

Terms and Conditions

By accessing or registering on the Nearpod website, or by downloading any of the Nearpod mobile applications (collectively, "Nearpod Materials"), you agree to become bound by these Terms and Conditions. If you do not agree to all the Terms and Conditions, then you may not access the Nearpod website or use any of our products or service.

IMPORTANT NOTE: Nearpod is intended for use by teachers and by educational institutions, public or private.

If you are interested in using Nearpod for commercial or corporate purposes, we'll be happy to discuss your options, but first you should contact us at biz@nearpod.com. Commercial, corporate or other misuse of Nearpod may result in the cancellation of the account.

We provide our services to teachers, and Nearpod is available in the US to individuals aged 13 years or older.

Outside the US, if you are under the age of majority in your country of residence, you must review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it. We will notify you of any updates by posting on Nearpod and notifying you by email using the email address on your account.

Nearpod and the Nearpod Materials comply with applicable law, including the Family Educational Rights and Privacy Act (FERPA) and Children's Online Privacy Protection Act (COPPA). We do not intentionally collect any personally identifiable information from users under the age of 13. If you are a parent or guardian or teacher and believe that your child or student has provided Nearpod with personally identifiable information, please notify privacy@nearpod.com so that we can immediately delete the information from our servers.

Terms of Service

1. In order to access the Nearpod Materials, Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas, ("TAMU" or "You") you may be required to provide certain information (such as name, e-mail, etc.). You agree that any information you provide will always be accurate.
2. The Nearpod Materials may contain material that is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance, and graphics. Reproduction of such material outside the Nearpod Materials is prohibited.
3. Nearpod owns all legal right, title, and interest in and to the Nearpod Materials, including any intellectual property rights, whether those rights are registered or not, and wherever in the world those rights may exist. Attempting to copy, duplicate, reproduce, sell, trade, or resell the Nearpod Materials is strictly prohibited without our prior written agreement. Unauthorized use of the Nearpod Materials may give rise to a claim for damages and be a criminal offense.
4. By using the Nearpod Materials, you may provide contents and any other materials, information, ideas, concepts, and know-how ("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 Content you make available through your use of the Nearpod Materials. Nearpod does not control the Content hosted via the service, nor does it guarantee the accuracy, integrity or quality of such Content. 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.

We are not responsible or liable in any way for any Content provided by others. However, we reserve the right at all times to determine whether Content is appropriate and in compliance with this Agreement, and may pre-screen and remove Content at any time if such Content is found to be in violation of this Agreement or is otherwise objectionable.

Copyright Claims (Digital Millennium Copyright Act)

Nearpod respects the intellectual property rights of others, and requires that the people who use the Sites 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, to the extent permitted by law, you will be liable for damages if you make any material misrepresentations when making or countering a copyright infringement claim.

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

- a. 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.
- b. 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).
- c. 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.
- d. 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."
- e. 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."
- f. 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.
- g. Send written communication to the following contact:

18305 Biscayne Blvd.

Aventura, Florida 33160

h. Send electronically-signed communication to dmca@nearpod.com.

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):

- a. 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.
- b. Provide your name, postal address, telephone number, email address, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in Miami, Florida (if your address is outside of the United States, for any judicial district in which Nearpod may be found), and that you will accept service of process from the person who provided the initial notification of infringement or an agent of such person.
- c. 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."
- d. Sign the paper or affix an electronic or digital signature to the communication in a form reasonably acceptable to Nearpod.

e. Send written communication to the following address:

18305 Biscayne Blvd.

Aventura, Florida 33160

f. Send electronically- or digitally-signed communication to copyright@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.

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.

