervised volunteer has been informed that the Contractor is authorized and required to conduct a criminal background check;
- (B) To affirm whether or not the applicant, employee, or unsupervised volunteer has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses or intra-family offenses in the District or their equivalent in any other state or territory of the United States, or for any of the felony offenses described in paragraph H.13.5(C);
- (C) To acknowledge that the applicant, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;
- (D) To acknowledge that the applicant may be denied employment, assignment to, or an unsupervised volunteer position for which a criminal background check is required based on the outcome of the criminal background check; and
- (E) To inform the applicant or employee that a false statement on the form or forms may subject them to criminal penalties pursuant to D.C. Official Code § 22-2405.

**H.13.8** The Contractor shall direct the applicant or employee to complete the form or forms and notify the applicant or employee when and where to report to be fingerprinted.

**H.13.9** Unless otherwise provided herein, the Contractor shall request criminal background checks from the Chief, MPD (or designee), who shall be responsible for conducting criminal background checks, including fingerprinting.

**H.13.10** The Contractor shall request traffic record checks from the Director, Department of Motor Vehicles (DMV) (or designee), who shall be responsible for conducting traffic record checks.

**H.13.11** The Contractor shall provide copies of all criminal background and traffic check reports to the CA within one business day of receipt.

**H.13.12** The Contractor shall pay for the costs for the criminal background and traffic record checks, pursuant to the requirements set forth by the MPD and DMV. The District shall not make any separate payment for the cost of criminal background and traffic record checks.

**H.13.13** The Contractor may make an offer of appointment to, or assign a current employee or applicant to, a compensated position contingent upon receipt from the CO of the CA's decision after his or her assessment of the criminal background or traffic record check.

**H.13.14** The Contractor may not make an offer of appointment to an unsupervised volunteer whose position brings him or her into direct contact with children until it receives from the contracting officer the CA's decision after his or her assessment of the criminal background or traffic record check.

**H.13.15** The Contractor shall not employ or permit to serve as an unsupervised volunteer an applicant or employee who has been convicted of, has pleaded nolo contendere to, is on probation before judgment

or placement of a case on the stet docket because of, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

**H.13.16** Unless otherwise specified herein, the Contractor shall conduct periodic criminal background checks upon the exercise of each option year of this contract for current employees and unsupervised volunteer in the positions listed in sections H.13.1 and H.13.2.

**H.13.17** An employee or unsupervised volunteer may be subject to administrative action including, but not limited to, reassignment or termination at the discretion of the CA after his or her assessment of a criminal background or traffic record check.

**H.13.18** The CA shall be solely responsible for assessing the information obtained from each criminal background and traffic records check report to determine whether a final offer may be made to each applicant or employee. The CA shall inform the CO of its decision, and the CO shall inform the Contractor whether an offer may be made to each applicant.

**H.13.19** If any application is denied because the CA determines that the applicant presents a present danger to children or youth, the Contractor shall notify the applicant of such determination and inform the applicant in writing that she or he may appeal the denial to the Commission on Human Rights within thirty (30) days of the determination.

**H.13.20** Criminal background and traffic record check reports obtained under this section shall be confidential and are for the exclusive use of making employment-related determinations. The Contractor shall not release or otherwise disclose the reports to any person, except as directed by the CO.

#### **H.14 Inadvertent Access to Student-Identifiable Data**

Pursuant to its obligations under the Family Education Rights and Privacy Act (“FERPA”), DCPS hereby acknowledges that while providing on-going professional development services, the types of services that School District would otherwise provide for itself, Nearpod may receive and collect identifiable data from individual School Leaders or Teachers. School District acknowledges that said disclosures by School Leaders or Teachers to Nearpod staff members are proper because said disclosures would be proper if made to a school official performing the same service.

**H.14.1** DCPS acknowledges that due to the nature of the services Nearpod provides to School District, Nearpod has legitimate educational interests in the student data it obtains from School Leaders or Teachers. Said data may include, among other things, students’ first and last name, district-assigned student identifier, grades, assessment results (including teacher-created assessments, district benchmarks and state standardized tests), and samples of student work. Nearpod will use such data solely to support the professional development of individual School Leaders or Teachers and shall destroy such data in student identifiable form when no longer need for the purposes for which Nearpod obtained the data and written request for same, within 60 days of expiration or termination of the applicable Nearpod School Account license (“Nearpod School Account Agreement”) or this contract. For the avoidance of doubt, this does not extend to de-identified data.

