



PresenceLearning

Service Order

Customer Name and Contact Information

Name: Bonneville Joint School District 93 - ID

Address: 3497 N AMMON RD IDAHO FALLS, ID

Customer Primary Point of Contact

Name: Julian Duffey

Email Address: duffeyj@d93.k12.id.us

Customer Secondary Point of Contact

Name:

Email Address:

PresenceLearning Contact Information

Name: Sarah Finney

Email Address: sarah@presencelearning.com

Service Order

1. Services

Service	Student Quantity	Price per Service	Service Total
Annual SLP Services	200	\$1,506.75	\$301,350.00
Annual OT Services	0	\$1,506.75	\$0.00
Annual BMH Services	0	\$1,506.75	\$0.00

2. SLP Assessments

Service	Student Quantity	Price per Service	Service Total
Screening by SLP	0	\$56.00	\$0.00
Screening by SLP BI	0	\$101.00	\$0.00
Evaluation Coordination and Reporting by SLP	0	\$225.00	\$0.00
Evaluation Coordination and Reporting by Bilingual SLP	0	\$225.00	\$0.00
Review of Records by SLP	0	\$100.00	\$0.00
Additional Assessment Component by SLP	0	\$29.00	\$0.00
Articulation Standard Assessment	0	\$60.00	\$0.00
Auditory Processing Select Index	0	\$74.00	\$0.00
Classroom Observation by SLP	0	\$41.00	\$0.00
Early Childhood Language Assessment	0	\$90.00	\$0.00
Fluency Standard Assessment	0	\$100.00	\$0.00
Language Select Index	0	\$41.00	\$0.00
Language Standard Assessment	0	\$130.00	\$0.00
Pragmatic Language Standard Assessment	0	\$80.00	\$0.00
Phonological Process Analysis Select Index	0	\$23.00	\$0.00
Phonological Processing Assessment	0	\$67.00	\$0.00
Supplemental Language Screener	0	\$23.00	\$0.00
Spanish Language Standard Assessment	0	\$125.00	\$0.00
Spanish Language Select Index	0	\$41.00	\$0.00
Spanish Auditory Processing Select Index	0	\$74.00	\$0.00
Additional Bilingual Assessment Component	0	\$41.00	\$0.00
Spanish Articulation Measures (SAM)	0	\$41.00	\$0.00
Spanish Articulation Standard Assessment	0	\$50.00	\$0.00

3. OT Assessments

Service	Student Quantity	Price per Service	Service Total
Screening by OT	0	\$56.00	\$0.00
Evaluation Coordination and Reporting by OT	0	\$225.00	\$0.00
Review of Records by OT	0	\$100.00	\$0.00
Classroom Observation by OT	0	\$41.00	\$0.00
Standard School-Related-ADL Assessment	0	\$65.00	\$0.00
Standard Sensory Processing Assessment	0	\$65.00	\$0.00
Standard Motor Skills Assessment	0	\$75.00	\$0.00
Standard Visual Perception Assessment	0	\$65.00	\$0.00
Standard Preschool Assessment	0	\$100.00	\$0.00
Additional Assessment Component by OT	0	\$29.00	\$0.00

4. BMH Assessments

Service	Student Quantity	Price per Service	Service Total
Screening by MHP	0	\$115.90	\$0.00
Evaluation Coordination and Reporting by MHP	0	\$275.90	\$0.00
Review of Records by MHP	0	\$200.90	\$0.00
Rating Scale Assessment	0	\$115.90	\$0.00
Classroom Observation by MHP	0	\$78.18	\$0.00
Additional Assessment by MHP	0	\$206.93	\$0.00
Additional Requested Meetings	0	\$100.90	\$0.00
Translation Services	0	\$100.90	\$0.00

