

This Confidential Data Privacy Agreement (“**DPA**”) is entered into by and between:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY, a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 (the “**Board**” or “**Jefferson County Public Schools**”) and

PresenceLearning, Inc. a corporation organized under the laws of Delaware with its principal place of business located at 530 Seventh Avenue Suite M1 New York, NY. 10018 (the “**Provider**”).

**WHEREAS**, the Provider is providing educational or digital services to the Board.

**WHEREAS**, the Provider and the Board recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

**WHEREAS**, the Provider and the Board desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, the Board and Provider agree as follows:

#### **ARTICLE I: PURPOSE AND SCOPE**

- 1. Entire Agreement.** This DPA is the entire agreement between the Parties and supersedes any and all agreements, representations, and negotiations, either oral or written, between the Parties before the effective date of this DPA. This DPA may not be amended or modified except in writing as provided below. This DPA is supplemented by the Board’s Procurement Regulations currently in effect (hereinafter “**Regulations**”) that are incorporated by reference into and made part of this DPA. In the event of a conflict between any provision of this DPA and the Regulations, the Regulations shall prevail. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
- 2. Term.** This DPA shall be effective as of November 15, 2023 (the “**Effective Date**”) and shall continue for three (3) years, terminating on November 14, 2026.
- 3. Services.** The services to be provided by Provider to the Board pursuant to this DPA are detailed in **Exhibit “A”** (the “**Services**”). Any compensation to be provided by the Board to Provider is also detailed in **Exhibit “A”** (the “**Compensation**”). Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to the Board are costs associated with the compiling of Confidential Data requested under this DPA and costs associated with the electronic delivery of Confidential DATA to Provider.
- 4. Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Confidential Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, the Provider shall be considered a School Official with a legitimate educational interest, and

performing services otherwise provided by the Board. Provider shall be under the direct control and supervision of the Board, with respect to its use of Confidential Data.

5. **Confidential Data to Be Provided.** In order to perform the Services described above, the Board shall provide Confidential Data as identified in the Schedule of Data, attached hereto as **Exhibit “B”**.
6. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit “C”**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

## ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Confidential Data Property of the Board.** All Confidential Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the Board. The Provider further acknowledges and agrees that all copies of such Confidential Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Confidential Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Confidential Data contemplated per the Service Agreement, shall remain the exclusive property of the Board. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the Board as it pertains to the use of Confidential Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the Board shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Confidential Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for the Board to respond to a parent or student, whichever is sooner) to the Board’s request for Confidential Data in a student’s records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Confidential Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Board, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the Board, transfer, or provide a mechanism for the Board to transfer, said Student-Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Confidential Data held by the Provider pursuant to the Services, the Provider shall notify the Board in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the Board of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the

Service Agreement, whereby the Subprocessors agree to protect Confidential Data in a manner no less stringent than the terms of this DPA.

- 6. Research and Program Evaluation.** For any project, involving data collection or research (e.g., program evaluation or monitoring activities), student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), the Board complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purposes of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all data collection and research activities must be approved by the Board's IRB and shall not begin before approval is secured from the IRB. If Provider wishes to collect data specifically for program evaluation or research purposes, or if Provider wishes to use identifiable data for program evaluation or research purposes, Provider must apply for and obtain permission from the Board's IRB prior to beginning any research or evaluation related data collection.

### ARTICLE III: DUTIES OF THE BOARD

- 1. Provide Data in Compliance with Applicable Laws.** The Board shall provide Confidential Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
- 2. Annual Notification of Rights.** If the Board has a policy of disclosing Education Records and/or Confidential Data under FERPA (34 CFR § 99.31(a)(1)), the Board shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
- 3. Reasonable Precautions.** The Board shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Confidential Data.
- 4. Unauthorized Access Notification.** The Board shall notify Provider promptly of any known unauthorized access. The Board will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

### ARTICLE IV: DUTIES OF PROVIDER

- 1. Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Confidential Data privacy and security, all as may be amended from time to time, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
- 2. Data Custodian.** For the purposes of this DPA and ensuring Provider's compliance with the terms of this DPA and all application of state and federal law, Provider designated Yasmin Gamboa as the data custodian ("Data Custodian") of the Confidential Data. The Board will release all data and information under this DPA to Data Custodian. Data Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data

requested and received pursuant to this DPA, including confirmation of the return or destruction of data as described below. The Board may, upon request, review the records Provider is required to keep under this DPA.

