



NEW YORK ED LAW 2-D NEARPOD TERMS AND CONDITIONS SUPPLEMENT (“SUPPLEMENT”)

between

Nearpod Inc. (“Nearpod”) and [Olean City School District]
and
Accompanying Bill of Rights

1. **Purpose**

(a) Olean City School District (hereinafter “District”) and Nearpod (hereinafter “Vendor”) are parties to a contract, available at: www.nearpod.com/terms-conditions or www.flocabulary.com/terms-of-use, as applicable, along with any accompanying Sales Order, if applicable, pursuant to which Vendor will receive student data that is protected under New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”) from the District for purposes of providing certain products or services to the District (the “Master Agreement”).

(b) This Supplement supplements the Master Agreement to which it is attached, to ensure that the Master Agreement conforms to the requirements of Section 2-d. This Supplement together with the Master Agreement, a Sales Order (to the extent applicable), a copy of the District’s Bill of Rights for Data Security and Privacy signed by Vendor (attached hereto as **Exhibit “A”** and incorporated by reference), and the Supplemental Information about the Master Agreement between District and Nearpod (attached hereto as **Exhibit “B”** and incorporated by reference) constitutes the entire agreement between the parties.

(c) In consideration of the mutual promises set forth in the Master Agreement, Vendor agrees that it will comply with all terms set forth in the Master Agreement and this Supplement. To the extent that any terms contained in the Master Agreement, or any terms contained in any other exhibit(s) attached to and made a part of the Master Agreement, conflict with the terms of this Supplement, the terms of this Supplement will apply and be given effect. In addition, in the event that Vendor has any additional online or written Privacy Policies or Terms of Service (collectively, “TOS”) that would otherwise be applicable to its customers or users of the products or services that are the subject of the Master Agreement between the District and Vendor, to the extent that any terms of the TOS, that are or may be in effect at any time during the term of the Master Agreement, conflict with the terms of this Supplement, the terms of this Supplement will apply and be given effect.

2. **Definitions**

(a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor may receive from the District pursuant to the Master Agreement.

(b) "Protected Data" means Student Data, to the extent applicable to the product or service being provided to the District by Vendor pursuant to the Master Agreement.

(c) "NIST Cybersecurity Framework" means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1).

3. **Confidentiality of Protected Data**

(a) Vendor acknowledges that the Protected Data it receives pursuant to the Master Agreement originates from the District and that this Protected Data belongs to and is owned by the District.

(b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with all applicable federal and state law (including but not limited to Section 2-d).

4. **Data Security and Privacy Plan**

As more fully described herein, throughout the term of the Master Agreement, Vendor will have a Data Security and Privacy Plan in place to protect the confidentiality, privacy, and security of the Protected Data it receives from the District.

Vendor's Plan for protecting the District's Protected Data includes, but is not limited to, its agreement to comply with the terms of the District's Bill of Rights for Data Security and Privacy, a copy of which is set forth below and has been signed by the Vendor.

Additional components of Vendor's Data Security and Privacy Plan for protection of the District's Protected Data throughout the term of the Master Agreement are as follows:

(a) Vendor will implement all applicable state, federal, and local data security and privacy requirements including those contained within the Master Agreement and this Supplement.

(b) Vendor will have specific administrative, operational, and technical safeguards and practices in place to protect Protected Data that it receives from the District under the Master Agreement.

(c) Vendor will comply with all obligations contained within the section set forth in this Supplement below entitled "Supplemental Information about a Master Agreement between District and Nearpod." Vendor's obligations described within this section include, but are not limited to:

- (i) its obligation to require subcontractors or other authorized persons or entities to whom it may disclose Protected Data (if any) to execute written agreements acknowledging that the data protection obligations imposed on Vendor by state and federal law and the Master Agreement shall apply to the subcontractor, and
- (ii) its obligation to follow certain procedures for the return, transition, deletion and/or destruction of Protected Data upon termination, expiration or assignment (to the extent authorized) of the Master Agreement.

(d) Vendor has provided or will provide training on the federal and state laws governing confidentiality of Protected Data for any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who will have access to Protected Data.

(e) Vendor will manage data security and privacy incidents that implicate Protected Data and will develop and implement plans to identify breaches and unauthorized disclosures. Vendor will provide prompt notification to the District of any breaches or unauthorized disclosures of Protected Data in accordance with the provisions of Section 5 of this Supplement.