**H.14.2** Nearpod will maintain student-identifiable data in accordance with the provisions laid out in 34 C.F.R. § 99.35, specifically Nearpod will (i) ensure that any re-disclosures will meet the provision of 34 C.F.R. § 99.31, (ii) protect any information in a manner that does not permit personal identification of individuals by anyone except authorized representative of State and local educational authorities which includes representatives of Nearpod with legitimate educational interests, and (iii) destroy student identifiable data when no longer need for the purposes for which Nearpod obtained the data, within 30 days of

expiration or termination of the applicable Nearpod School Account license (“Nearpod School Account Agreement”) or this contract, whichever is earlier.

**H.14.3** DCPS acknowledges that in accordance with 34 C.F.R. §99.33(b) Nearpod may redisclose student identifiable information on behalf of School District as part of Nearpod service to School District of providing ongoing math curriculum and professional development services. Nearpod will provide DCPS with the names of additional parties and said parties’ legitimate educational interests to which Nearpod may disclose student identifiable information on behalf of School District. Nearpod hereby discloses that it shares student identifiable information with the following third-party service providers to perform the services: Amazon Web Services (cloud platform for data hosting); Dropbox (file transfer for rostering support); Heroku (Salesforce Enterprise) (cloud platform for database hosting); Stitch (ETL); and Zendesk (customer support communication and helpdesk function).

**H.15.1** The Contractor shall ensure that their staff adhere to the District’s mask and health mandates. At the time of this contract award, the District government requires the wearing of masks inside schools and education facilities and while on duty, this includes all DCPS locations. All contractors and employees must wear a mask regardless of whether they are fully vaccinated.

## **SECTION I: CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated July 2010 (“SCP”) are incorporated as part of the contract. To obtain a copy of the SCP go to <http://ocp.dc.gov>, under Quick Links click on “Required Solicitation Documents”.

### **I.2 CONTRACTS THAT CROSS FISCAL YEARS**

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

### **I.3 CONFIDENTIALITY OF INFORMATION**

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

### **I.4 TIME**

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

### **I.5 RIGHTS IN DATA**

Delete Article 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 42, Rights in Data) in its place:

#### **A. Definitions**

1. **“Products”** - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.
2. **“Existing Products”** - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.
3. **“Custom Products”** - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.
4. **“District”** – The District of Columbia and its agencies.

**B. Title to Project Deliverables**

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. **Existing Products:** Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District shall be granted a revocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor’s bid that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District’s satisfaction), and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose of the project or work plan or contract. Licenses shall be granted in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.
2. **Custom Products:** Effective upon Product creation, Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all patent, trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor. District acknowledges that at the time of this contract’s execution, the parties do not intend for Contractor to deliver any Custom Products under this contract; however, where both parties mutually agree in writing that any particular deliverable constitutes a Custom Product, this paragraph shall apply to that deliverable.

C. **Reserved.**

D. **Reserved.**

E. **Indemnification and Limitation of Liability.** The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

## **I.6 OTHER CONTRACTORS**

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

## **I.7 SUBCONTRACTS**

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

## **I.8 INSURANCE**

- A. **GENERAL REQUIREMENTS.** The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

## B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

The vendor should be named as an additional insured on the applicable manufacturer's/distributor's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad).

DCPS should collect, review for accuracy and maintain all warranties for goods and services.

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage

for all owned hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.
5. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

#### C. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein, shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.



- D. **DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.
- E. **LIABILITY.** These are the required minimum-insurance requirements established by the District of Columbia. However, the required minimum insurance requirements provided above will not in any way limit the contractor's liability under this contract.
- F. **CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- G. **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- H. **NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.
- I. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**

**And mailed to the attention of:**

**LaVeta Hilton**

**Deputy Chief Procurement Officer**

**District of Columbia Public Schools**

**1200 First Street, NE**

**Washington, DC 20002**

**Phone: 202-442-5136**

**E-mail: [laveta.hilton@k12.dc.gov](mailto:laveta.hilton@k12.dc.gov)**

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

J. **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

K. **CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the District.

## **I.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

## **I.10 ORDER OF PRECEDENCE**

The contract awarded as a result of this contract will contain the following clause:

### **ORDER OF PRECEDENCE**

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Negotiated Contract for goods and services (pages 1 – 31)
- (3) Standard Contract Provisions for Use with District of Columbia Supplies and Services Contract dated July 2010
- (4) Contract attachments other than the Standard Contract Provisions
- (5) Contractor's Quote together with any terms and conditions referenced therein as modified

## **I.11 DISPUTES**

Delete Article 14, Disputes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 14, Disputes, in its place:

#### **14. Disputes**

All disputes arising under or relating to the contract shall be resolved as provided herein.