3. **Authorized Use.** The Confidential Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in **Exhibit "A"** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA. Provider will not contact the individuals included in the data sets without obtaining advance written authorization from the Board.
4. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Confidential Data to comply with all applicable provisions of this DPA with respect to the Confidential Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Confidential Data pursuant to the Service Agreement.
5. **Insurance.** Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County  
Attn: Insurance/Real Estate Dept.  
3332 Newburg Road  
Louisville, Kentucky 40218

6. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Confidential Data or any portion thereof, including without limitation, user content or other nonpublic information and/or personally identifiable information contained in the Confidential Data other than as required by law or court order. If Provider becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule, regulation, or otherwise), then Provider shall use all reasonable efforts to provide the Board with prior notice before disclosure so that the Board may seek a protective order or other appropriate remedy to present the disclosure or to ensure the Board's compliance with the confidentiality requirements of federal or state law. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information or to Subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Confidential Data to any third party.
7. **De-Identified Data:** Provider agrees not to attempt to re-identify De-Identified Confidential Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the Board or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive Learning purpose and for customized student Learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by the Board to return or destroy Confidential Data. Except for Subprocessors, Provider agrees not to transfer de-identified Confidential Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice

has been given to the Board who has provided prior written consent for such transfer. Prior to publishing any document that names the Board explicitly or indirectly, the Provider shall obtain the Board's prior written approval.

8. **Disposition of Data.** Upon written request from the Board, Provider shall dispose of or provide a mechanism for the Board to transfer Confidential Data obtained under the Service Agreement in a usable format, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the Board is received to return the data in a usable format, Provider shall dispose of all Confidential Data after providing the Board with reasonable prior notice. The duty to dispose of Confidential Data shall not extend to Confidential Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The Board may employ a **“Directive for Disposition of Data”** form, a copy of which is attached hereto as **Exhibit “D”**. If the Board and Provider employ **Exhibit “D”**, no further written request or notice is required on the part of either party prior to the disposition of Confidential Data described in **Exhibit “D”**.
9. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Confidential Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to the Board. This section does not prohibit Provider from using Confidential Data (i) for adaptive Learning or customized student Learning (including generating personalized Learning recommendations); or (ii) to make product recommendations to teachers or the Boards employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Confidential Data as permitted in this DPA and its accompanying exhibits.
10. **Liability.** Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Provider's intentional or negligent release of personally identifiable student, parent or staff data (“Claim” or “Claims”). Provider agrees to hold harmless the Board and pay any costs incurred by the Board in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this DPA.

#### ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Confidential Data shall be stored within the United States. Upon request of the Board, Provider will provide a list of the locations where Confidential Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the Board with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the Board to audit the security and privacy measures that are in place to ensure protection of Confidential Data or any portion thereof as it pertains to the delivery of services to the Board . The Provider will cooperate reasonably with the Board and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or the Board, and shall provide reasonable access to the Provider's facilities, staff, agents and the Board's Confidential Data and all records pertaining to the Provider, the Board and delivery

of Services to the Board. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Confidential Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the standards set forth in **Exhibit “E”**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit “E”**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who the Board may contact if there are any data security concerns or questions. Additionally, The Provider agrees to maintain a minimum security standard including but limited to the following precautions and protections:

- a) Encrypting all data, at rest and in transit;
- b) Maintaining multi-factor authentication on accounts that can access the network or email remotely, including 3rd party accounts;
- c) Establishing and enforcing well-defined data privilege rights which follow the rule of least privilege and restrict users’ access to the data necessary for this to perform their job functions;
- d) Ensuring all staff and 3rd parties sign a nondisclosure statement, and maintaining copies of the signed statements;
- e) Installing end-point protection including but not limited to anti-malware and anti-spyware on any device connected to the network that has access to scoped data, when applicable

4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Confidential Data that compromises the security, confidentiality or integrity of the Confidential Data maintained by the Provider the Provider shall provide notification to the Board within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
  - i. The name and contact information of the individual reporting a breach subject to this section.
  - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and

- i. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Confidential Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
  - (1) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Confidential Data or any portion thereof, including personally identifiable information and agrees to provide the Board, upon request, with a summary of said written incident response plan.
  - (2) The Board shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
  - (3) In the event of a breach originating from the Board's use of the Service, Provider shall cooperate with the Board to the extent necessary to expeditiously secure Confidential Data.

**5. Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act.** If Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:

- a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
  - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
  - ii. A Social Security number;
  - iii. A taxpayer identification number that incorporates a Social Security number;
  - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
  - v. A passport number or other identification number issued by the United States government; or

- vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
- b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
- c. Provider shall not re-disclose, without the written consent of the Board, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
- d. Provider agrees to cooperate with the Board in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
- e. Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

**6. Cloud Computing Service Providers.** If Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Provider agrees that:

Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."

Pursuant to KRS 365.734(2), Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.

Pursuant to KRS 365.734(2), Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.

Pursuant to KRS 365.734(3), Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).

## **ARTICLE VI: MISCELLANEOUS**

- 1. Termination.** Either party may terminate this DPA if the other party breaches any terms of this DPA, provided however, the breaching party shall have thirty (30) days to cure such breach and this DPA shall remain in force. The Board may terminate this DPA in whole or in part at any time by giving written notice to Provider of such termination and specifying the effective date thereof, at Least thirty (30) days before the specified effective date. In accordance with **Attachment A**, the Board shall compensate Provider for Services satisfactorily performed through the effective date of termination.



2. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of the Board's Confidential Data pursuant to Article IV, section 6.
3. **Priority of Agreements.** This DPA shall govern the treatment of Confidential Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence.
4. **Modification.** No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.
5. **Disputes.** Any differences or disagreements arising between the Parties concerning the rights or liabilities under this DPA, or any modifying instrument entered into pursuant to this DPA, shall be resolved through the procedures set out in the Regulations.
6. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for the Board for this DPA is:

Name: Rashawna Mullaney Title: Lead Psychologist

Address: 3332 Newburg Road, Louisville, KY 40218

Phone: 502-485-6052 Email: Rashawna.mullaney@jefferson.kyschools.us

The designated representative for the Provider for this DPA is:

PresenceLearning, Inc

Attn: Legal Department Email: legal@presencelearning.com

7. **Amendment and Waiver.** This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
8. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

9. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR JEFFERSON COUNTY KENTUCKY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
10. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the Board no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Confidential Data within the Service Agreement. The Board has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
11. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Confidential Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Confidential Data and/or any portion thereof.
12. **Relationship of Parties.** The Board is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor the Board shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.
13. **Equal Opportunity.** During the performance of this DPA, Provider agrees that Provider shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Compensation is paid from federal funds, this DPA is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this DPA as if set forth in full herein.
14. **Prohibition on Conflicts of Interest.** It shall be a breach of this DPA for Provider to commit any act which is a violation of Article XI of the Regulations entitled “Ethics and Standards of Conduct,” or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.
15. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to Provider for the duration of this DPA and shall reveal any final determination of a violation by the Provider of the preceding KRS chapters.

**16. Access to School Grounds.** No employee or agent of Provider shall access the Board's school grounds on a regularly scheduled or continuing basis for purposes of providing services to students under this DPA.

