



PresenceLearning Consulting Services Agreement

This Consulting Services Agreement (“Agreement”) along with its accompanying Exhibits, issued on September 29, 2015 (“Issue Date”), is entered into as of **September 30, 2015** (the “Effective Date”) by and between PresenceLearning, Inc., a Delaware corporation (“PresenceLearning”) and **Jerome Joint School Dis** with its principal place of operation in **Jerome, ID** (together with its agents, employees, and affiliates, “Partner”). PresenceLearning and Partner are referred to herein individually as a “Party” or collectively as the “Parties.”

1. **Services.** PresenceLearning will make available to Partner qualified clinicians and teachers, including but not limited to special education teachers, speech-language pathologists, psychologists, social workers, counselors, and occupational therapists (each, a “Clinician”) to provide supplemental educational services in accordance with the terms and conditions of Exhibits A and B, herein incorporated by reference, remotely or via the web, to Partner clients with identified or suspected special needs, including, but not limited to:
 - a. Instruction and instructional services; consultation and collaboration with teachers, parents and Partner; initial and triennial assessments; administrative and billing work; pre- and post-assessments and intervention services; maintenance of regular documentation of services provided, recommended service plan, services provided, and responsiveness to services as well as participation in Partner meetings, including, but not limited to, individualized education planning meetings, as mutually agreed by Partner and PresenceLearning. Collectively, (the “Services”).
2. **Schedule and Location of Services.** Services will be provided exclusively via computer or telepractice, unless otherwise agreed.
3. **Service Levels and Terms.** Parties agree that Services are to be provided as follows:
 - a. Services for **10** Clients “Client(s)”) per month during the term of this Agreement.
 - b. Hourly rate of **\$74.00** per hour (“Hourly Services Rate”).
 - c. Installation Fee of **\$74.00** per Client per year (“Technology Setup Fee”).
4. **Fees.** In exchange for the Services, Partner agrees to pay PresenceLearning according to the following schedule:

Monthly Payment	Partner agrees to pay for Services at an Hourly Services Rate of \$74.00 per hour.
Minimum Clients	Effective for any Services being provided from September to May (inclusive), no PresenceLearning invoice shall represent a fee for Services based on fewer than 9 Clients (“Minimum Client(s)”). Partner may elect to reduce the Minimum Client number by providing written notice to PresenceLearning detailing specific, named Clients that have either (i) achieved their IEP goals and no longer require Services under their IEP or (ii) are no longer enrolled in Partner’s school(s). If the total number of Clients drops below the number of Minimum Clients in any given month, Partner agrees to make a total minimum payment of \$1,665.00 (equal to the Minimum Clients * Hourly Services Rate * 2.5 hours) per month to PresenceLearning, unless written notice is provided.
Set-Up Fee	Partner agrees to pay \$74.00 per Client per year who receives Services for an initial total of \$740.00.
Assessments	Online initial and triennial assessments shall be billed at \$375.00 per assessment (the “Assessment Fee”). The Assessment Fee covers ordinary and customary evaluations. Evaluations exceeding 6 hours are subject to additional fees. Partner may also elect to



	<p>request in-person assessments. In these cases, Partner shall pay PresenceLearning reasonable costs of travel, including airfare, car mileage or rental car fees, hotel, and meals, as necessary, in addition to a per-diem rate equal to an 8 hour Service day for each day of travel.</p>
<p>Cancellation Policy</p>	<p>Partner agrees to pay PresenceLearning for Services that are scheduled with PresenceLearning, but not cancelled with at least 24 hours advance notice. PresenceLearning commits in good faith to make best efforts to use the time for any session cancelled with less than 24 hour notice for session make-ups, documentation or planning work that would have been necessary regardless. Partner will only be billed once for this time.</p>
<p>Equipment Kits & OT Manipulables</p>	<p><u>Equipment Kits</u>. PresenceLearning shall provide Partner 3 set(s) of suitable web cameras and headsets free of charge. Additional sets can be purchased at \$95 per set, or, individual items of equipment may be purchased individually as necessary. <u>Occupational Therapy Manipulables</u>. PresenceLearning can provide Partner with set(s) of suitable occupational therapy manipulables at \$35 per set, plus shipping costs, as needed.</p>
<p>Smart Start (Optional)</p>	<p>Smart Start. PresenceLearning may provide two days of onsite implementation support services from a staff member including some or all of the following services Client selection, school site selection, technical set-up, paraprofessional training, Client scheduling, administrator orientation, school principal orientation, IT department training, school clinician training, parent orientation(s), and SPEDinsight training for an additional fee dependent on implementation requirements.</p>
<p>Inflation Adjustment</p>	<p>Partner agrees that for each successive year after the first school year of Services, the Hourly Services Rate, Set-up Fee, and any other rates and fees related to Services will rise each year at, but no greater than, the most recent annual rate of inflation, rounded to the nearest half dollar (\$0.50) as defined at the following U.S. Government URL, or its successor: http://data.bls.gov/timeseries/CUUR0000SAM?output_view=pct_12mths</p>