(a) **Claims by the Contractor against the District:** Claim, as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant

- (1) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:
  - (i) A description of the claim and the amount in dispute;
  - (ii) Data or other information in support of the claim;
  - (iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
  - (iii) The Contractor's request for relief or other action by the CO.
- (2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (4) The CO's written decision shall do the following:
  - (i) Provide a description of the claim or dispute;
  - (ii) Refer to the pertinent contract terms;
  - (iii) State the factual areas of agreement and disagreement;
  - (iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
  - (v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
  - (vi) Indicate that the written document is the CO's final decision; and
  - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.
- (6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

**(b) Claims by the District against the Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.

(2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:

- (i) Provide a description of the claim or dispute;
- (ii) Refer to the pertinent contract terms;
- (iii) State the factual areas of agreement and disagreement;
- (iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
- (v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
- (vi) Indicate that the written document is the CO's final decision; and
- (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.

(4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.

(5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.

(6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

## I.12 CHANGES

Delete clause 15, Changes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 15, Changes in its place:

### **15. Changes:**

- (a) The CO may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that the CO, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in **clause 14 Disputes**.
- (b) The District shall not require the Contractor, and the Contractor shall not require a subcontractor, to undertake any work that is beyond the original scope of the contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of this contract, unless the CO:
  - (1) Agrees with Contractor, and if applicable, the subcontractor on a price for the additional work;
  - (2) Obtains a certification of funding to pay for the additional work;
  - (3) Makes a written, binding commitment with the Contractor to pay for the additional work within 30-days after the Contractor submits a proper invoice; and
  - (4) Provides the Contractor with written notice of the funding certification.
- (c) The Contractor shall include in its subcontracts a clause that requires the Contractor to:
  - (1) Within 5 business days of its receipt of notice the approved additional funding, provide the subcontractor with notice of the amount to be paid to the subcontractor for the additional work to be performed by the subcontractor;
  - (2) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for the additional work within 10 days of receipt of payment from the District; and
  - (3) Notify the subcontractor and CO in writing of the reason the Contractor withholds any payment from a subcontractor for the additional work.
- (d) Neither the District, Contractor, nor any subcontractor may declare another party to be in default, or assess, claim, or pursue damages for delays, until the parties to agree on a price for the additional work.

## I.13 NON-DISCRIMINATION CLAUSE

Delete clause 19, Non-Discrimination Clause, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 19, Non-Discrimination Clause, in its place:

### **19. Non-Discrimination Clause:**

- (a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*) (“Act”, as used in this clause). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor agrees, and any subcontractor shall agree, to post in conspicuous places, available to employees and applicants for employment, a notice setting forth the provisions of this non-discrimination clause as provided in section 251 of the Act.
- (b) Pursuant to Mayor’s Order 85-85, (6/10/85), Mayor’s Order 2002-175 (10/23/02), Mayor’s Order 2011-155 (9/9/11) and the rules of the Office of Human Rights, Chapter 11 of Title 4 of the D.C. Municipal Regulations, the following clauses apply to the contract:
- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
  - (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. The affirmative action shall include, but not be limited to the following:
    - (a) employment, upgrading or transfer;
    - (b) recruitment, or recruitment advertising;
    - (c) demotion, layoff or termination;
    - (d) rates of pay, or other forms of compensation; and
    - (e) selection for training and apprenticeship.
  - (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency, setting forth the provisions in paragraphs 19(b)(1) and (b)(2) concerning non-discrimination and affirmative action.
  - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in paragraph 19(b)(2).
  - (5) The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers’ representative of that contractor’s commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (6) The Contractor agrees to permit access to its books, records, and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of the Office of Human Rights or designee, for purposes of investigation to ascertain compliance with the Act, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
- (7) The Contractor agrees to comply with the provisions of the Act and with all guidelines for equal employment opportunity applicable in the District adopted by the Director of the Office of Human Rights, or any authorized official.
- (8) The Contractor shall include in every subcontract the equal opportunity clauses, i.e., paragraphs 19(b)(1) through (b)(9) of this clause, so that such provisions shall be binding upon each subcontractor.
- (9) The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

#### **I.14 COST AND PRICING DATA**

Delete Article 25, Cost and Pricing Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts.

