

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as “SBBC”),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**NEARPOD INC.**

(hereinafter referred to as “VENDOR”),  
whose principal place of business is  
1855 Griffin Rd. Suite A-290  
Dania Beach, Florida 33004

**WHEREAS**, VENDOR’s software is designed to modernize traditional instruction and engage students. It is compatible on any device, operating system, Learning Management System (“LMS”), or web browser to easily integrate into SBBC’s technology landscape; and

**WHEREAS**, VENDOR’s software allows teachers to present content by synchronizing with student devices, to engage students by integrating rich multimedia within lessons, and to assess students in real-time through formative assessments, and VENDOR is willing to provide such software to SBBC; and

**WHEREAS**, Rule 6A-1.012, 11(b) and 14, Florida Administrative Code and School Board Policy 3320, Section II, H, waive the requirement of competitive solicitation for the purchase of any type of copyrighted materials, instructional materials, and computer software.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **ARTICLE 1 - RECITALS**

1.01 **Recitals**. The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement**. Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement commences on August 1, 2020 and concludes on July 31, 2021. The term of the Agreement may be extended for two (2) additional one year periods, by mutual agreement between SBBC and VENDOR.

2.02 **Description of Goods or Services Provided.** Description of goods and/or services are detailed in **Attachment A**.

2.03 **Cost and Payment.** SBBC shall pay VENDOR Five Hundred Sixty-six Thousand Three Hundred Dollars and 00/100 Cents (\$566,300.00) after receipt of an appropriate invoice for services rendered as detailed below and further described in **Attachment B**:

(a) Five Hundred Thousand Dollars and 00/00 Cents (\$500,000.00), on or after August 1, 2020.

(b) Sixty-Six Thousand Three Hundred Dollars and 00/100 Cents (\$66,300.00), after completion of professional development services.

(c) If this Agreement is amended in writing and approved by both parties to add any additional licenses, the price for such additional licenses will remain Sixty-two Dollars and 50/100 Cents (\$62.50) per teacher for the same products, features, and capabilities.

2.04 **Disclosure of Education Records.**

(a) SBBC will provide the education records listed below to VENDOR for the following purposes:

<b>Type of Data</b>	<b>How</b>	<b>What it's used for/ Purpose</b>
Full Student Name	via Learning Management System (LMS)	Generate post session reports
Student Name (First Name and First Initial)	Manually by student when joining session	Generate post session reports
Student Nickname	Manually by student when joining session	Generate post session reports
Voice Recording	Students' use of Nearpod	For literacy and speech skills
Student Generated Content including survey, poll, or quiz, multiple choice responses, responses to open ended	Students' use of Nearpod	For teacher formative assessment and check for understanding
Grade level and subject areas	Teacher's use of Nearpod	Create personalized experiences in the product for teachers. For example, to recommend appropriate lessons for each grade.
Anonymized usage metrics, such as: Google Analytics and Mixpanel.	Teacher's use of Nearpod	Unidentifiable teacher activity metrics that are used to guide how our product is being used.
IP addresses of users, use of Cookies	By visiting the Nearpod website to join a lesson	Identify and respond to security related concerns. This information is not stored.

(b) VENDOR is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records in the implementation of student information and education management systems. Pursuant to the Family

Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 years or over is needed for any types or purposes of disclosures of education records beyond those listed in this section.

(c) The requirements of this section shall supersede any uses of education records as listed in VENDOR's privacy policy.

**2.05 VENDOR Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, VENDOR shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 years or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical, and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com), and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any third-party complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by VENDOR, or an officer, employee, agent, representative, contractor, or sub-contractor of VENDOR to the extent that VENDOR or an officer, employee, agent, representative, contractor, or sub-contractor of VENDOR either intentionally or negligently violates the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section survives the termination of all performance required or conclusion of all obligations existing under this Agreement.

**2.06 SBBC Disclosure of Employee Records.**

(a) SBBC will provide the following employee records to VENDOR:

- 1) First and last name
- 2) SBBC email address
- 3) School location

(b) VENDOR will utilize employee's records to create user access to VENDOR's system.

(c) VENDOR shall not use the employee records listed for any purpose other than those listed above or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law.