5. Psychoeducational Assessments

Service	Student Quantity	Price per Service	Service Total
Evaluation Coordination and Reporting by MHP	0	\$275.90	\$0.00
Review of Records by MHP	0	\$200.90	\$0.00
Cognitive Select Index	0	\$100.90	\$0.00
Processing Select Index	0	\$100.90	\$0.00
Achievement Select Index	0	\$100.90	\$0.00
Rating Scale Assessment	0	\$115.90	\$0.00
Classroom Observation by MHP	0	\$78.18	\$0.00
Achievement Standard Battery	0	\$206.93	\$0.00
Long Cognitive Battery	0	\$206.93	\$0.00
Additional Assessment by MHP	0	\$206.93	\$0.00
Processing Standard Battery	0	\$206.93	\$0.00
Additional Requested Meetings	0	\$100.90	\$0.00
School Psych Consultation	0	\$74.00	\$0.00

Service	Student Quantity	Price per Service	Service Total
Translation Services	0	\$100.90	\$0.00
Short Cognitive Battery	0	\$100.90	\$0.00
Select Spanish Index	0	\$200.90	\$0.00
Spanish Battery	0	\$309.93	\$0.00
Screening by MHP	0	\$115.90	\$0.00

Service Order

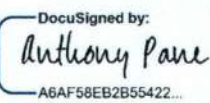
Minimum Fees Per Service Order	\$301,350.00
Assessments Commitment	0
Flat Rate Assumptions	Annual Service Fees are based on the assumption of prior year's utilization and Extended School Year ("ESY") or services provided following the last regular day of the school year are not included.
Psychoeducational Assessment Commitment	\$2,250.00
Document Camera	\$85.00 (each)
Service Order Term	July 1, 2020 through June 30, 2021

Service Order Form

Except as expressly set forth in this Service Order, the parties agree to be bound by the terms of the Master Service Agreement ("Agreement"). To the extent there is any conflict between this Service Order and the Agreement, this Service Order shall govern. The terms of this Service Order are confidential information.

The parties have executed this Service Order as of the date of the last signature ("Service Order Effective Date").

PresenceLearning, Inc.

By: 
A6AF58EB2B55422...

Name:
Anthony Pane

Title:
CFO

Date:
2020-07-27

Customer

By: 
EA9233E59F9F44D...

Name:
Julian Duffey

Title:
special education director

Date:
2020-07-27



Master Service Agreement

This Master Services Agreement ("Agreement") entered into as of the date of the last signature ("Effective Date") by and between PresenceLearning, Inc., a Delaware corporation with a place of business located at 530 Seventh Ave, Suite 407, New York, NY 10018 ("PresenceLearning") and the entity named in an Service Order that is receiving the Services ("Customer"). PresenceLearning and Customer agree as follows:

1. **Services.** This Agreement shall apply each time Customer engages with PresenceLearning for the provision of services and/or products ("Services") through a Service Order and/or other mutually agreed upon document. Services will be provided by a licensed clinician ("Clinician") and includes access to PresenceLearning's proprietary online therapy platform. All Services and other obligations will be as set forth in each applicable service order referencing this Agreement ("Service Order").
2. **Platform.**
 - 2.1. **Access and Use.** The Services are provided and delivered through PresenceLearning's proprietary online therapy platform, which includes evidence-based and user-generated content library with 100K+ items; user-visible aspects; proprietary software and technology embodied in the platform; and proprietary self-guided training modules, (collectively, the "Platform"). The Platform enables engagement between Customer's students and Customer's support staff (collectively, "Users") and PresenceLearning's clinical providers ("Clinicians"). During the Service Order Term, PresenceLearning grants Customer and its Users a limited, non-exclusive, revocable, non-sublicensable, non-transferable, royalty-free, right and license to use and display the Platform.
 - 2.2. **Unauthorized Use.** Customer may not disclose to or provide access, allow to use, or display the Platform to any third-party, without express written permission from PresenceLearning. Customer shall establish, maintain, and enforce policies and procedures to safeguard and protect the Platform, which are no less rigorous than reasonable standards Customer maintains and protects its own confidential information. Customer will be responsible for all acts and omissions of its Users who have access to the Platform. Customer will notify PresenceLearning immediately of any unauthorized access to or use of the Platform.
 - 2.3. **Changes to Platform.** PresenceLearning may, at its sole discretion, make any change or update to the Platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of PresenceLearning's products or services to its customers, (ii) for the efficiency or performance of Platform, or (iii) to comply with applicable law.
 - 2.4. **Safeguard.** Customer will not, nor permit or encourage its Users or any third-party to, directly or indirectly (i) reverse engineer, decompile, disassemble or otherwise attempt to discover or derive the source code, object code or underlying structure, ideas, know-how or algorithms