#### **SECTION J: ATTACHMENTS**

The following list of attachments is incorporated into the solicitation by reference.

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010) available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on "Required Solicitation Documents"
<b>J.2</b>	U.S. Department of Labor Wage Determination No. 2015-4281 Revision 24 dated June 27, 2022
<b>J.3</b>	Contractor Quote No. 164875, and Terms and Conditions as modified
<b>J.4</b>	Way to Work Amendment Act of 2006 - Living Wage Notice
<b>J.5</b>	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet

# 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

—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.

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

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

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

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

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

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

## 2. Definitions

For purposes of these Terms:

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

### *Highlights*

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

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

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

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

### *Terms*

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

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

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

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

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

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

*B. Passwords.* Accounts -- whether an educator account or a student account -- cannot be shared. You are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Nearpod Materials and you are responsible for all activities that occur under your account(s). Furthermore, you are solely responsible for any consequences, losses, or damages that we may directly or indirectly incur or suffer due to any unauthorized activities conducted by you. If you become aware of any unauthorized use of your password or of your account, you agree to notify Nearpod immediately at [privacy@nearpod.com](mailto:privacy@nearpod.com).

*C. Payments.*

i. Reserved

- ii. For Institution Accounts and Enterprise Accounts:1. Your Paid Account will continue until the end date of contract between DCPS and Nearpod (C-0125). Nearpod is responsible for cancelling or terminating your Paid Account, according to the terms above or C-0125. Should you elect to cancel your Paid Account, please note that you will not be issued a refund for any previous payments.
  1. Educational institutions are charged directly for the services. Nearpod accepts credit cards and certain other specified payment methods. Nearpod acknowledges that DCPS will make this purchase using a purchase order (PO) and no additional fees will apply for using this payment method.
  - ~~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.
- iii. DCPS shall provide us with a valid tax exemption certificate authorized by the appropriate taxing authority.

### **1. 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.

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*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, [but excluding personal identifiable information such as name, address, identification number or other identifying number or code, telephone number, email address, birth date, and any combination of gender, race, geographic indicator, or other description which can be used to identify users](#) -submitted through the Nearpod Materials, you grant us a perpetual, revocable, 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 servicesto 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, if you choose to make your content available to other users, you also hereby grant to each user of the Nearpod Materials a non-exclusive license to access and view your anonymized User-Generated Content as permitted by the functionality of the Nearpod Materials and these Terms. Notwithstanding the immediately preceding sentence, or anything else to the contrary, the Nearpod Materials only make your content available to others if you choose to allow it. For the avoidance of doubt, such anonymized User-Generated Content shall not include any personally identifiable information.

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

i. You will not and will not attempt to: (i) license, sublicense, copy, duplicate, distribute, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, reproduce,



sell, trade, or resell the Nearpod Materials or Content (including, without limitation, the

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

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

iii. You may not use the Nearpod Materials in any manner that in our sole discretion could damage, disable, overburden, impair or interfere with any other party's use of them. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Nearpod Materials. You agree not to scrape or otherwise use automated means to access or gather information from the Nearpod Materials, and agree not to bypass any robot exclusion measures we may put in place. In addition, you agree not to use false or misleading information in connection with your user account, and acknowledge that we reserve the right to disable any user account with a profile which we believe (in our sole discretion) is false or misleading (including a profile that impersonates a third party).

iv. In connection with your User-Generated Content, you further agree that you will not: (i) use material that is subject to third party intellectual property or proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant Nearpod all of the license rights granted herein; (ii) use material that is unlawful, defamatory, libelous, threatening, pornographic, obscene, harassing, hateful, racially or ethnically offensive or encourages conduct that would be considered a criminal offense, violate any law or is otherwise inappropriate as agreed upon by Nearpod and DCPS; 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 as agreed upon by Nearpod and DCPS; (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 while Nearpod does not have any obligation to monitor such content for any purpose, our DCPS students will have access only to content created by DCPS users. Furthermore, as a teacher and/or educator, you hereby acknowledge that you will review content that others may provide or share with you, prior to sharing or showing it to your students. However, we reserve the right at all times to determine whether content is appropriate and in compliance with these Terms, and may pre-screen and remove content at any time if such content is found to be in violation of these Terms and Conditions or is otherwise objectionable.