IN WITNESS WHEREOF, The Board and Provider execute this DPA as of the Effective Date above.

**BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Dr. Marty Pollio

Title/Position: Superintendent

**Presence Learning, Inc.**

By:  \_\_\_\_\_ Date: 10/25/2023

Printed Name: Anthony K. Alejandre

Title/Position: VP, Customer Success - West

**EXHIBIT "A"**

**DESCRIPTION OF SERVICES**

Provider shall provide software licenses and support for the following products at prices equal or below Provider's standard pricing rates for the products:

Psychoeducational Educational Assessments

Behavior and Mental Health Counseling for 7 hours per week for an estimated cost of \$19,704.18

**COMPENSATION**

Purchase orders shall be entered by JCPS ECE. Funds for purchase shall come from account codes: EC12736-0349-478IA and EC12736-0349-478IP. Total payments under this DPA in accordance with the attached Service Order, per fiscal year, running from July 1-June 30.

**EXHIBIT "B"**

**SCHEDULE OF DATA**

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	<input type="checkbox"/>
	Other application technology meta data- Please specify:	<input type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application	<input type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input checked="" type="checkbox"/>
	Other assessment data-Please specify:	<input type="checkbox"/>
Attendance	Student school (daily) attendance data	<input type="checkbox"/>

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	Student class attendance data	<input type="checkbox"/>
Communications	Online communications captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Conduct or behavioral data	<input checked="" type="checkbox"/>
Demographics	Date of Birth	<input checked="" type="checkbox"/>
	Place of Birth	<input type="checkbox"/>
	Gender	<input checked="" type="checkbox"/>
	Ethnicity or race	<input checked="" type="checkbox"/>
	Language information (native, or primary language spoken by student)	<input checked="" type="checkbox"/>
	Student disability information	<input checked="" type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	Other demographic information-Please specify:	<input type="checkbox"/>
Enrollment	Student school enrollment	<input type="checkbox"/>
	Student grade level	<input checked="" type="checkbox"/>
	Homeroom	<input type="checkbox"/>
	Guidance counselor	<input type="checkbox"/>
	Specific curriculum programs	<input type="checkbox"/>
	Year of graduation	<input type="checkbox"/>
	Other enrollment information-Please specify:	<input type="checkbox"/>

Parent/Guardian Contact Information	Address	<input type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input type="checkbox"/>
Parent/Guardian ID	Parent ID number (created to link parents to students)	<input type="checkbox"/>
Parent/Guardian Name	First and/or Last	<input checked="" type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>
Special Indicator	English language Learner information	<input type="checkbox"/>
	Low income status	<input type="checkbox"/>
	Medical alerts/ health data	<input type="checkbox"/>



Category of Data	Elements	Check if Used by Your System
	Specialized education services (IEP or 504)	<input checked="" type="checkbox"/>
	Living situations (homeless/foster care)	<input type="checkbox"/>
	Other indicator information-Please specify:	<input type="checkbox"/>
Staff Data	First and Last Name	<input type="checkbox"/>
	Email Address	<input type="checkbox"/>
	Staff ID number	<input type="checkbox"/>
	Other information – Please specify	<input type="checkbox"/>
Student Contact Information	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>

Student Identifiers	Local (School district) ID number	<input type="checkbox"/>
	State ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input type="checkbox"/>
	Student app username	<input type="checkbox"/>
	Student app passwords	<input type="checkbox"/>
Student Name	First and/or Last	<input checked="" type="checkbox"/>
Student In App Performance	Program/application performance (typing program- student types 60 wpm, reading program- student reads below grade level)	<input type="checkbox"/>
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	<input type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires	<input type="checkbox"/>
Student work	Student generated content; writing, pictures, etc.	<input type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	Other student work data -Please specify:	<input type="checkbox"/>
Transcript	Student course grades	<input type="checkbox"/>
	Student course data	<input type="checkbox"/>
	Student course grades/ performance scores	<input type="checkbox"/>
	Other transcript data - Please specify:	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>