relevant to the Platform or any software, documentation or data related to the Platform; (ii) modify, translate, or create derivative works based on the Platform; (iii) use Platform in any manner to assist or take part in the development, marketing or sale of a product potentially competitive with such Platform. For the avoidance of doubt, all aspects of Platform are the Confidential Information of PresenceLearning, and Customer will comply with Section 5.

- 2.5. Ownership. PresenceLearning will have and retain sole and exclusive ownership of, and all right, title and interest in the Platform.

3. Fees and Payment Terms.

- 3.1. Fees; Payment. PresenceLearning shall invoice Customer for the services and Customer shall pay all undisputed amounts due within thirty (30) days of the invoice date. Outstanding balances shall accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, from due date until date paid, plus PresenceLearning's reasonable costs of collection.
- 3.2. Clinical Services. The Service Order will list the clinical discipline of the services Customer purchases ("Clinical Services") referenced as SLP Services, SLP Supervision, OT Services, OT Supervision, BMH Services. These Clinical Services may be purchased as an Hourly Service or Annual Service.
- 3.3. Hourly Service Fee. If applicable, the Service Order may specify an Hourly Service Fee, for a particular discipline (SLP, OT, BMH) which is based on a per hour, per Clinician pricing.
- 3.4. Annual Service Fee. If applicable, the Service Order may specify an Annual Service Fee, for a particular discipline (SLP, OT, BMH) which is based on the student group size and therapy hours (the assumptions will be listed). If Customer makes any changes, PresenceLearning may make a pricing adjustment to the Annual Service Fee.
- 3.5. Student Administrative Fee. If applicable, the Service Order may specify Student Administrative Fee which will be billed in the first invoice of the Service Order Term and any Renewal Term on a per student, per service basis. At any time during the Service Order Term, if students are added to receive a Service, Customer will be billed Student Administrative Fee for those students during the month the services start.
- 3.6. Monthly Commitment. If applicable, the Service Order may specify a minimum dollar payment due each month during the Service Order Term ("Monthly Commitment"), excluding any Psychoeducational Assessment minimums. A Monthly Commitment fee will not be charged for (i) the month in which Services begin, or (ii) the last month of Services. If Customer's fees are less than the Monthly commitment, Customer will be billed the difference on a quarterly basis. For the month(s) exempt from a Monthly Commitment, Customers shall pay the total fees incurred for the month.

- 3.7. **Assessments Commitment.** If applicable, the Service Order may specify the minimum number of assessments (excluding Psychoeducational Assessments) for which payment is due at the end of the Service Order Term. Screenings, review of records, and evaluations may count towards this Assessment Commitment. At the end of the Service Order Term, PresenceLearning will reconcile the Assessment Commitment with actual Assessments given, and Customer will be invoiced for the difference if the Assessment Commitment was not met.
- 3.8. **Psychoeducational Assessments Commitment.** If applicable, the Service Order may specify a minimum fee for psychoeducational assessments for which payment is due at the end of the Service Order Term. At the end of the Service Order Term, PresenceLearning will reconcile the Psychoeducational Assessment Commitment fee with actual Psychoeducational Assessment fees billed, and Customer will be invoiced for the difference if the Psychoeducational Assessment Commitment fee was not met.
- 3.9. **Unplanned Student Absence Fee.** If Customer cancels a session with less than 24 hours advance notice or the session does not occur due to a student absence ("Unplanned Student Absence"), Customer agrees to pay PresenceLearning the applicable Rate for the duration of the scheduled session. If Customer has agreed to be billed for a minimum number of hours in a period, e.g., one week, the duration of the session shall be applied toward such minimum for the period in which the session was scheduled to occur.
- 3.10. **Contracted Students.** If applicable, the Service Order may specify the number of students for whom Customer has purchased Services.
- 3.11. **Disputes.** Customer may dispute an invoice no later than twenty (20) calendar days from the date of the invoice. The parties will work together in good faith to resolve any disputes as soon as possible. Upon resolution, Customer shall remit the amount owed within ten (10) calendar days.
4. **PresenceLearning Materials.** PresenceLearning owns all rights, title, and interest, including patent rights, copyrights, trade secret rights, and all other intellectual property rights of any nature relating to the products, materials, Services, designs, know-how, data, software, graphic art, and similar works authored, created, contributed to, made, conceived or reduced to practice, in whole or part, by PresenceLearning or its agents or affiliates, which arise out of the performance of Services, except with regard to materials and intellectual property for which PresenceLearning has a license to use, display, host and administer in providing Services. Customer agrees to maintain (and not supplement, remove, or modify) all copyright, trademark, or other proprietary notices on any materials utilized in providing the Services. During the Service Order Term, PresenceLearning grants Customer a non-exclusive, limited license, to reproduce and distribute the materials solely to assist in the provision of Services.
5. **Confidentiality.**
 - 5.1. Except as otherwise provided in this Agreement, each party will be maintain the other party's Confidential Information (as defined below) in strict confidence, will use the other party's

