

TELETHERAPY PROFESSIONAL DEVELOPMENT AND PLATFORM LICENSE AGREEMENT

This TELETHERAPY PROFESSIONAL DEVELOPMENT AND PLATFORM LICENSE AGREEMENT (“Agreement”) is made and entered into as of the last signature date (the “Effective Date”), between PresenceLearning, Inc., a company incorporated in Delaware (the “Licensor”) and Davis Joint Unified Schools (the “Licensee”).

The Parties agree as follows:

1. DEFINITIONS. The following terms shall have the meaning set forth in this section.

“Authorized Users” or “Authorized User” means Licensee’s teachers and staff who are recruited, managed and employed solely by Licensee, and for whom a seat is purchased.

“Components” means all of the existing proprietary components of the Platform, including software or other information and technology that is embodied in the Platform.

“Documentation” means any written, printed or otherwise recorded or stored material that relates to the Platform, including technical specifications, source code annotations, training and support materials, descriptions of the principles of operation of source code, other instructions.

“Improvement” means any invention, modification, addition, derivative work, enhancement, revision, translation, abridgment or expansion to or arising from a work, or any other form in which a work or any part thereof, may be recast, transformed, or adapted.

“Library” means evidence-based and user-generated content library with 100K+ items and therapy playlists using Licensor proprietary content.

“Licensee Property” means all text, content, images, video, music, drawings, documentation and other materials of any kind posted, submitted, provided or otherwise made available by Licensee or an Authorized Users.

“Platform” means (a) the Licensor’s software application (in both source code and object code form), (b) the Components, (c) the Documentation, and (d) Improvements or updates to the Platform, the Components or the Documentation.

“Personal Information” and/or “PI” is information that can identify a specific individual.

“Service Order” means an ordering document, the first of which is included as Exhibit A. The terms of this Agreement will be deemed to be incorporated in each applicable Service Order.

“Student User” or “Student Users” means the Licensee’s students currently enrolled at Licensee’s organization.

“Telehealth Institute” means proprietary self-guided training modules.

2. SERVICES AND PLATFORM.

- 2.1. Teletherapy 101 Professional Development. Licensor will provide each Authorized User with (i) authorized attendance to one 90-minute live-online teletherapy and tele-assessment training session; (ii) one login to Telehealth Institute; and (iii) ability to register for office hours with Licensor’s clinical experts.
- 2.2. Tele-Assessment 101 Professional Development for Psychoeducational Services. Licensor will provide each Authorized User with (i) authorized attendance to one 2-hour live-online teletherapy and tele-assessment training session; (ii) one login to Telehealth Institute; (iii) ability to register for office hours with Licensor’s clinical experts; and (iv) and use of psychoeducational assessments, except for RIAS, made available through the Platform.

- 2.3. PresenceLearning Therapy and Assessment Platform. Licensor will provide each Authorized User with (i) unlimited access and use of the Platform; (ii) access to Library; (iii) access to speech-language and OT evaluations; and (iv) Technical Support as set forth in Section 8.

3. LICENSE.

- 3.1. License Grant. During the Term, for each PresenceLearning Therapy and Assessment Platform license seat purchased, Licensor grants to Licensee a limited, non-exclusive, revocable, non-sublicensable, non-transferable, royalty-free, license to use and display the Platform by each of Authorized User and Student Users. Unless provided by this Agreement, Licensee may not provide access, allow to use, or display the Platform to any third-party, without express written permission from Licensor.
- 3.2. Safeguarding. Licensee shall establish, maintain, and enforce policies and procedures to safeguard and protect the Platform and Licensor Property which are no less rigorous than reasonable standards relating to Licensee's confidential information and property. Licensee will be responsible for all acts and omissions of its employees, representatives, affiliates, and Licensee's third-parties (including their employees and representatives) who have access to the Platform and Licensor's Property.
- 3.3. Business Use. Licensee agrees that it will inform and instruct its Authorized Users that the use of the Platform and Licensor Property are solely and exclusively to be used for the benefit of the Licensee ("Business Use"). Authorized Users may not use the Platform and Licensor Property for personal or independent business purposes. The use of Platform and Licensor Property for any other purpose than Business Use will constitute cause for immediate termination to Platform access.
- 3.4. Ownership. Licensor will have and retain sole and exclusive ownership of, and all right, title and interest in the Platform and Licensor Property.
- 3.5. Disclosure of Improvements and Developments. Unless otherwise provided in this Agreement, Licensor will have no obligation to disclose to Licensee any Platform improvements or modifications.
- 3.6. Acknowledgements. Licensee acknowledges and agrees the Licensor is in the business of commercially licensing the Platform or providing services relating to the Platform to third parties and that the Platform may contain errors. LICENSOR SHALL NOT HAVE ANY DUTIES OR RESPONSIBILITIES UNDER THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND NO IMPLIED OBLIGATIONS SHALL BE READ INTO THIS AGREEMENT. LICENSOR RETAINS ALL RIGHT, TITLE, AND INTEREST IN AND TO THE PLATFORM NOT EXPRESSLY LICENSED UNDER THIS AGREEMENT.