	Other transportation data – Please specify:	<input type="checkbox"/>
Other	Please list each additional data element used, stored, or collected by your application:	<input type="checkbox"/>
None	No Confidential Data collected at this time. Provider will immediately notify JCPS if this designation is no longer applicable.	<input type="checkbox"/>

**EXHIBIT “C”**  
**DEFINITIONS**

**Compensation:** Amounts to be paid to the Provider in exchange for software licenses and support. The maximum amount of Compensation that may be paid under this DPA is set forth in Attachment A. The Board is not obligated to pay the maximum Compensation amount solely by its inclusion in this DPA. Compensation owed is determined by the purchase orders submitted to Provider. The cost for any single license or support provided under this DPA shall not exceed Provider’s standard pricing for that product.

**De-Identified Data and De-Identification:** Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

**Educational Records:** Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

**Metadata:** means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

**Operator:** means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with the Board to provide a service to the Board shall be considered an “operator” for the purposes of this section.

**Provider:** For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Confidential Data. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

**Regulations:** The Board Procurement Regulations, available on the Board website, as may be amended from time to time.

**Student Generated Content:** The term “Student-Generated Content” means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

**School Official:** For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Confidential Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

**Service Agreement:** Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

**Confidential Data:** Confidential Data includes any data, whether gathered by Provider or provided by the Board or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Confidential Data includes Meta Data. Confidential Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Confidential Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Confidential Data as specified in **Exhibit "B"** is confirmed to be collected or processed by the Provider pursuant to the Services. Confidential Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student's use of Provider's services.

**Subprocessor:** For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Board or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Confidential Data.

**Targeted Advertising:** means presenting an advertisement to a student where the selection of the advertisement is based on Confidential Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

**Third Party:** The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Confidential Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

**EXHIBIT "D"**

**DIRECTIVE FOR DISPOSITION OF DATA**

The Board of Education of Jefferson County Kentucky directs Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between The Board and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

\_\_\_\_\_ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

**[Insert categories of data here]**

\_\_\_\_\_ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

\_\_\_\_\_ Disposition shall be by destruction or deletion of data.

\_\_\_\_\_ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

**[Insert or attach special instructions]**

3. Schedule of Disposition

Data shall be disposed of by the following date:

\_\_\_\_\_ As soon as commercially practicable.

\_\_\_\_\_ By **[Insert Date]**

Signature

\_\_\_\_\_  
Authorized Representative of the Board

\_\_\_\_\_  
Date

Verification of Disposition of Data

\_\_\_\_\_  
Authorized Representative of Provider

\_\_\_\_\_  
Date

**EXHIBIT “E”**

**DATA SECURITY REQUIREMENTS**

**Adequate Cybersecurity Frameworks**

Provider will utilize one of the following known and credible cybersecurity frameworks which can protect digital learning ecosystems.

Cybersecurity Frameworks

	<b>MAINTAINING ORGANIZATION/GROUP</b>	<b>FRAMEWORK(S)</b>
	American Institute of CPAs	SOC2
	International Standards Organization (ISO)	Information technology — Security techniques — Information security management systems (ISO 27000 series)
X	The Board of Education of Jefferson County	Board provided standardized questionnaire





## Service Order

### Customer Name and Contact Information

Name: Jefferson County Public Schools - KY

Address: 3332 Newburg Road, Louisville, KY

### Customer Primary Point of Contact

Name: Kim Chevalier

Email Address: [kimberly.chevalier@jefferson.kyschools.us](mailto:kimberly.chevalier@jefferson.kyschools.us)

### Customer Secondary Point of Contact

Name: Rashawna Mullaney

Email Address: [rashawna.mullaney@jefferson.kyschool.us](mailto:rashawna.mullaney@jefferson.kyschool.us)

### PresenceLearning Contact Information

Name: Jennifer Adams

Email Address: [Jennifer.Adams@presencelearning.com](mailto:Jennifer.Adams@presencelearning.com)



### Service Order

This Service Order (“Service Order”) is hereby attached and made part of the Agreement between PresenceLearning, Inc. (“Presence”) and the undersigned customer. Capitalized terms not defined in this Service Order shall have the meaning set forth in the Agreement. To the extent there is any conflict between this Service Order and the Agreement, this Service Order shall govern.