Confidential Information only for purposes of this Agreement, and will not disclose the other party's Confidential Information without the other party's prior written consent, provided that the receiving party may disclose the disclosing party's Confidential Information to the receiving party's or its affiliates' personnel and contractors who need to know such Confidential Information and who are bound by confidentiality obligations at least as restrictive as those in this Agreement. If there is a breach of this Section 5, the disclosing party may suffer irreparable harm and will therefore be entitled to obtain injunctive relief in addition to any other available rights and remedies.

- 5.2. "Confidential Information" means the terms of this Agreement and all information, materials, or technology provided by a party to the other party that is marked as "Confidential" or "Proprietary," or that, under the circumstances taken as a whole, would be reasonably deemed to be confidential. "Confidential Information" does not include information which (i) is or becomes generally available to the public other than as a result of the breach of this Agreement by the receiving party, (ii) is independently developed by the receiving party, (iii) was rightfully within the receiving party's possession prior to disclosure by the disclosing party, (iv) is received from a third party which was not bound by a confidentiality obligation with respect to such information, or (v) is legally required to be disclosed, provided that the receiving party will notify the disclosing party before disclosing the Confidential Information.

6. Data and Privacy.

- 6.1. Customer Data. Customer retains all rights, in and to all data, files, information, provided by Customer or User to PresenceLearning.
- 6.2. State Privacy Laws. PresenceLearning is, and at all times has been, in material compliance with all applicable state laws, rules, and regulations relating to privacy, data protection and the collection and use of personal information collected, used and held for use by the PresenceLearning.
- 6.3. FERPA. In providing Services or performance under this Agreement, PresenceLearning may have access to education records ("FERPA Records") that are defined in and subject to the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, et seq. and related regulations ("FERPA"). To the extent that PresenceLearning has access to FERPA Records, PresenceLearning is deemed a "school official" and may use FERPA Records solely for the specific "legitimate educational purposes" as defined under FERPA.
- 6.3.1. PresenceLearning represents, warrants, and agrees that PresenceLearning will: (1) hold FERPA Records in strict confidence and will not use or disclose FERPA Records without the prior written consent of the appropriate parent or eligible student, except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by Customer in writing; (2) safeguard FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which PresenceLearning protects its own

confidential information; and (3) continually monitor its operations and take any action necessary to assure that FERPA Records are safeguarded in accordance with the terms of this Agreement. PresenceLearning policy may be accessed on <https://www.presencelearning.com/about/ferpa/>.