4. RESTRICTIONS.

- 4.1. No Reverse Engineering. Licensee shall not itself (and shall ensure that Authorized Users and Student Users do not): (i) translate, reverse engineer, decompile or disassemble the Platform or any Component, or by any other method attempt to derive source code to the Platform or its Components; (ii) rent, lease, loan, assign, transfer, share or resell the Platform; (iii) make the Platform available to third parties, without the prior express written consent of Licensor; (iv) create derivative works based on the Platform, or use the Platform for any purpose other than as provided for in this Agreement (including, without limitation, altering any notices of intellectual property or other proprietary rights); or (v) make copies of the Documentation or any pertinent documents, except for tangible copies of online documents made by Licensee for Licensee's internal use and Licensee agrees to use commercially reasonable efforts to prevent any unauthorized copying Documentations or other intellectual property.
- 4.2. Sublicensing and Third Parties. Licensee does not have the right to grant a sublicense to the rights granted in Section 3.
- 4.3. Misuse. If Licensee or its Authorized Users misuse the Platform in an illegal manner, or as listed in this Section 4.3, Licensee may permanently lose access. Licensee and its Authorized Users may not
- 4.3.1. enable or allow others to use the Platform using Authorize Users Therapy Room or other account information;

- 4.3.2. circumvent any access or use restrictions put into place to prevent certain uses of the Platform or areas of the Platform;
- 4.3.3. engage in behavior that violates anyone's Intellectual Property Rights. "Intellectual Property Rights" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights;
- 4.3.4. Upload to the Platform and/or share any material that is unlawful, harmful, threatening, obscene, violent, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, hateful, or otherwise objectionable;
- 4.3.5. Use the Platform and/or share any of materials that sexualizes minors or that is intended to facilitate inappropriate interactions with minors, or other users;
- 4.3.6. impersonate any person or entity, or falsely state or otherwise misrepresent their affiliation with a person or entity;
- 4.3.7. attempt to disable, impair, or destroy the Platform;
- 4.3.8. upload, transmit, store, or make available any of materials that contains any viruses, malicious code, malware, or any components designed to harm or limit the functionality of the Platform;
- 4.3.9. disrupt, interfere with, or inhibit any other user from using the Platform (such as stalking, intimidation, harassment, or incitement or promotion of violence or self-harm);
- 4.3.10. engage in chain letters, junk mails, pyramid schemes, phishing, spamming, fraudulent activities, or other unsolicited messages;
- 4.3.11. place an advertisement of any products or services in the Library; or
- 4.3.12. violate any laws.

5. **TERM AND TERMINATION.**

- 5.1. Term. This Agreement shall commence on the Effective Date and continue until the earlier of (i) the date upon which this Agreement is terminated in accordance with this Section and (ii) the last day any Service Order that is in effect.
- 5.2. Service Order Term. The term of a Service Order shall commence and end on the date specified on the applicable Service Order.
- 5.3. Termination by Licensor. Licensor, at its sole discretion, reserves the right to terminate this Agreement or any Service Order immediately upon a material breach by Licensee. In such an event, Licensee will still be liable for the fees under the Service Order.
- 5.4. Effects of Termination. Upon the expiration of the Service Order Term or Termination of this Agreement, Licensee shall immediately lose access to the Platform.