**2.07 Inspection of VENDOR's Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's applicable records, regardless of the form in which they are kept, shall be open to inspection and

subject to audit, inspection, examination, evaluation, and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations, and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

(b) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to VENDOR's facilities and to any and all records related to this Agreement and shall be provided adequate and appropriate workspace in order to exercise the rights permitted under this section.

(d) Failure to Permit Inspection. Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any VENDOR's claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually entitled, VENDOR shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods specifically with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is

intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director, Innovative Learning  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

To VENDOR: Nearpod Inc.  
Maurice Heiblum, President & COO  
1855 Griffin Rd. Suite A-290  
Dania Beach, Florida 33004

With a Copy to: Nearpod Inc. – Legal Department  
Attn: Natali Barski-Meyman, Esq.  
1855 Griffin Rd. Suite A-290  
Dania Beach, Florida 33004

2.09 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

2.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the

Agreement if **VENDOR** does not transfer the public records to SBBC. Upon completion of the Agreement, **VENDOR** shall transfer, at no cost, to SBBC all public records in possession of **VENDOR** or keep and maintain public records required by SBBC to perform the services required under the Agreement. If **VENDOR** transfers all public records to SBBC upon completion of the Agreement, **VENDOR** shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If **VENDOR** keeps and maintains public records upon completion of the Agreement, **VENDOR** shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

**IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.**

2.11 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) **By SBBC:** SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

(b) **By **VENDOR**:** **VENDOR** agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all third-party claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by **VENDOR**, its agents, servants or employees; the equipment of **VENDOR**, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of **VENDOR** or the negligence of **VENDOR**'s agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by **VENDOR**, SBBC or otherwise.

2.12 **Insurance Requirements.** **VENDOR** shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** **VENDOR** shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Technical/Errors & Omissions. VENDOR shall maintain Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per claim covering services provided under this Agreement.

(c) Workers' Compensation. VENDOR shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) Auto Liability. VENDOR shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) Acceptability of Insurance Carriers. The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) Verification of Coverage. Proof of the required insurance must be furnished by VENDOR to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) calendar days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within thirty (30) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.13 Equal Opportunity Provision. The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex, or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.



2.14 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.15 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.16 **Incorporation by Reference.** Attachments A and B attached hereto and referenced herein are incorporated into this Agreement by reference.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third-Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors, or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors, or assignees.

3.04 **Default.** The parties agree that, if either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days' written notice to cure the default. However, if said default cannot be cured within said thirty (30) calendar day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure

time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) calendar days' written notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar days' written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There

shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC. Notwithstanding the foregoing, VENDOR may assign this Agreement without the consent of SBBC, in relation to a corporate restructuring, merger, acquisition, or the sale of all or substantially all of a VENDOR's assets. Should VENDOR experience a corporate restructuring, merger, acquisition, or the sale of all or substantially all of its assets, it shall notify SBBC in writing and SBBC shall have the option to terminate VENDOR without any liability pursuant to section 3.05.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles, and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe, or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** If any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such will not affect the remaining portions of this Agreement and the same will remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses, or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county or municipal governing bodies, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival**. All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration**. SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals**. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **Authority**. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date first above written.

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

**FOR VENDOR:**

(Corporate Seal)

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary  
-or-

**NEARPOD INC.**

DocuSigned by:  
*Jose Carrera*  
By \_\_\_\_\_  
33B8AE5BEDFE484...  
Name Jose Carrera  
Title Chief Executive Officer

DocuSigned by:  
*Natali Baraki*  
\_\_\_\_\_  
B6E1BF82F4434C4...  
Witness

DocuSigned by:  
*Herbie Guzman*  
\_\_\_\_\_  
21C2349A3A04EB...  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ (date) by \_\_\_\_\_ (name of officer or agent, title of officer or agent) of \_\_\_\_\_ (name of corporation acknowledging), a \_\_\_\_\_ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

My Commission Expires:

\_\_\_\_\_

Signature – Notary Public

\_\_\_\_\_  
Notary's Printed Name

\_\_\_\_\_  
Notary's Commission No.