- 6.3.2. If any person(s) seeks access to any FERPA Records, PresenceLearning will immediately inform Customer of such request in writing. PresenceLearning shall not disclose any FERPA Records without the prior written authorization of an authorized representative of Customer; if the request for access is pursuant to a court order or lawfully issued subpoena, PresenceLearning shall immediately provide Customer with a copy of such court order or subpoena, and must comply with FERPA notification requirements to the parents and/or eligible students.
 - 6.3.3. If PresenceLearning experiences a security breach concerning any FERPA Record, PresenceLearning will notify Customer in a timely manner and take immediate steps to limit and mitigate such security breach as reasonably as possible.
 - 6.3.4. Upon expiration or termination of this Agreement, PresenceLearning shall return and/or destroy all FERPA Records received pursuant to this Agreement as directed by Customer, provided that PresenceLearning shall not be required to destroy copies of any computer records or files containing the FERPA Records which have been created pursuant to automatic archiving or back-up procedures and which cannot reasonably be deleted.
- 6.4. HIPAA. Student records that are disclosed to PresenceLearning by Customer and maintained within Platform are by definition "education records" under FERPA and not "protected health information" under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Because student health information in education records is protected by FERPA, the HIPAA Privacy Rule excludes such information from its coverage. See the exception paragraph (2)(i) in the definition of "protected health information" in the HIPAA Privacy Rule at 45 CFR § 160.103. See, also, Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records, USED and U.S. Department of Health and Human Services (November 2008).

7. Clinicians.

- 7.1. Credentials and Clearances. For each Clinician PresenceLearning assigned to Customer, PresenceLearning has collected and verified clinicians' credentials in accordance with the state law of Customer's state, including state clinician license. If Customer requires additional certification such as Board of Education certifications, then Customer must inform PresenceLearning and provide all necessary information or instructions in a timely manner.
- 7.2. Background Checks. PresenceLearning conducts background checks, which include criminal background checks and Registered Sex Offender registry checks, on all its employees and

Clinicians, and PresenceLearning refreshes such checks on the Clinicians on a yearly basis. If Customer requires additional clearances such as FBI Fingerprinting by the school district, Customer will provide all necessary information or instructions in a timely manner to allow PresenceLearning to convey instructions to Clinicians.

8. Indemnification.

8.1. Indemnification by Customer. Unless prohibited by law, Customer shall indemnify and hold PresenceLearning harmless against any and all claims, demands, damages, liabilities and costs (including attorney's fees) incurred by PresenceLearning which result from, or arise in connection with, any breach of Customer's obligations or representations under this Agreement and/or negligent act or omission or willful misconduct of Customer, its agents, or employees, pertaining to its activities and obligations under this Agreement.

8.2. Indemnification by PresenceLearning. PresenceLearning shall indemnify and hold Customer, harmless against any and all claims, demands, damages, liabilities and costs (including attorney's fees) incurred by Customer which directly or indirectly result from, or arise in connection with, any negligent act or omission or willful misconduct of PresenceLearning, its agents, or employees, pertaining to its activities and obligations under this Agreement.

8.3. Conditions of Indemnification. The obligations set forth in Sections 8.1 and 8.2 are conditioned upon: (a) prompt written notice by the indemnified party to the indemnifying party of any claim, action or demand for which indemnity is claimed; (b) complete control of the defense and settlement thereof by the indemnifying party, provided that no settlement of an indemnified claim shall be made without the consent of the indemnified party, such consent not to be unreasonably withheld or delayed; and (c) reasonable cooperation by the indemnified party in the defense as the indemnifying party may request. The indemnified party shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

9. **Limitation of Liability.** In no event will PresenceLearning be liable for any incidental damages, consequential damages, or any lost profits arising from or relating to this Agreement or to the Services, whether in contract or tort or otherwise, even if PresenceLearning knew or should have known of the possibility of such damages. PresenceLearning's cumulative liability relating to this Agreement will not exceed the actual fees paid by Customer to PresenceLearning during the school year for three (3) months immediately preceding the date on which a claim is made; provided that such amount shall under no circumstances exceed \$10,000. Customer acknowledges that this Agreement reflects an adequate and acceptable allocation of risk and that in the absence of the foregoing limitations PresenceLearning would not enter into this Agreement.

10. **Non-Solicitation.** Customer shall not, during the Term of this Agreement and for one (1) year thereafter, directly or indirectly solicit, induce, or attempt to induce any PresenceLearning employee or its clinicians without PresenceLearning's prior written consent. Customer should contact the PresenceLearning account manager with any inquiries concerning the aforementioned.