[Signatures appear on the following page]



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement along with its Exhibits to be executed as of the Effective Date.

PresenceLearning, Inc.

Partner

By:

DocuSigned by:
Clay Whitehead
193D8B266DB2484...

By:

DocuSigned by:
Kindel Mason
3FCFB480C6C54BE...

Name: clay whitehead

Name: kindel mason

Title: Co-CEO

Title: Special Education Director

Date: 2015-10-05

Date: 2015-10-05



Exhibit A: Terms and Conditions

1. **Services.** PresenceLearning will provide consulting services to Partner relating to the provision of supplemental educational services as mandated by State and Federal law to Partner's Clients (the "Services"). The Services will be provided according the terms set forth in this Agreement and its Exhibits. Partner shall provide PresenceLearning with the environment, equipment and supervision necessary for the provision of Services as set forth in Exhibit B.
2. **Fees and Payment Terms.** In consideration for the Services, Partner agrees to pay PresenceLearning in accordance with the fee schedule set forth in this Agreement. All fees due hereunder are non-refundable and are not contingent on any additional services to be provided. Partner shall pay all amounts due within thirty (30) days of PresenceLearning's invoice date. Partner will promptly notify PresenceLearning of any disputed amounts and the reason for such dispute, but in no even later than 20 days from receipt of invoice. Unless PresenceLearning receives notice of any such dispute, within 20 days of receipt of such invoice, such invoice shall be considered undisputed and shall be due and payable no later than 30 days of the date of such invoice. 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 paid, plus PresenceLearning's reasonable costs of collection.
3. **PresenceLearning Materials.** PresenceLearning retains all right, title, and interest to any materials and intellectual property that it develops or provides as part of Services. Partner agrees to maintain (and not supplement, remove, or modify) all copyright, trademark, or other proprietary notices on such materials. Provided Partner is not in breach of any term of this Agreement, PresenceLearning grants Partner a non-exclusive, limited license, which license shall terminate upon expiration or termination of this Agreement, to reproduce and distribute the Materials solely to assist in the provision of Services in accordance with the terms herein.
4. **Indemnification.** Partner shall indemnify and hold PresenceLearning harmless against any and all claims, demands, damages, liabilities and costs (including attorney's fees) incurred by PresenceLearning which directly or indirectly result from, or arise in connection with, any negligent act or omission or willful misconduct of Partner, its agents, or employees, pertaining to its activities and obligations under this Agreement. PresenceLearning shall indemnify and hold Partner, harmless against any and all claims, demands, damages, liabilities and costs (including attorney's fees) incurred by Partner 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. The foregoing obligations 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.
5. **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 Partner 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. Partner acknowledges that the Agreement reflects an adequate and acceptable allocation of risk and that in the absence of the foregoing limitations Contactor would not enter into the Agreement.
6. **Non-Solicitation.** Partner shall not, during the term of the Agreement and for one (1) year thereafter, directly or indirectly solicit, induce, or attempt to induce any PresenceLearning employee or contractor without PresenceLearning's prior written consent.
7. **Term and Termination.** This Agreement shall be in effect as of the Effective Date and shall continue until June 30, 2016 (the "Initial Term") and shall automatically renew on an annual basis (each a "Renewal Term"), unless either party gives written notice of its intention not to renew 90 days before expiration of the Initial Term or a Renewal Term.. 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. In addition to the post-termination obligations in this Section 7, Sections 3 through 14 will survive any expiration or termination of this Agreement. In case of early termination of this Agreement by Partner outside of the aforementioned time periods, Partner shall pay a cancellation fee of \$750 per Client, multiplied by the greater of either: (a) the minimum number of Clients or (b) the largest number of Clients served in any given month during any term hereof.
8. **Disclaimer of Warranties.** The Services are provided "as is" without any warranty and PresenceLearning expressly disclaims any and all warranties, express, implied, or statutory, including warranties of title, noninfringement, merchantability, and fitness for a particular purpose.
9. **Limited Guarantee of Therapist Availability.** If this Agreement is not signed by Partner within thirty (30) calendar days of the Issue Date, PresenceLearning does not guarantee sufficient clinician availability to provide required Services. If this Agreement is signed by Partner within 30 days of the Issue Date, PresenceLearning does guarantee sufficient clinicians provide required Services.
10. **Confidentiality.** Partner understands that it may receive confidential and proprietary information relating to PresenceLearning's business. Partner agrees that the PresenceLearning proprietary information is confidential and is the sole, exclusive and extremely valuable property of PresenceLearning. PresenceLearning understands that it may receive confidential information protected by the federal *Family Educational Rights and Privacy Act* (FERPA). PresenceLearning will comply with the requirements established by FERPA. It is understood and agreed that money damages would not be a sufficient remedy for any Partner's breach of confidentiality and that PresenceLearning shall be entitled to specific performance, including, without limitation, injunctive relief, as a remedy for any such breach by the Partner in any court of competent jurisdiction. Such remedy shall not be deemed to be the exclusive remedy for breach of confidentiality