#### Weekly Dedicated Hours

Weekly Dedicated Hours: BMH Services  7 hours per week  
Cost per hour: \$72.00

Weekly Dedicated Hours: Select Service Type hours per week  
Cost per hour:

Weekly Dedicated Hours: Select Service Type hours per week  
Cost per hour:

Order Term: 8/14/23 - 5/28/24

School Service Weeks: 36

**Total Estimated Clinical Service Fees: \$18,144**

**Program Implementation Fee (one-time up-front): \$907.00**

**Service Coordination Fee:**

(Invoiced monthly starting in 2nd month of the Service Order Term) 4 % of Monthly Clinical Services Fees

**Estimated Annual Service Coordination Fee: \$648.00**

(For illustrative purposes only)


[Continues on the next page]

**Psychoeducational Assessments**

Service	Student Quantity/Groups	Price per Service
Evaluation Coordination and Reporting by MHP/Ed Diag	0	\$295.00
Review of Records by MHP/Ed Diag	0	\$235.00
Cognitive Select Subtests	0	\$155.00
Processing Select Subtests by MHP/Ed Diag	0	\$165.00
Achievement Select Subtests	0	\$118.00
Rating Scale Assessment by MHP/Ed Diag	0	\$175.00
Classroom Observation by MHP/ Ed Diag	0	\$133.00
Achievement Standard Battery	0	\$233.00
Long Cognitive Battery	0	\$300.00
Additional Assessment by MHP/Ed Diag	0	\$260.00
Processing Standard Battery	0	\$300.00
Additional Requested Meetings by MHP/Ed Diag	0	\$68.00
Schoolwide Consultation	0	per hour
Short Cognitive Battery	0	\$150.00
Spanish Select Subtests by MHP/Ed Diag	0	\$272.00
Spanish Battery	0	\$378.00
Screening by MHP/Ed Diag	0	\$133.00
Additional Requested Paperwork by MHP/Ed Diag	0	\$68.00
Functional Behavior Assessment by MHP/ Ed Diag	0	\$355.00
Intervention Data Analysis by MHP/Ed Diag	0	\$68.00
Extended Coordination by MHP/Ed Diag	0	\$68.00
Results Meeting	0	\$110.00
Parent Interview by MHP/ Ed Diag	0	\$68.00
Student Interview by MHP/Ed Diag	0	\$68.00
Teacher Interview by MHP/Ed Diag	0	\$68.00
Unplanned Student Absence MHP/Ed Diag	0	\$75.00

Document Camera	\$90.00 (each)

**Approved and Agreed:**

PresenceLearning, Inc.  
 Signature:   
 Name: Anthony K. Alejandre  
 Title: VP, Customer Success - West  
 Date: 10/25/2023

Customer  
 Signature:  
 Name:  
 Title:  
 Date:



## Addendum

This Addendum (“Addendum”) is entered into between PresenceLearning, Inc., (“Contractor”) and Jefferson County Board of Education (the “Board”) and incorporated into the Jefferson County Public Schools Contract for the Professional Services (“Agreement”) to which it is attached. Contractor and the Board may individually refer to as “Party” and collectively referred to as the “Parties”.

1. **CLINICAL SERVICES.** The services and fees are provided in the Contractor’s Service Order (“Service Order”) attached and incorporated into the Agreement as Exhibit 1. The Service Order will list the clinical discipline of the services the Board has purchased, referenced by discipline type, which services may be purchased on an hourly or annual basis (other fees may apply), and include direct clinical therapy, indirect clinical services, IEP development, attendance to meetings through the Platform (collectively, “Services”).