5. 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). 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

6. You agree the use of any data related to the Nearpod Materials shall be in accordance with Nearpod's Privacy Policy.

7. We may provide various open communication tools on the Nearpod Materials, such as blog comments, blog posts, chat forums, message boards, and the like. By posting information or otherwise using any open communication tools as mentioned, you agree that you will not upload, post, share, or otherwise distribute any content that: (i). is illegal, threatening, defamatory, harassing, degrading, intimidating, fraudulent, racist, and pornographic or contains any type of inappropriate or explicit language; (ii). infringes any trademark, copyright, trade secret, or other proprietary right of any party; or (iii). attempts any type of unauthorized advertising.

8. 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.

9. 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 this Agreement.

Data Ownership

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

Pricing Terms and Conditions

In case you decide to upgrade to a Nearpod paid account and to provide Nearpod with your payment account information, you hereby agree to the following payment terms and conditions:

Paid Accounts

Nearpod offers you the option of upgrading your account to increase your storage and enjoy additional features for a fee. If you choose to upgrade, your account will be converted to a Paid Account and will

not be subject to some of the restrictions placed on Free Accounts as described at <https://nearpod.com/pricing>.

Nearpod accepts credit cards and will automatically charge your credit card before upgrading your account. If your Nearpod balance is not paid within seven (7) days after Nearpod provides you with notification that your account is in arrears, Nearpod reserves the right to use our discretion to delete some or all of your files so as to reduce your storage space and to convert your Nearpod Paid Account back to a Free Account.

Billing

The fees for your Paid Account will be billed from the date you convert to a Paid Account and on each renewal thereafter unless and until you cancel your account. Nearpod will automatically bill your credit card on the calendar day corresponding to the commencement of your Paid Account. All fees and charges are pre-paid and nonrefundable, and there are no refunds or credits for partially used periods. If payment is not received from the credit card issuer, you agree to pay all amounts due upon demand. You must provide current, complete and accurate billing and credit card information. In certain instances, the issuer of the credit card may charge a foreign transaction fee or related charges, which you shall be responsible to pay.

Cancelling Your Account

You may cancel your Nearpod Paid Account at anytime, and cancellation will be effective immediately. Your Nearpod Paid Account will continue in effect unless and until you cancel your Paid Account or we terminate it. You must cancel your Paid Account before it renews in order to avoid billing of the next period's fees to your credit card. Should you elect to cancel your Paid Account, please note that you will not be issued a refund for any previous payments.

Disclaimer of Warranties

The Nearpod Materials are provided "as is." Nearpod hereby disclaims all warranties of any kind, express or implied, including, without limitation, the 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.

You understand that you use the Nearpod Materials at your own discretion and risk. You are solely responsible for any damage to your computer or other devices and for any loss of data that may result from the download of such content. We do not provide any warranty or guarantee as to the accuracy, performance, completeness, or suitability of the information and materials found or offered on the Nearpod Materials. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law. Nearpod does not guarantee or warrant that any content you may store or access through the Nearpod service will not be subject to inadvertent damage, loss or removal.

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

Limitation of Liability

To the extent permitted by law, in no event will Nearpod be liable with respect to any subject matter of this agreement under any contract, negligence, strict liability, or other legal or equitable theory for: (i) any special, incidental, or consequential damages; (ii) the cost of procurement for substitute products or services; (iii) for interruption of use or loss or corruption of data; or (iv) for any amounts that exceed the fees paid by you to Nearpod.

General Representation and Warranty

You represent that (i) your use of our Product will be in strict accordance with the Privacy Policy as stated below, with this Agreement 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) and (ii) your use of the Product will not infringe or misappropriate the intellectual property rights of any third party.

Miscellaneous

This Agreement constitutes the entire agreement between Nearpod and you concerning the subject matter hereof, and it may only be modified by a written amendment signed by an authorized executive of Nearpod, or by the posting by Nearpod of a revised version. Except to the extent that applicable law, if any, provides otherwise, this Agreement and any access to or use of the Nearpod Materials will be governed by the laws of the state of Texas, U.S.A.

Contact Information: 8305 Biscayne Blvd.