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

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

*f. Wireless Features.* Use of Nearpod's mobile applications requires usage of data and messaging services provided by your wireless service carrier. You acknowledge and agree that you are solely responsible for data usage fees, messaging fees and any other fees that your wireless service carrier may charge in connection with your use of the Nearpod Materials.

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

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

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

a. Nearpod respects the intellectual property rights of others and requires that the people who use the Nearpod Materials do the same. It is our policy to respond promptly to claims of intellectual property misuse. Our procedures for responding to alleged copyright infringement are consistent with the form suggested by the United States Digital Millennium Copyright Act, the text of which can be found at the U.S. Copyright Office web site <http://www.copyright.gov/legislation/dmca.pdf>. Please note that you will be liable for damages (including costs and attorneys' fees) if you make any material misrepresentations when making or countering a copyright infringement claim.

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

i. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

ii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Nearpod to locate the material (e.g., URL).

iii. Information reasonably sufficient to permit Nearpod to contact you, such as name, postal address, telephone number, and, if available, an email address at which you may be contacted.

iv. Include the following statement: "I have a good faith belief that use of the material described above in the manner complained of is not authorized by the copyright owner, its agent, or the law."

v. Include the following statement: "The information in the notification is accurate, and under penalty of perjury, I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."

vi. A physical, electronic or digital signature, in a form reasonably acceptable to Nearpod, of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

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

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

c. DMCA Counter-Notification Procedure: After receiving a notification of alleged infringement, Nearpod will remove or disable access to the material claimed to be infringing or claimed to be the subject of infringing activity. At the same time, Nearpod will provide the provider of affected material with a copy of the notice. The provider of affected material may make a counter notification pursuant to sections 512(g)(2) and (3) of the Digital Millennium Copyright Act. Please be advised that you may be held liable for damages if you make material misrepresentations pursuant to federal law in the counter notification. When we receive a counter notification, we may reinstate the material in question. To file a counter notification with us, the provider of affected material must provide a written communication (by postal mail, overnight mail, or, when digitally-signed, by email) that sets forth the items specified below. To expedite our ability to process your counter notification, please use the following format (including section numbers):

i. Identify the material that Nearpod has removed or to which Nearpod has disabled access and the location at which the material appeared before it was removed or access to it was disabled.

ii. Provide your name, postal address, telephone number, email address, and a statement that you consent to the jurisdiction of Federal District Court for Washington, DC (if your address is outside of the United States, for any judicial district in which Nearpod may be found). Service of process must be made upon the Office of the Attorney General for the District of Columbia.

iii. Include the following statement: "I swear, under penalty of perjury, that I have a good faith belief that the removed material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled."

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

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

vi. Send electronically- or digitally-signed communication to [notices@nearpod.com](mailto:notices@nearpod.com). Upon receipt of a counter notification in substantial compliance with the DMCA, Nearpod will provide the person who provided the initial notification of claimed infringement with a copy of the counter notification promptly. After receipt of the counter notification, Nearpod will generally replace the removed material and cease disabling access to it, unless Nearpod's designated agent first receives notice from the person who submitted the initial notification that such person has filed an action seeking a court order regarding the removed material.

d. Nearpod is generally unable to evaluate the merits of trademark disputes because trademark rights may be based on registration or common law use, exist only for certain categories of goods or services and may differ internationally. Therefore, Nearpod expects you to resolve trademark disputes directly with the individual rather than utilizing Nearpod as an intermediary.

### **3. 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. Nearpod may not email teachers any marketing, contest, sweepstakes, survey, or similar promotion that Nearpod may host. Platform update announcements and features already included in the licenses, as well as transaction emails (e.g. support requests) are permitted.