(SEAL)



## ATTACHMENT A

### SCOPE OF SERVICES

#### **Nearpod Instructional Software:**

Nearpod's award-winning instructional software is designed to modernize traditional instruction and engage students. It is compatible on any device, operating system, LMS or web browser to easily integrate into your technology landscape. Software features allow teachers to present content by synchronizing with student devices, engage students by integrating rich multimedia within lessons and assess students in real-time through formative assessments. Additionally, our intuitive instructional software provides administrative reporting tools and shared school/district libraries to support school/district-wide initiatives, foster collaboration, and ensure oversight.

- Synchronize to student devices & capture real-time student feedback through formative assessment.
- Eliminate multi-tab teaching through the integration of multiple media in one seamless experience.
- Maximize district investments with LMS, LTI & software integrations.

#### **Nearpod Lesson Library:**

Nearpod offers **7,000+ customizable, standards-aligned lessons** for all subject areas and grade levels. Designed in partnership with respected publishers and built on research-based instructional models, the Nearpod lesson library saves teachers time with ready-to-teach content and provides exemplars on how teachers can transform their own content.

- Drive deeper learning with rigorous content from well-known publishers in all academic areas.
- Support all learners with research-based instructional models such as Gradual Release of Responsibility, BCSC's 5e Model and Universal Design for Learning.
- Search by standards, resource type, and grade level to align with your instructional needs.

#### **Digital Citizenship & Literacy:**

Nearpod's Digital Citizenship & Literacy (DCL) program is a four-part series that offers a comprehensive K-12 curriculum that is standards-aligned, using research-based instructional models to support a district-wide implementation. As students navigate the modern world, DCL is your central resource to teach **Digital Citizenship, Media Literacy, Technology Applications, and Coding**. Featuring our partnerships with *Common Sense Education* and *Codemonkey*, over 250 ready-to-teach, customizable lessons cover topics such as cyberbullying, evaluating popular social media sites, creative productivity apps, computational thinking, programming, and more.



- Access to the newest digitally enhanced content from the nation's leading digital citizenship curriculum from Common Sense Education.
- Assess and apply knowledge with authentic practices and applications that drive meaningful discussions including PBLs.
- Access to a library of up-to-date content that grows as quickly as the digital landscape evolves.

### **College & Career Exploration:**

Nearpod's College & Career Exploration (CCE) supplemental curriculum is a K-12 solution that provides equal access to future opportunities as students explore college pathways and career clusters. This program leverages dynamic media, including virtual reality, to expose students to experiences and provides a critical lens, so students can make informed decisions about life beyond school, and provides direct instruction in the skills they need when they get there. This flexible curriculum is designed to be delivered by any teacher, in any setting, so that all students have access to lessons in **Career Exploration, College Exploration, Learning Strategies, and Financial Literacy**, with over 175 ready-to-teach, customizable learning experiences.

### **Nearpod SEL:**

Nearpod's Social Emotional Learning (SEL) supplemental curriculum is a K-12 solution to provide direct instruction in SEL competencies, built from CASEL's leading framework. Create positive, safe, and empowering learning environments with over 125 lessons in the following topics: **SEL in Action, SEL in Digital Life, Growth Mindset Practices, Lifelong Learning Strategies, and Mindful Moments.**

### **Nearpod for EL**

Nearpod EL lessons have built-in scaffolds to address all English Language Proficiency levels and are aligned to state standards. Over **700 ready-to-teach, customizable lessons** use virtual reality, 3D images, audio, and more to create a truly inclusive and active learning experience that engages students in all modalities. Nearpod EL addresses Every Student Succeeds Act's (ESSA's) focus on Academic Achievement and the need for ELP standards to be aligned with academic standards. Support English learners with research-based instructional models such as The Cognitive Academic Language Learning Approach (CALLA), Mutual Adaptive Learning Paradigm Instructional Approach (MALA), and Sheltered Instruction Observation Protocol (SIOP). Access hundreds of lessons that include Academic Vocabulary, Building Background, Content Connectors, Newcomer Phrases and VR Tours for English learners. Backed by recognized expert partners including Dr. Kate Kinsella, Dr. Robert Marzano and Dr. Diane S. Fenner.