- 6. **FEE AND PAYMENT TERMS.** Licensee shall pay all fees specified in each Service Order (the first of which is Exhibit A) plus any applicable taxes. Fees are due and payable thirty (30) days from the date of execution of this Agreement, except for the monthly usage fees. All fees are charged per user and are non-refundable.

Monthly usage fees will be charged in arrears, per user, for any month Licensee or Authorized Users access and/or use the Platform. All monthly usage invoices will be due and payable thirty (30) days from date of invoice. Licensor may, upon notice to Licensee, suspend Licensee's access to the Platform until overdue amounts are paid in full.

- 7. **COMPUTER SPECIFICATIONS AND REQUIREMENTS.** The Platform is a cloud application. The following system requirements are needed by Authorized Users and Student Users:

- 7.1. Any computer with Dual core processor and 2 GB RAM;

- 7.2. Ability to support headset and mic;
- 7.3. A broadband internet connection with a minimum of 500 kbps (or higher) upload and download speeds of 1 mbps or higher preferred.
- 7.4. For more information Licensee should refer to <https://www.presencelearning.com/tc/eq-spec/>
- 8. **TECHNICAL SUPPORT.** Licensor will provide technical support on weekdays between the hours of 6:00 am and 6:00 pm Mountain Standard Time (MST).

9. PROPRIETARY RIGHTS.

- 9.1. Licensor Property. Licensor owns all right, title and interest in the Platform. Licensor retains all rights and title to all proprietary content in the Platform and Library, including therapy playlists and documents and all Telehealth Institute content. Licensor retains all right, title and interest to any work product or other intellectual property developed and/or created by Licensor on Licensor's behalf in the Library. Intellectual Property that is licensed to Licensor from a third party, such Intellectual Property will be included in the Licensor Intellectual Property only to the extent that Licensor has the right to sublicense such Intellectual Property to Licensee within the scope of the license granted hereunder.
- 9.2. Licensee Property. Licensee Property is and shall remain the sole and exclusive property of Licensee.
- 9.3. Licensor Use of Licensee Property. During the Term, Licensee grants to Licensor, solely to perform Licensor's obligations of this Agreement, a non-exclusive, royalty-free license to modify, display, combine, copy, store, transmit, and otherwise use the Licensee Property. Further, by uploading permitted materials to the Library an Authorized Users grants to Licensor a perpetual, non-exclusive, royalty-free license to modify, display, combine, copy, store, transmit, and otherwise use the materials.
- 9.4. Content Restrictions. Licensee agrees not to use the Platform to store, display, or transmit content that is deceptive, libelous, defamatory, obscene, racist, hateful, infringing or illegal, and to the extent Authorized Users exercise the rights granted to Licensee under this Agreement, Licensee represents and agrees that Licensee will ensure that such Authorized Users will also comply with the obligations set forth in this Agreement. Licensor takes no responsibility and assumes no liability for any Licensee Property that an Authorized Users submits, displays, or otherwise makes available via the Platform.
- 9.5. Removal of Content. If Licensor determine in good faith, at its discretion, that any Licensee Property could (i) pose a material security risk, (ii) be deceptive or perceived as libelous, defamatory, obscene, racist, hateful, or otherwise objectionable, or (iii) give rise to (a) a liability, or (b) a violation of Law or the terms or restrictions of the Agreement, then Licensor may remove the offending Licensee Property, suspend an Authorized Users' or Licensee's use of the Platform, and/or pursue other remedies and corrective actions.
- 9.6. Other Rights. Licensee grants to Licensor the limited right to use Licensee's name, logo and/or other marks for the sole purpose of listing Licensee as a user of the applicable the Platform in promotional materials. Licensee can revoke this grant at any time with fifteen (15) days written request.

10. CONFIDENTIALITY.

- 10.1. Confidential Information. All information disclosed by one party to the other party during the Term of this Agreement that is either identified in writing at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure, whether in oral, written, graphic or electronic form, shall be deemed to be "Confidential Information."
- 10.2. Exceptions. Information will not be considered Confidential Information if the information is or was: publicly available through no act or omission of the receiving party; in the receiving party's lawful

possession prior to disclosure by the disclosing party and not obtained either directly or indirectly from the disclosing party; lawfully disclosed to the receiving party by a third party without restriction on disclosure; or independently developed by the receiving party without use of or access to the disclosing party's Confidential Information.