#### **4. 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.

#### **5. 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 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.

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

**6. Reserved.**

**7. Reserved.**



## **8. 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.* Nearpod shall not use the logo of DCPS, the District government or any District agency in any way including, but not limited to, in any statement, promotional materials (including on Nearpod's website) or other published materials. In addition, Nearpod shall not use the name of DCPS, the District government or any District agency in any statement, promotional materials (including on Nearpod's website) or in any published materials in a manner which states or implies support for or an endorsement of Nearpod by DCPS. Further, Nearpod shall at all times obtain prior written approval from DCPS before it makes any public statement, disseminates any promotional materials or issues any published materials bearing on the services it provides under this contract.

*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 District of Columbia. You agree that any action at law or in equity arising out of or relating to these Terms and Conditions or the Nearpod Materials shall be filed only in the state or federal courts in the District of Columbia (or a small claims court of the above-referenced jurisdiction).

*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, along with the purchase order and the negotiated contract for goods and services, is the entire agreement between us relating to the subjectmatter 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 wedrafted them.

~~*k. Contact Information:*~~ Nearpod Inc., 1855 Griffin Rd., A290, Dania Beach, FL 33004.

If you have any questions or comments about these Terms and Conditions or our [Privacy Policy](#), you can contact us at: [privacy@nearpod.com](mailto:privacy@nearpod.com).

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

Posted Date: 6/15/2021

Effective: 8/1/21

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

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



**Quote ID: 164875**

**Sales Order For:**

Sakon Kieh  
 DISTRICT OF COLUMBIA PUBLIC SCHOOLS  
 1200 1ST ST NE FL 9  
 WASHINGTON, District of Columbia 20002  
 UNITED STATES

**Nearpod Contact:**

Ike Ramos and Victoria Liaros  
 1855 Griffin Rd. Suite A-290  
 Dania Beach, FL 33004  
[ike@nearpod.com](mailto:ike@nearpod.com)  
[victorial@nearpod.com](mailto:victorial@nearpod.com)

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

Purchase Orders should be addressed to:  
 Nearpod Inc.  
 1855 Griffin Road A-290  
 Dania Beach, FL 33004

**Service Start:** 08/02/2022

**Service End:** 08/01/2023

Description	Quantity	Total
<p>Nearpod Premium Plus - District:</p> <p>Nearpod Premium Plus, including unlimited access to:</p> <ul style="list-style-type: none"> <li>- Nearpod’s lesson, video, and activity creation and delivery platform with 20+ formative assessment and media features</li> <li>- Nearpod Lesson Library with 7,500+ standards-aligned, interactive lessons for all K-12 subject areas, featuring favorite educational brands</li> <li>- Nearpod Video &amp; Activity Library with 5,000+ standards-aligned interactive videos and activities for all K-12 subject areas, featuring favorite educational brands, that can be used on their own,</li> </ul>	<p>All Staff and Students Have Access</p>	<p>\$242,060.00</p>

<p>or added to Nearpod slides lessons</p> <ul style="list-style-type: none"> <li>- District features including larger class sizes, unlimited storage, School and District shared Libraries, LMS integration, and more</li> <li>- Premium Plus lesson delivery features, including Live Teacher Annotation and Co-Teaching</li> </ul>		
<p>Online Training:</p> <p>Webinar: Up to 2-hour session with a Nearpod Trainer for up to 50 participants.</p>	16 Webinar Sessions	\$7,200.00
	<b>Total</b>	(USD) \$249,260.00