## Supporting Broward County Initiatives

### Alignment to Innovative Learning

Nearpod aligns well with the Innovative Learning team mission of empowering all learners to achieve their highest potential through customized learning, creativity, collaboration, and the infusion of digital tools and resources.

#### Teaching with Technology

- Design Instruction - allow teachers to foster student interests when developing lessons.
- Deliver Instruction - deliver lessons and assessments in consideration of the whole class as well as individual learners.
- Foster Meaningful Dialogue- leverage technology to support rich discourse in a safe classroom environment.
- Sustain Student Enthusiasm - increase opportunities for celebration and enhance student voice.

#### Canvas Integration

- Nearpod has been contributing to the usage of Canvas with MoM increase (25%+) of Nearpod lessons launched within Canvas.
- In addition, professional development is conducted through Canvas resulting in 100+ teachers completing Nearpod Certified Educator courses in the 2018 Fall Semester.
- Canvas Gradebook Integration - allows teachers to use the Canvas SpeedGrader to efficiently import student grades into Pinnacle.
- Curriculum Mapping - In collaboration with Broward and Nearpod teams, we are able to utilize current courses in the Canvas Commons and integrate Nearpod lessons that align to the standards addressed. This process makes it seamless for teachers to integrate aligned Nearpod lessons in their daily curriculum routine.

Below is an example of how Nearpod can align with current curriculum maps within BCPS.



### **NewsELA Integration**

- a) Nearpod has partnered with NewsELA to incorporate high-interest and relevant leveled texts into Nearpod's signature interactive learning experiences.
- b) Through this partnership, NewsELA's multidisciplinary, standards-aligned articles are embedded into 100 ready-to-run Nearpod lessons that leverage Nearpod's signature features such as virtual reality and interactive assessments.

### **Office 365 Integration**

- a) Nearpod allows educators the ability to create interactive lessons and instantly assign and share lessons through single sign-on with Office 365. Integrations with Microsoft One Drive, PowerPoint, Sway, Teams, and other applications are also included.
- b) Teachers today often face issues with fragmentation between edtech tools, and this partnership increases the interoperability between platforms to deliver a user-friendly experience for teachers.
- c) Nearpod users can access files such as images, videos, and PowerPoints, from OneDrive, where students are also able to save their notes within the Nearpod platform.

### **Alignment to ESOL and World Languages**

- a) Nearpod is used by Broward's Developmental Language Arts teachers as well as a number of World Language teachers to scaffold instruction for language learners. With Nearpod's EL content bundle, teachers are able to leverage lessons for Academic Vocabulary, Building Background, Newcomer resources, and delivering alongside core content lessons.

### **Alignment to Reimagining Middle Grades**

- a) Enabling access to specialized live instruction through distance learning across multiple classrooms and schools
- b) Aligning to Social Emotional Learning initiatives such as providing 175+ lessons that build on Social Emotional Learning Skills.

### **Alignment to Applied Learning (Civic Engagement)**

- a) Engaging 155 Civic Engagement teachers with opportunities to provide students with background knowledge for current world events in preparation for upcoming debates
- b) Providing standardized curriculum and resources for teachers facilitating enrichment programs during Broward's Align Summer Camps.

### **Alignment to Applied Learning (STEM)**

- a) Nearpod will provide for a platform to create standardized content created by the Applied Learning STEM team and allow for distribution and access through the Nearpod District Library.
- b) In grades 6-12, Computer Science teachers who are using code.org will be able to integrate their Google Slides to incorporate formative assessments and multimedia experiences within Nearpod.



**Alignment to School Safety initiatives**

a) Nearpod is offering to leverage our virtual reality capabilities to enhance communication and visualization of best School Safety practices for school administration.

**Alignment to K-12 Digital Citizenship and Media Literacy**

a) Nearpod's Digital Citizenship and Media Literacy offering will provide needed ready to teach resources such as Keyboarding, Digital Citizenship, Evaluating Media, Social Media, Technology applications and Coding. This content is age appropriate and relevant to the current world of all students K-12.