but shall be in addition to all other remedies available at law or equity.

- 11. **Miscellaneous.** This Agreement will be governed by the laws of the State of California (without giving effect to any conflict of laws principles that provide for the application of the law of another jurisdiction). 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. This Agreement may only be amended by the mutual consent of the Parties in writing. This Agreement 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.
- 12. **Partner Representations.** Partner hereby represents and warrants to PresenceLearning as follows: (i) Partner has the right, power, and authority to enter into and perform its obligations under this Agreement, (ii) Partner has obtained all necessary consents in accordance with its operations to execute and deliver this Agreement and perform its obligations under this Agreement, (iii) the undersigned has the right, power and authority to enter into this Agreement on behalf of Partner, (iv) this Agreement constitutes the legal, valid and binding obligation of Partner, enforceable against Partner in accordance with its terms, subject only to the effect, if any, of (A) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (B) rules of law governing specific performance, injunctive relief and other equitable remedies, and (v) the execution, delivery, performance of and compliance with this Agreement will not, with or without the passage of time, result in any violation or be in conflict with or constitute a default under any contract to which Partner is a party or any terms or provisions thereof.
- 13. **PresenceLearning Representations.** PresenceLearning hereby represents and warrants to Partner as follows: (i) PresenceLearning has the right, power, and authority to enter into and perform its obligations under this Agreement, (ii) PresenceLearning has obtained all necessary consents in accordance with its operations to execute

and deliver this Agreement and perform its obligations under this Agreement, (iii) the undersigned has the right, power and authority to enter into this Agreement on behalf of PresenceLearning, (iv) this Agreement constitutes the legal, valid and binding obligation of PresenceLearning, enforceable against Partner in accordance with its terms, subject only to the effect, if any, of (A) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (B) rules of law governing specific performance, injunctive relief and other equitable remedies, and (v) the execution, delivery, performance of and compliance with this Agreement will not, with or without the passage of time, result in any violation or be in conflict with or constitute a default under any contract to which PresenceLearning is a party or any terms or provisions thereof.

- 14. **Research.** The Parties agree that mutual consent is required for the initial publication or distribution of any research and/or marketing materials, including without limitation, customer or vendor lists, press releases, and research and case studies mentioning both Parties, but that once this consent is given for initial publication the Parties may republish such works in their original or reasonably modified form at will.
- 15. **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 is authorized to make any representation, contract, or commitment on behalf of the other Party.
- 16. **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 San Francisco, California.
- 17. **Assignment.** PresenceLearning’s rights and obligations under this Agreement will bind and inure to the benefit of its successors and permitted assigns.