Aventura, Florida 33160

If you have any questions or comments about this Agreement or our Privacy Policy, you can contact us at: privacy@nearpod.com

State Contracting Requirements

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the Nearpod or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Nearpod agrees that any payments owing to Nearpod under this Agreement may be applied directly toward certain debts or delinquencies that Nearpod owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Texas Government Code requires the following statement: "Under Section 2155.004, Texas Government Code, the Nearpod certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Public Information. Nearpod acknowledges that TAMU is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon TAMU's written request, Nearpod will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to TAMU in a non-proprietary format acceptable to TAMU. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TAMU has a right of access. Nearpod acknowledges that TAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

Venue. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against TAMU shall be in Brazos County, Texas.

Force Majeure. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

Dispute Resolution. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU and Nearpod to attempt to resolve any claim for breach of contract made by Nearpod that cannot be resolved in the ordinary course of business. Nearpod shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of TAMU, who shall examine Nearpod's claim and any counterclaim and negotiate with Nearpod in an effort to resolve the claim.

Access by Individuals with Disabilities. Nearpod represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TAMU under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Nearpod becomes aware that the EIRs, or any portion thereof, do not comply then Nearpod represents and warrants that it will, at no cost to TAMU, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

a. REQUIREMENT AND STANDARDS. Nearpod certifies that each information and communication technology ("ICT") product or service furnished under this Agreement satisfies the requirements (including exceptions) specified in the regulations [36 CFR Part 1194] implementing Section 508 of the

Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.0 Level A and Level AA Success Criteria and Conformance Requirements (2008) and the functional performance criteria.

b. DOCUMENTATION. Nearpod shall maintain and retain, and make available to TAMU for review upon request, records of any testing or simulations conducted and all other documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria.

c. REMEDIATION. If TAMU notifies Nearpod that any furnished ICT product or service is not in compliance with such requirements and standards, Nearpod shall, at no cost to TAMU, remediate or replace the non-compliant ICT products or services within the period specified by TAMU. If Nearpod fails to complete the remediation or replacement within the specified time, TAMU may terminate this Agreement without liability or have the necessary remediation performed on TAMU's behalf, and Nearpod shall promptly reimburse TAMU for any expenses incurred by TAMU on such remediation.

Family Educational Rights and Privacy Act. Nearpod and its employees will adhere to all Texas and Federal law that regulates the confidentiality and protection of the confidential information and shall ensure proper notification of any breach thereof required under relevant law including, but not limited to, the requirements pertaining to the security, confidentiality, and privacy of the confidential information set forth in the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). Nearpod agrees to indemnify and hold harmless TAMU for any damages, costs or expenses finally awarded against TAMU in any legal action as a direct result of Nearpod's failure to comply with its obligations to TAMU under this Agreement with respect to the nondisclosure of confidential information protected under the Family Educational Rights and Privacy Act.

Franchise Tax Certification. If Nearpod is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Nearpod certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Nearpod is exempt from the payment of franchise (margin) taxes.

Loss of Funding. Performance by TAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU will issue written notice to Nearpod and TAMU may terminate this Agreement without further duty or obligation hereunder. Nearpod acknowledges that appropriation of funds is beyond the control of TAMU.

Prompt Payment Act. Payment from TAMU will be due thirty (30) days from the date TAMU receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

State Auditor's Office. Nearpod understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Nearpod agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Nearpod will include this provision in all contracts with permitted subcontractors.

Non-Waiver. Nearpod expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

Nearpod Certification regarding Boycotting Israel. Pursuant to Chapter 2270, Texas Government Code, Nearpod certifies Nearpod (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Nearpod acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Nearpod Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Nearpod certifies Nearpod (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Nearpod acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, Nearpod and each person signing on behalf of Nearpod certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

ACCEPTED & AGREED:

Nearpod

Texas A&M University

Signature

Signature

DEAN K. ENDLER
UNIVERSITY CONTRACTS OFFICER

Name & Title

VP of Finance

Name & Title

Date

7/30/2018

Date

31 JULY '18