**Alignment to SEL**

a) Nearpod will be utilized to mobilize SEL initiatives from both a student facing perspective as well as a teacher facing resource. Nearpod's partnership to trusted experts, like the New Teacher Center, has provided professional learning experiences with a focus on Creating Equitable Classrooms, Cultural Influences on Learning, Building Empathy, Emotional Intelligence and more.

**Alignment to Career, Technical, Adult Community Education**

a) Nearpod provides equal access to experiences through virtual College and Career Explorations to increase exposure to future opportunities. Students will have access to enhanced Virtual Explorations in the 16 Career Clusters as well as College tours, Lifelong learning strategies, and Financial Literacy to prepare them for the world ahead.

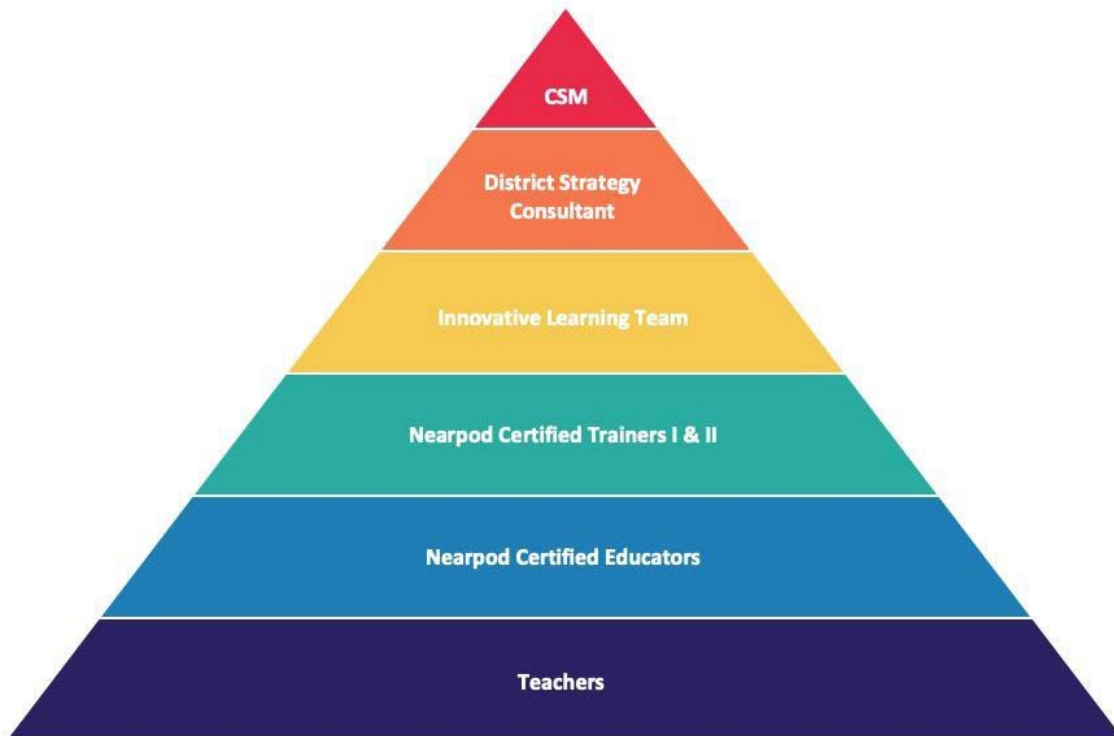


## Ensuring Your Success

### **Professional Development Services**

**Objective** - Collaboratively work with Broward County Public Schools to create an implementation plan that will be scalable and sustainable. Additionally, this will create a strategy to support Nearpod beyond the implementation ensuring return on investment with adoption and usage of Nearpod.

### **Train the Trainer Model**



### **Customer Success Manager (CSM)**

The Customer Success Manager is assigned to the account and serves as the Nearpod point of contact to the district for the implementation and throughout the life of the contract. The CSM is responsible for day-to-day interaction activities, documentation, facilitation, scheduling, and district communication. More specifically the CSM will:

- Consult on and help create the district implementation and training plan.
- Coordinate Curriculum Mapping with the district implementation team and curriculum department.
- Provide regular updates to district team on status toward goals.
- Assist in creation and coordination of resources listed below as well as others determined during the engagement.