Exhibit B: Environment, Equipment, and Supervision

Partner shall provide PresenceLearning with the conditions described below to enable the provision of the applicable Services. PresenceLearning will not begin Services until all of the below criteria are met in order to ensure Client success:

1. Computer Set-Up.

- a. Each station must have a computer with a dual core processor.
- b. A broadband internet connection with 1.0 mbps (or higher) upload and download speeds. If internet speeds are not sufficient to support PresenceLearning's platform at any site, Partner may elect to purchase a suitable wireless 4G card from PresenceLearning for \$550 per unit per year.
- c. Browser: Internet Explorer, Safari, Chrome or Mozilla Firefox.
- d. Software: Latest version of Adobe Flash Player.
- e. Operating system: Windows Vista or later. Mac OS X 10.7 (or later) with Intel processor.
- f. Whitelist the following from all web filters:
 - i. *.live.presencelearning.com
 - ii. *.presence.influxis.com
 - iii. *.youtube.com (optional)
 - iv. *.presence.enterprise.ics.influxis.com: 8510 TCP/UDP
 - v. *.presence.enterprise.ics.influxis.com: 443 TCP
 - vi. *.presence.enterprise.ics.influxis.com: 19350-19400 UDP
 - vii. *.presence.enterprise.ics.influxis.com: 1935 TCP/UDP
- g. A phone with speaker-phone capability in the immediate vicinity of the computer where service is delivered, to be used as a backup means of communication.

2. Environment.

- a. A suitable non-noisy controlled space such as a resource room, classroom, computer room, library and/or home setting.
- b. Ample lighting that shines either (i) from above the Client or (ii) directly on the face of the Client but not (iii) from behind the Client and directly into the webcam.
- c. Privacy screens or other equipment may be necessary to guarantee privacy.

3. Supervision.

- a. A suitable number of Partner paraprofessionals (or parents) to provide the below services. Additional services may or may not be required.
 - i. Transporting the Client to/from the telepractice session.
 - ii. Assisting the Client with technology set-up (e.g., attaching the headset to the computer).
 - iii. Ensuring that the conferencing connection with remote therapist is functioning. Contacting the therapist via phone if necessary.
 - iv. Remaining in the sessions to ensure that any technology glitches are reported and fixed
 - v. Providing cues, prompts, and models for the Client upon therapist direction.

- vi. Helping relay information between the school staff and the therapist related to scheduling, absences, or school functions.

- b. The paraprofessional shall act under the direction of the PresenceLearning SLP or OT, except in the event of emergency.

4. In the event that Partner contracts with PresenceLearning to supervise clinical assistants such as speech language pathology assistants (each an "SLPA") or certified occupational therapy assistants (each a "COTA"), Partner shall ensure that each such SLPA and/or COTA shall:

- a. meet state and/or American Speech Hearing Language Association ("ASHA") or American Occupation Therapy Association ("AOTA") guidelines for SLPAs or COTAs
- b. have the appropriate level of education and training
- c. have completed fieldwork according to state/ASHA or AOTA guidelines
- d. follow ASHA or AOTA/state guidelines on duties and responsibilities
- e. follow the treatment plans for clients set out by the supervising SLP or OT
- f. not administer standardized or nonstandardized diagnostic tests
- g. not participate in parent conferences, case conferences, IEP meetings, etc. without the presence of the supervising SLP or OT.
- h. not represent him/herself as an SLP or OT
- i. not counsel or consult with families/clients/Clients regarding status of service

In addition, Partner agrees that PresenceLearning clinicians shall:

- a. participate in training of the SLPA or COTA
- b. inform clients/Clients that SLPA or COTA will provide treatment
- c. make all clinical decisions
- d. prepare individualized treatment plans for each client/Client that the SLPA or COTA treats
- e. Sign all formal documents and signed treatment notes of SLPA or COTA
- f. Delegate tasks to SLPA or COTA while retaining legal and ethical responsibility for all client/Client services provided or omitted
- g. Ensure that the SLPA or COTA only performs tasks within State or ASHA/AOTA approved guidelines for SLPAs or COTAs.
- h. provide both direct and indirect supervision as required by state and/or ASHA or AOTA guidelines