5. **Notification of Breach and Unauthorized Release**

(a) Vendor will promptly notify the District of any breach or unauthorized release of Protected Data it has received from the District in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.

- (b) Vendor will provide such notification to the District by contacting:
- Name of Contact: _____ Marc Friends _____
- Title: _____ Technology Coordinator _____
- School/District Name: _____ Olean City School District _____
- Address: _____ 410 W Sullivan Street _____
- City/State/Zip: _____ Olean, NY 14760 _____
- Email: _____ dpo@oleanschools.org _____

(c) Vendor will cooperate with the District and provide as much information as possible directly to District Contact, as specified in section (b), above, or his/her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of Protected Data involved, an estimate of the number of records affected, the schools within the District affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.

(d) Vendor acknowledges that upon initial notification from Vendor, the District, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor agrees not to provide this notification to the CPO directly unless requested by the District or otherwise required by law. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after

having been initially informed of the incident by the District, Vendor will promptly inform the District, so long as legally permitted to do so.

6. Additional Statutory and Regulatory Obligations

Vendor acknowledges that it has the following additional obligations under Section 2-d with respect to any Protected Data received from the District, and that any failure to fulfill one or more of these statutory or regulatory obligations will be deemed a breach of the Master Agreement and the terms of this Data Sharing and Confidentiality Agreement:

(a) To limit internal access to Protected Data to only those employees or subcontractors that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA); *i.e.*, they need access in order to assist Vendor in fulfilling one or more of its obligations to the District under the Master Agreement.

(b) To not use Protected Data for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement and the Master Agreement to which this Supplement is attached.

(c) To not disclose any Protected Data to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations to the District and in compliance with state and federal law, regulations, and the terms of the Master Agreement, unless:

- (i) the parent or eligible student has provided prior written consent; or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to the District no later than the time of disclosure unless such notice is expressly prohibited by the statute or court order.

(d) To maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Data in its custody.

(e) To use encryption technology to protect Protected Data in its custody while in motion or at rest, using a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5.

(f) To adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.

(g) To not sell Protected Data nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.

(h) To notify the District, in accordance with the provisions of Section 5 of this Data Sharing and Confidentiality Agreement, of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of applicable state or federal law, the District's Bill of Rights for Data Security and Privacy, the District's policies on data security and privacy, or other binding

obligations relating to data privacy and security contained in the Master Agreement and this Supplement.

(i) To cooperate with the District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Protected Data.

(j) To pay for or promptly reimburse the District for the full cost of notification, in the event the District is required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

In witness whereof, this Supplement is entered into by the Parties as of the date last signed by the parties below.

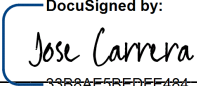

<p>Nearpod Inc.</p> <p>DocuSigned by:</p> <p>By:  33B8AE5BEDFE484...</p> <p>Name: Jose Carrera</p> <p>Title: Chief Executive officer</p> <p>Date: 2/4/2021</p>	<p>District [Olean City School District]</p> <p>By:  Digitally signed by Marc Friends DN: cn=Marc Friends, o=Olean City School District, ou, email=marcfriends@oleanschools.org, c=US Date: 2021.02.04 10:22:06 -05'00'</p> <p>Name: Marc Friends</p> <p>Title: Technology Coordinator</p> <p>Date: 2-4-21</p>
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Exhibit “A”

Parent Bill of Rights for Data Security and Privacy

Pursuant to New York State Education Law 2-d, Parents, Legal Guardians, and persons in parental relation to a student are entitled to certain rights regarding their child’s personally identifiable information, as defined by Education Law 2-d. This document contains a plain-English summary of such rights.