**District Strategy Consultant Services-** This role will be responsible for facilitating, consulting, scheduling and overseeing the training and implementation in alignment to the identified user personas. More specifically, they will:

- Consult and help create the district training and implementation plan.
- Train the District Innovative Learning Team to complete NCT I & II.
- Provide training consultation to District Innovative Learning team and other NCTs throughout the district.
- Coordinate Curriculum Mapping project.
- Provide regular updates to district project team on status towards goals.
- Assist in creation and coordination of resources listed below as well as other determined during the engagement.

**Innovative Learning Team Training** - Existing team within the district that will be trained, as they will be key to the scalable approach for driving adoption and usage of the Nearpod solution.

**Nearpod Certified Trainer (NCT) Levels I & II** - District resources identified that will deliver trainings at the school and district levels. They will be responsible for delivering districts at their "home" schools. They will also act as the "Nearpod Expert" at their school and will join an elite group that will first be managed through district strategy consultant services. They will serve as the liaison between the schools and the district and will provide not only trainings but support to their teachers and administration at the school level.

**Nearpod Certified Educators (NCE)** - Teachers who have distinguished themselves as a local Nearpod expert at their school. These teachers will serve as a grade level experts at the school level.

**Teachers** - the final level that will be utilizing the solution to drive student engagement.

**Resources** - In addition to onsite, face to face training, additional resources will be created to supplement trainings for users as well as to reinforce after the initial training.

- **Online Nearpod Courses** - available in the lesson library will be lessons that will cover a variety of topics accessible by users.
- **Canvas Courses** - to align with the Canvas solution used within the district today, Nearpod will integrate our lessons to offer courses available for the users.
- **Curriculum Mapping** - will provide curriculum alignment to current curriculum maps to help teachers use Nearpod in conjunction with their current instructional resources.
- **Yammer Group** - an online community that can help answer questions, share innovative ideas and solve problems. We encourage the creation of Yammer Groups aligned with the user personas listed above that can provide this experience.

**ATTACHMENT B**

# Sales Order

**Sales Order For**

Daryl Diamond  
 Broward County Public Schools  
 600 SE 3rd Ave  
 Fort Lauderdale, FL, 33301

**Nearpod Contact:**

Michelle Moore  
 1855 Griffin Rd. Suite A-290  
 Dania Beach, FL 33004

**Proposed Solution: 1-Year Agreement****Service Start: 08/01/2020****Service End: 07/31/2021**

Description	Qty	Total
<b>Nearpod K-12 Lesson Library</b> Over 7,000 K-12 Standards-aligned lessons built with research-based instructional models  <b>Nearpod EL</b> <ul style="list-style-type: none"> <li>• EL Content Companions</li> <li>• Academic Vocabulary</li> <li>• Newcomer Essentials</li> </ul> <b>Nearpod Future Ready Package</b> Nearpod K-12 Digital Citizenship and Literacy <ul style="list-style-type: none"> <li>• Keyboarding</li> <li>• Digital Citizenship</li> <li>• Evaluating Media</li> <li>• Social Media</li> <li>• Technology Applications</li> <li>• Coding</li> </ul> <b>Included Promotional Packages:</b> Nearpod K-12 College and Career Exploration Nearpod Social Emotional Learning	Up to 8,000 teachers	\$960,000
Discount		(\$460,000)
<b>Sub Total</b>		\$500,000
Curriculum Alignment Service		\$66,300
<b>Total</b>		\$566,300



This proposal is valid until: 07/31/2020.

Service runs from 08/01/2020 until 07/31/2021. The agreed upon price for this timeframe is (USD) \$566,300 paid annually.

In the event that BCPS chooses to increase access, the price for any additional licenses will be \$62.50 per teacher for the same products, features & capabilities included in this proposal.

Tax-exempt customers should include their tax-exempt number on their Purchase Order.

This proposal covers the Nearpod Services described herein and is governed by the license agreement available only at <https://nearpod.com/terms-conditions-school-district> and incorporated by reference along with the Privacy Policy available online at: <https://nearpod.com/privacy-policy>.