- 10.3. Nondisclosure. The parties agree, that during the Term and for a period of one year (or, as applicable, with respect to Confidential Information that is a trade secret, indefinitely) after its termination, to hold each other's Confidential Information in confidence and not to disclose such information in any form to any third party without the express written consent of the disclosing party, except to employees, subcontractors, or agents (collectively, "Representatives") who are under a written non-disclosure agreement protecting the applicable Confidential Information in a manner no less restrictive than this Agreement.

11. REPRESENTATIONS AND WARRANTIES.

- 11.1. Power and Authority. Licenser represents to Licensee that Licenser has the full right, power and authority, including the necessary intellectual property rights, to enter into this Agreement.
- 11.2. Platform performance. Licensee agrees and acknowledges Licensee has verified the Platform's necessary specifications, performance, functionality, access to, and availability, and found it suitable for License's needs and requirements.
- 11.3. Uploaded Materials. Licensee, and on behalf of its Authorize Users, assert the party uploading materials to the Library has all rights necessary to upload, share, and grant the rights for all the materials.
- 11.4. Safety of Platform. Licenser warrants to Licensee that Licenser has used commercially reasonable efforts to prevent the introduction of, and to the knowledge of Licenser, or the Platform does not contain any software viruses, time or logic bombs, trojan horses, worms, timers or clocks, trap doors or other malicious computer instructions, devices or techniques.
- 11.5. FERPA and HIPAA. Licenser represents to Licensee that the Platform is safe to use in an educational setting and is FERPA and HIPAA compliant. However, Licenser will not receive from Licensee any Student User records and therefore Licensee agrees it is solely responsible for any applicable compliance with FERPA and HIPAA in regard to student and/or medical records.

12. **DISCLAIMERS OF WARRANTIES**. The Platform is provided 'AS-IS' and to the maximum extent permitted by law, Licenser disclaims all warranties, express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. Further, Licenser disclaims any warranty that the Platform will meet Licensee's requirements or will be constantly available, uninterrupted, timely, secure, or error-free. In addition, Licenser disclaims all liability for any actions resulting from Licensee's use of the Platform. Licensee understands that Licensee's use and access to the Platform is at Licensee's own discretion and risk, and Licensee is solely responsible for any damage to computer systems or loss of data that results from such use. If Authorized Users post or upload materials to the Library, Licenser is not responsible for any loss, corruption, damage, deletion of the materials.

13. INDEMNIFICATION.

- 13.1. By Licenser. Licenser shall defend, indemnify and hold harmless the Licensee from and against any and all losses asserted against, incurred, sustained or suffered by Licensee and/or the Representatives of Licensee as a result of, arising out of or relating to a claim that the Platform or any Licenser's intellectual property as delivered to Licensee infringes or misappropriates the intellectual property of any third party.
- 13.2. By Licensee. Unless prohibited by state law or regulations, Licensee will defend, indemnify and hold harmless the Licenser from and against any and all losses incurred, sustained or suffered by Licenser as a result of, or arising out of, or relating to any third party lawsuit or proceeding brought against Licenser due to: (i) Authorized Users' posted and uploaded content, (ii) Licensee or Authorized Users' illegal behavior or conduct; (iii) Licensee's, Authorized Users, and/or Student Users' use of the Platform or Licenser

Property in any manner inconsistent with or in breach of the Agreement; and/or (iv) any claim alleging facts that would constitute a breach of Licensee's representations and warranties made in this Agreement.

14. LIMITATION ON LIABILITY.

- 14.1. DAMAGE DISCLAIMER. EXCEPT AS PROVIDED BELOW IN THIS SECTION 14, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.2. GENERAL DAMAGE CAP. EXCEPT AS PROVIDED ELSEWHERE IN THIS AGREEMENT, IN NO EVENT SHALL LICENSOR BE LIABLE IN THE AGGREGATE FOR ANY DAMAGES OR LOSSES IN EXCESS OF THE GREATER OF THAN THE AMOUNT LICENSEE PAID FOR THE PLATFORM/SERVICES DURING A THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THESE LIMITATIONS APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW EVEN IF (A) A REMEDY DOES NOT FULLY COMPENSATE LICENSEE FOR ANY LOSSES; OR (B) LICENSOR KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF DAMAGES.