1. A student’s personally identifiable information cannot be sold or released for any commercial purposes.
2. Parents have the right to inspect and review the complete contents of their child’s educational records maintained by Olean City School District.
3. State and Federal Laws protect the confidentiality of personally identifiable student information, and safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection must be in place when data is stored or transferred.
4. A complete list of all student data elements collected by New York State is available for review at the following website:

<http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>

The list may also be made available by writing to:

Office of Information & Reporting Services
New York State Education Department
Room 863 EBA,
89 Washington Avenue
Albany, NY 12234

5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to:

Olean City School District
410 W. Sullivan St.
Olean, NY 14760
Email: DPO@OleanSchools.org

OR

Chief Privacy Officer
New York State Education Department
89 Washington Avenue, EB 152
Albany, NY 12234

Phone: (518) 474-0937

Email: Privacy@nysed.gov

6. Each contract with a third-party contractor which will receive student data, or teacher or principal data will include information addressing the following:
 - a. The exclusive purposes for which the student data or teacher or principal data will be used.
 - b. How the third-party contractor will ensure that the subcontractors, persons, or entities that the third-party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements.
 - c. When the agreement expires and what happens to the student data or teacher and principal data upon expiration of the agreement.
 - d. If and how a parent, student, a student over eighteen years of age, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and
 - e. Where the student data or teacher or principal data will be stored, and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
 7. Third-party contractors are also required to:
 - a. Provide training on federal and state law governing confidentiality to any officers, employees, or assignees who have access to student data or teacher or principal data.
 - b. Limit internal access to education records to those individuals who have a legitimate educational interest in such records.
 - c. Not use educational records for any other purpose than those explicitly authorized in the contract.
 - d. Not disclose personally identifiable information to any other party without the prior written consent of the parent or eligible student; or (ii) unless required by statute or court order and the third-party contractor provides a notice of the disclosure to the New York State Education Department, board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
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- e. Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody.
 - f. Use encryption technology to protect data while in motion or in its custody from unauthorized disclosure as specified in Education Law 2-d.
 - g. Notify Olean City School District of any breach of security resulting in an unauthorized release of student data, in the most expedient way possible and without unreasonable delay.
 - h. Provide a data security and privacy plan outlining how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract.
 - i. Provide a signed copy of this Bill of Rights to the Olean City School District thereby acknowledging that they aware of and agree to abide by this Bill of Rights.
8. This Bill of Rights is subject to change based on regulations of the Commissioner of Education and the New York State Education Department Chief Privacy Officer, as well as emerging guidance documents.

Exhibit "B"
**Supplemental Information about a Master Agreement between
District and Nearpod**

District has entered into a Master Agreement with Nearpod, which governs the availability to the District of the following products or services (check as applicable):

- ☐ Nearpod
☐ Flocabulary

Pursuant to the Master Agreement (which includes a Data Sharing and Confidentiality Agreement), the District may provide to Vendor, and Vendor will receive, personally identifiable information about students that is protected by Section 2-d of the New York Education Law ("Protected Data").

Exclusive Purposes for which Protected Data will be Used: The exclusive purpose for which Vendor is receiving Protected Data from the District is to provide the District with the functionality of the products or services listed above. Vendor will not use the Protected Data for any other purposes not explicitly authorized above or within the Master Agreement.

Oversight of Subcontractors: In the event that Vendor engages subcontractors or other authorized persons or entities to perform one or more of its obligations under the Master Agreement (including subcontracting hosting of the Protected Data to a hosting service provider), it will require those subcontractors or other authorized persons or entities to whom it will disclose the Protected Data to execute legally binding agreements acknowledging their obligation under all applicable laws and to comply with all applicable data protection, privacy and security requirements required of Vendor under the Master Agreement and applicable state and federal law and regulations.

Duration of Agreement and Protected Data Upon Termination or Expiration:

- The Master Agreement commences on 01/01/2021 and expires on 12/31/2025.
- Upon expiration of the Master Agreement without renewal, or upon termination of the Master Agreement prior to its expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by the District, in writing, Vendor will assist the District in exporting all Protected Data previously received back to the District for its own use, prior to deletion, in such formats as may be requested by the District.
- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with the District as necessary to transition Protected Data to the successor Vendor prior to deletion.
- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever upon termination or expiration of the Master Agreement without renewal. Notwithstanding anything to the contrary in this Agreement or otherwise, this requirement does not apply to any backups that Contractor may create in the usual course of business (i.e., Business Continuity Plans) that will be deleted in accordance with Vendor's internal data deletion policies unless that backup is used to restore Contractor's systems, at which point, the data belonging to District will be deleted. Upon written request (no earlier than sixty days following expiration/termination of the Master Agreement), Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide the District with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by the District to Vendor, by contacting the District regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA).

Data Storage and Security Protections: Any Protected Data that Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States.

Encryption of Protected Data: Vendor (and, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology that complies with Section 2-d of the New York Education Law.