### 2. SERVICES AND PLATFORM; PLATFORM SPECIFICATIONS.

2.1 Services and Platform. Contractor shall provide the Board with the Services and technical support set forth on each Service Order. All Services shall be delivered via Contractor’s proprietary web-based application (together with any components, software, or related documentation, the “Platform”). The Platform enables engagement between the Board’s authorized users, support staff and administrators overseeing the Services (collectively, “Authorized Users”), and Contractor’s clinical providers (each, a “Clinician”, and, collectively, “Clinicians”). During the Term, Contractor grants the Board and its Authorized Users a limited, non-exclusive, revocable, non-sublicensable, non-transferable, royalty-free, right and license to use and display the Platform.

2.2 Platform Specifications and Support. As a web-based application, the Platform requires certain equipment for optimal performance, see tech specifications at (<https://www.presencelearning.com/tech-requirements/>). Contractor will provide technical support on weekdays between the hours of 8:00AM and 8:00PM (Eastern time). The Board may purchase necessary equipment from Contractor pursuant to the terms and conditions set forth on the Equipment Schedule.

#### 2.3 Platform Restrictions.

2.3.1 The Board shall not for itself or through a third party (and shall ensure that its Authorized Users and students do not): (i) translate, reverse engineer, decompile, or disassemble the Platform, or by any other method attempt to derive source code to the Platform; (ii) sublicense, rent, lease, loan, assign, transfer, share, or resell the Platform; (iii) make the Platform available to third parties; (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 documentation contained within the Platform.

2.3.2 If Board breaches the terms of this Agreement or if the Board or any of its Authorized Users misuse the Platform or violate any laws with respect to the Platform, Contractor may terminate or suspend the Board’s and its Authorized Users’ and students’ access to the Platform and remove any material it deems offensive or in violation of this Section 2.3.2. Neither the Board or its Authorized Users may:

2.3.2.1 Circumvent any access or use restrictions put into place to prevent certain uses of the Platform or areas of the Platform or attempt to disable, impair, or destroy the Platform by, among other things, uploading, transmitting, storing, or making available any materials that contain any viruses, malicious code, malware, or any components;

2.3.2.2 Engage in behavior that violates any copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, or any other proprietary rights of any third party;

2.3.2.3 Upload to the Platform and/or share any material that is unlawful, harmful, threatening, obscene, violent, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, hateful, or otherwise objectionable, as determined in the sole discretion of Contractor, or share any of materials that sexualizes minors or that is intended to, or could potentially, facilitate inappropriate interactions with minors, or other users;

2.3.2.4 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); or

3.3.2.5 Take photos or screenshots of the Platform and/or post on social media or engage in any other behavior that violates the confidentiality of Platform.

**3. FEE AND PAYMENT TERMS.** The Board shall pay all Fees specified in the applicable Service Order for Services. Fees are due and payable net thirty (30) days from date of invoice. Fees for Services include the use of Platform for the Board's Authorized Users.

3.1 Weekly Dedicated Hours. Beginning on a mutually agreed date through the end of the Service Order Term, Customer will be charged for a specified number of hours per week that Presence will make clinicians available to provide Clinical Services. Customer may reduce the number of weekly dedicated hours upon sixty (60) days' notice to Presence.

3.2 Flexible Hours. The Service Order may provide for flexible hours for a particular Service, the fee for which shall be based on a per hour, per Clinician basis. If the Board cancels a session with less than 24 hours advance notice, a session does not occur due to a student absence, or if a student fails to attend a session (each such instance, an "Unplanned Student Absence"), the Board agrees to pay Contractor (i) if the Unplanned Student Absence is from a therapy session, the applicable rate for the duration of such therapy session or (ii) if the Unplanned Student Absence is from an assessment, the applicable fee shall be \$20.00 for an SLP assessment, \$20.00 for an OT assessment, or \$30.00 for a BMH or Psychoeducational Assessment.