11. Term and Termination.

- 11.1. Term. This Agreement shall be in effect from the date of the last signature until terminated by either party with forty-five (45) days prior written notice.
- 11.2. Service Order Term. Each Service Order will specify a term for which services begin and end.
- 11.3. Termination for breach. PresenceLearning may, without prejudice to any other remedies available to it by law, terminate this Agreement immediately if Customer commits a material breach of this Agreement, and the breach is not cured within fifteen (15) days after receipt of written notice of the breach.
- 11.4. Effects of Termination. Upon the expiration or termination of this Agreement for any reason, all amounts owed to PresenceLearning under this Agreement, which accrued before such termination, or expiration will be immediately due and payable.

12. Disclaimer of Warranties. Except as otherwise set out herein, the Services are provided "as is" without any warranty and, except as provided herein, PresenceLearning expressly disclaims any and all warranties, express, implied, or statutory, including warranties of title, non-infringement, merchantability, and fitness for a particular purpose.

13. Student Benchmarking Data. If Customer collects benchmarking data at the individual or school level in relation to Services provided by PresenceLearning, Customer will provide PresenceLearning a copy of such benchmarking data. To the extent not prohibited by Section 6 of this Agreement or applicable law, PresenceLearning may store indefinitely, use and publish deidentified benchmarking data.

14. Customer Representations and Warranties.

- 14.1. Customer hereby represents and warrants to PresenceLearning that the undersigned has the right, power, and authority to enter into this Agreement on behalf of Customer.
- 14.2. Customer hereby represents and warrants that, prior to receiving Services, it will provide PresenceLearning with the conditions described in the Environment, Equipment and Supervision Specifications, available at <https://www.presencelearning.com/tc/eq-spec>, and other conditions as set forth by PresenceLearning. Any delay in Customer's ability to provide the specified conditions will delay the ability for PresenceLearning to provide the Services.
- 14.3. Customer hereby represents and warrants that it will comply with any applicable law concerning Services, including but not limited to obtaining informed parental consents where required.
- 14.4. Customer represents that it has verified the accuracy, completeness and appropriateness of all Students' medical, educational, demographic, disciplinary, and therapeutic-related information ("Records") prior to Customer's providing PresenceLearning with access to such Records. Customer acknowledges and agrees that the professional duty to educate, supervise and treat

the Students lies solely with Customer, and that the provision of Services in no way replaces or substitutes for the professional judgment of Customer.

- 14.5. Customer acknowledges that PresenceLearning is not a healthcare provider, and that it cannot and does not independently review or verify the medical accuracy or completeness of Records made available to it pursuant to this Agreement.
15. **PresenceLearning Representations and Warranties.** PresenceLearning represents and warrants to Customer as follows the undersigned has the right, power and authority to enter into this Agreement on behalf of PresenceLearning.
16. **Research; Promotional Materials.** The parties agree that mutual consent is required for publication or distribution of any research and/or case studies mentioning either party. However, Customer grants to PresenceLearning the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Service in PresenceLearning promotional materials. Customer can revoke this grant at any time with fifteen (15) days written request.
17. **Independent Contractor.** The Parties are independent contractors, and no agency, partnership, franchise, joint venture, or employment relationship is intended or created by this Agreement. Neither party shall be deemed to be an employee or legal representative of the other nor shall either party have any right or authority to create any obligation on behalf of the other party.
18. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration proceedings shall be confidential and conducted in the English language before a single neutral arbitrator to be selected by AAA. The place of arbitration shall be State the Customer is located.
19. **Governing Law.** This Agreement will be governed by the laws of the State the Customer is located.
20. **Miscellaneous.** The waiver of a breach of any term hereof will in no way be construed as a waiver of any other term or breach hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect. The headings in this Agreement do not affect its interpretation.
21. **Assignment.** PresenceLearning's rights and obligations under this Agreement will bind and inure to the benefit of its successors and assigns.
22. **Survival.** The parties obligations under Sections 2.4, 2.5, 9, 10, 16, and 18 will survive any expiration or termination of this Agreement.
23. **Force Majeure.** Neither party shall be liable for failing or delaying performance of its obligations

(except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood, epidemics, pandemics, or other acts of God, labor conditions, power failure, and Internet disturbances.