<p><b>Terms</b></p> <p>This Sales Order is valid until: July 31, 2022  Service will run from 08/02/2022 until 08/01/2023, or from when customer is first provided access to the purchased service(s) for a length of time equal to the time between the Start Date and End Date, whichever is later. The agreed upon price for this timeframe is (USD) \$249,260.00.</p> <p>Nearpod price quotes are confidential, unless disclosure is required by subpoena or state law. Education List Pricing is only available for PreK-12 Education customers. Please submit this price quote attachment with your Purchase Order. Tax-exempt customers should include their tax-exempt number on their Purchase Order.</p> <p>This Sales Order covers the Nearpod and/or Flocabulary Services described herein and is governed by the Nearpod Terms and Conditions available online at: <a href="https://nearpod.com/terms-conditions">https://nearpod.com/terms-conditions</a>, the Nearpod Privacy Policy available online at: <a href="https://nearpod.com/privacy-policy">https://nearpod.com/privacy-policy</a>, the Flocabulary Terms of Use available online at: <a href="https://flocabulary.com/terms-of-use/">https://flocabulary.com/terms-of-use/</a>, and the Flocabulary Privacy Policy available online at: <a href="https://flocabulary.com/privacy-policy/">https://flocabulary.com/privacy-policy/</a>, as applicable.</p> <p><b>Training Policy</b></p> <p><b>Training Cancellation Policy</b>  Nearpod requests 48 hours notice to cancel or reschedule a confirmed session. If the session is not canceled but no one attends, this session will be considered expired.</p> <p><b>Minimum Attendance Policy</b>  Nearpod requests that at least 10 participants attend a confirmed training session. If there are fewer than 10 participants, the session may be modified and will not be recorded.</p> <p><b>Free Training Resources</b>  Access to daily public webinars, on-demand webinars and how-to resources and videos can be accessed here: <a href="http://nearpod.com/resources">http://nearpod.com/resources</a></p> <p><b>Customers providing a Purchase Order are required to remit payment within 30 days of invoicing. Otherwise, payment is required within 7 business days. Failure to remit payment may cause a disruption in service. By signing this Agreement, I certify that I am authorized to sign on behalf of the Customer and agree to the Terms and Conditions of this Sales Order and any documents incorporated herein.</b></p>
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If you are a Tax-exempt customer, please include your Sales Tax-Exempt Certificate with signed documents/proof of payment. Otherwise, applicable tax will be included in your invoice.

**Is a PO Required for Purchase?** Yes / No

If Yes, please provide PO number below and submit PO with this Sales Order.

If No, please return this Sales Order with Signature below and indicate payment method.

**Purchase Order (Net 30):**

Please provide PO #: \_\_\_\_\_

If PO is not provided, payment is due immediately via Credit Card, Check, ACH, or Wire

**Check, ACH or Wire**

\_\_\_\_\_

**Credit Card**

\_\_\_\_\_

Please provide email address to receive  
secure payment link:

\_\_\_\_\_

Expiration Date:

\_\_\_\_\_

Name on card:

\_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Tax Exempt #: \_\_\_\_\_

**Purchase Orders should be addressed to:**

Nearpod, Inc

1855 Griffin Rd. Suite A-290

Dania Beach, FL 33004

Email: ike@flocabulary.com or FAX: +1 305-655-1999

**Request for Taxpayer  
 Identification Number and Certification**

**Give Form to the  
 requester. Do not  
 send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type.  
 See Specific Instructions on page 3.

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**Nearpod Inc.**

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC

C Corporation

S Corporation

Partnership

Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ \_\_\_\_\_

**Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ▶ \_\_\_\_\_

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

(Applies to accounts maintained outside the U.S.)

**5** Address (number, street, and apt. or suite no.) See instructions.  
**1855 Griffin Road, A290**

**6** City, state, and ZIP code  
**Dania Beach, Florida 33004**

**7** List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

**Social security number**

			-						
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**OR**

**Employer identification number**

4	6	-	0	9	9	3	6	7	9
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**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign Here** Signature of U.S. person ▶ *Devinne Veen x CFO* Date ▶ 1/5/2022

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
  - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
  - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
  - Form 1099-S (proceeds from real estate transactions)
  - Form 1099-K (merchant card and third party network transactions)
  - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
  - Form 1099-C (canceled debt)
  - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*



<b>TITLE</b>	2022C0362 Contract_Nearpod_FINAL (1) - Felecia Moore (1)
<b>FILE NAME</b>	2022C0362 C...ore (1).pdf and 2 others
<b>DOCUMENT ID</b>	2185dc5641e0faca64d897e398101265030a2b3d
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

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## Document History



SENT

**09 / 28 / 2022**

21:34:59 UTC

Sent for signature to Jose Carrera (pep.carrera@nearpod.com) from amy.kierpal@nearpod.com  
IP: 71.65.238.249



VIEWED

**09 / 29 / 2022**

14:38:50 UTC

Viewed by Jose Carrera (pep.carrera@nearpod.com)  
IP: 73.1.226.102



SIGNED

**09 / 29 / 2022**

14:39:45 UTC

Signed by Jose Carrera (pep.carrera@nearpod.com)  
IP: 73.1.226.102



COMPLETED

**09 / 29 / 2022**

14:39:45 UTC

The document has been completed.