15. MISCELLANEOUS.

- 15.1. Compliance with Laws. Each party shall comply with all laws, rules and regulations, if any, applicable to it in connection with the performance of its obligations under the Agreement.
- 15.2. Competitors. Licensee agrees to not share or make available the Platform or Licensor Property to a competitor of Licensor.
- 15.3. Survival. Upon the expiration or termination of this Agreement, all access to the Platform may cease without prior notice. Sections 4.1, 9.1, 10, and 12-14 will survive expiration or termination of this Agreement.
- 15.4. Amendment and Modification. Any amendment and modifications to this Agreement must be in writing, reference the Agreement, and be executed by both parties.
- 15.5. No Third-Party Beneficiaries. The Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights in any third party.
- 15.6. Assignment. Licensee shall not assign or otherwise transfer its rights or delegate its obligations under the Agreement, in whole or in part, without the prior written consent of Licensor; and any attempt to do so will be null and void. Licensor may assign or transfer its rights to a third party due to a merger, consolidation, change of control, sale of all or substantially all of a party's securities or assets, contract, management agreement, or otherwise.
- 15.7. Force Majeure; Transmissions. 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. Licensor will not be responsible for receiving data, queries or requests directly from Authorized Users, Student Users or any other third party, or for the transmission of data between Authorized Users or Student Users and the Platform.
- 15.8. No Waiver. The failure to require performance of any provision shall not affect a party's right to require performance at any time thereafter; nor shall waiver of a breach of any provision constitute a waiver of the provision itself.
- 15.9. 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 Licensor, or by other legally acceptable means.

- 15.10. Independent Contractors. The parties are and shall remain independent contractors and nothing in this Agreement shall be deemed to create any agency, partnership, or joint venture relationship between the parties. 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.
- 15.11. 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 mutually agreed upon, otherwise in New York.
- 15.12. Entire Agreement. This Agreement, any Exhibits, and applicable Service Orders constitutes the entire agreement between the parties with respect to the subject matter and supersedes all other prior agreements and understandings, both written and oral, between the parties.
- 15.13. Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement are governed by the law of the state the Licensee is located.
- 15.14. 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.

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

PresenceLearning, Inc.

Davis Joint Unified School District

By: _____

By: _____

Name: _____

Name: Amari Watkins

Title: _____

Title: Associate Superintendent of Business Services

Date: _____

Date: September 25, 2020

EXHIBIT A - SERVICE ORDER

This Service Order is incorporated and made part of the Teletherapy Professional Development and Platform License Agreement (“Agreement”) between PresenceLearning, Inc., (“Licensor”) and Davis Joint Unified Schools (“Licensee”). In the event of a conflict between this Service Order and the Agreement, the terms and conditions of the Service Order will prevail.

Service Order Term: July 1, 2020 – June 30, 2021

Licensee Primary Contact Information	PresenceLearning Contact Information
Name: Davis Joint Unified Schools	Name: PresenceLearning, Inc.
Address: 526 B St.	Address: 530 Seventh Ave., Suite 407
City, State, Zip: Davis, CA. 95616	City, State, Zip: New York, NY 10018
Email: pmcgrew@djsd.net	Email: Andy.Merideth@presencelearning.com

Services/Product	Quantity/User	Per User Fee	Subtotal
Teletherapy 101 Professional Development includes access to Presence Learning Therapy and Assessment Platform during the Service Order Term	11	\$1000.00	\$11,000.00
Tele-Assessment 101 Professional Development for Psychoeducational Services includes access to Presence Learning Therapy and Assessment Platform during the Service Order Term		\$	\$
			\$11,000.00

Platform Usage Fee

Platform Usage Fee will be charged, per user, only for the month(s) in which a user accesses the Platform beginning in the second calendar month of the Service Order Term.

Platform usage fee for Teletherapy 101 Professional Development: \$100 per user per month of usage

Platform usage fee for Tele-Assessment 101 Professional Development: \$450 per user per month of usage

Changes to Quantity

Additional users or products may be purchased under this Service Order through an email from Licensee to PresenceLearning Contact set forth above, stating the number of additional users or products being purchased.

Prices set forth in this Service Order do not include tax. Tax, if applicable, will be included in the invoice sent by PresenceLearning to Licensee.