24. **Notices.** All notices relating to this Agreement must be in writing, sent by postage prepaid first-class mail, courier service, or via email: To PresenceLearning, Inc., 530 Seventh Ave, Suite 407, New York, NY 10018, Attn: Legal Department or via email at legal@presencelearning.com. To Licensee: Notices will be sent to the address provided to Licensors, or by other legally acceptable means.
25. **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. A facsimile, PDF or other electronic signature of this Agreement shall be valid and have the same force and effect as a manually signed original.
26. **Entire Agreement.** This Agreement along with any corresponding Service Orders constitutes the entire agreement between the Parties regarding the Services and supersedes all prior or contemporaneous agreements and understandings between the Parties relating to the Services. This Agreement may only be amended by the mutual written consent of the Parties.
27. **Customer's Additional terms:**
- 27.1. **STUDENT DATA PRIVACY AND SECURITY:** PresenceLearning covenants and represents as follows: (i) PresenceLearning agrees that all information regarding Services, including, but not limited to, the student's identity and the nature of services rendered, shall be confidential and comply with all federal and state laws; (ii) PresenceLearning represents and warrants that it has in place Administrative Security, Physical Security, and Logical Security controls to protect from a Data Breach or unauthorized data disclosure; (iii) PresenceLearning agrees to restrict access to Personally Identifiable Information (PII) to only authorized staff who require such access to perform their assigned duties; (iv) PresenceLearning shall not use Student Data and PII for secondary uses including, but not limited to, sales, marketing, or advertising in any manner other than in an anonymized and aggregate format; (v) PresenceLearning agrees to indemnify and hold harmless the School District from any liability arising out of noncompliance with state and federal law regarding Student Data Privacy and Security; and (vi) PresenceLearning represents and warrants that it has an appropriate records retention schedule and/or policy for the destruction of data.
- 27.2. **PENALTIES FOR PRESENCELEARNING'S FAILURE TO COMPLY WITH STUDENT DATA PRIVACY AND SECURITY:**
Penalties in case of non-compliance by PresenceLearning with state and federal law or its covenants and representations regarding Student Data Privacy and Security, as set forth in this Agreement, will be assessed at the reasonable discretion of School District's Board of Trustees and may include, but are not limited to: (i) Immediate termination of any contracts with the School District without cause and for convenience, without recourse by PresenceLearning; (ii) a two-year ban on PresenceLearning's ability to contract and provide services to the School

District; and (iii) any other sanction the School District's Board of Trustees deems proper and appropriate under the circumstances.

27.3. DEFINITIONS

"Administrative Security" consists of policies, procedures, and personnel controls including security policies, training, and audits, technical training, supervision, separation of duties, rotation of duties, recruiting and termination procedures, user access control, background checks, performance evaluations, and disaster recovery, contingency, and emergency plans. These measures ensure that authorized users know and understand how to properly use the system in order to maintain security of data.

"Data Breach" is the unauthorized acquisition of PII. "Logical Security" consists of software safeguards for an organization's systems, including user identification and password access, authenticating, access rights and authority levels. These measures ensure that only authorized users are able to perform actions or access information in a network or a workstation.

"Personally Identifiable Information (PII)" includes: a student's name; the name of a student's family; the student's address; the students' social security number; a student education unique identification number or biometric record; or other indirect identifiers such as a student's date of birth, place of birth or mother's maiden name; and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances, to identify the student.

"Physical Security" describes security measures designed to deny unauthorized access to facilities or equipment.

"Student Data" means data collected at the student level and included in a student's educational records. "Unauthorized Data Disclosure" is the intentional or unintentional release of PII to an unauthorized person or untrusted environment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PresenceLearning, Inc.

DocuSigned by:
By: Anthony Pane
A6AF58EB2B554E2...
Name: Anthony Pane
Title: CFO
Date: 2020-07-27

Customer

DocuSigned by:
By: Julian Duffey
EA9233E59F9F40...
Name: Julian Duffey
Title: special education director
Date: 2020-07-27