3.3 Assessments. If applicable, the Service Order may specify that Contractor will provide educational assessments (e.g., Psychoeducational, OT, speech, etc.). The applicable fees for assessments will be set forth in the Service Order.

3.4 Assessment Commitment. Except with respect to Psychoeducational Assessments, if applicable, the Service Order may specify the minimum number of initial 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, Presence will reconcile the Assessment Commitment with actual initial assessments given, and Customer will be invoiced an amount equal to price of an ECAR as specified in the Service Order multiplied by the number of initial assessments that were not conducted.

3.5 Psychoeducational Assessment Commitment. If applicable, the Service Order may specify a minimum fee for Psychoeducational Assessments for which payment is due at the end of the Term (such payment, the "Psychoeducational Assessment Commitment Fee"). At the end of the Term, Contractor will reconcile the Psychoeducational Assessment Commitment Fee with the actual Psychoeducational Assessment fees billed, and the Board will be invoiced for the difference between the Psychoeducational Assessment Commitment Fee and the actual Psychoeducational Assessment fees billed.

3.6 Program Implementation Fee. Each Service Order will include a non-refundable Program Implementation Fee for technology onboarding, Clinician onboarding, training onsite support, developing procedures and gathering data to create service handbooks, review and data input of student referrals, assigning students to appropriate Clinicians, and scheduling student services.

3.7 Service Coordination Fee. Beginning in the second calendar month of the Term, each monthly invoice will include a non-refundable Service Coordination Fee for ongoing scheduling and referral management, support for school personnel, and district-level communication to providers.

#### **4. CLINICIANS.**

4.1 Credentials and Clearances. For each Clinician assigned to the Board, Contractor has verified clinicians' qualifications to provide services, as applicable, within the Board's state. If the Board requires additional verifications or credentials (such as district fingerprinting or the Board of Education certifications), all of which will be conducted at the Board's sole expense. The Board must inform Contractor and provide all necessary information or instructions with respect to such additional verifications or certifications to Contractor in a timely manner.

4.2 Background Checks. Contractor conducts yearly background checks, which include criminal background checks and U.S. Registered Sex Offender registry checks, on all its employees and Clinicians. If the Board requires additional clearances such as FBI Fingerprinting, except in the states of California and Texas, all such additional

clearances will be conducted at the Board's sole expense. The Board will provide all necessary information or instructions with respect to such additional clearances to Contractor in a timely manner.

4.3 Clinician Availability; Supporting Documentation. Contractor will use commercially reasonable efforts to provide the Services throughout the Term. The Board agrees to provide all pertinent school records in a timely manner to enable Contractor to begin Services.

4.4 Primary Support Person. The Board agrees to provide an adult primary support person (a "PSP") wherever the services are being delivered. The duties and responsibilities of the PSP can be found at <https://presencelearning.com/welcome-primary-support-person/>.

## 5. CLINICIAN CONVERSION; CONVERSION FEE.

5.1 Clinician Conversion. During the Term of this Agreement, the Board may not, directly or indirectly, solicit, induce, hire, or attempt to induce or hire any Contractor's clinician except in accordance with the terms set forth in this Section 5.

5.2 Conversion Fee. During the Term, and for a period of twelve months thereafter, the Board shall notify Contractor of its intent to offer employment to any clinician not less than ten (10) calendar days prior to offering such employment (any clinician that accepts such offer of employment, a "Converted Clinician"). Upon the date a Converted Clinician commences employment with the Board (the "Conversion Effective Date"): (i) the Converted Clinician shall be allowed to continue to utilize the Platform (in the same manner and with the same functionality as the Converted Clinician utilized the Platform prior to the Conversion Effective Date) through the earlier of the expiration of the then-current school year or the Term pursuant to which the Converted Clinician was performing Services hereunder prior to becoming a Converted Clinician and (ii) the Board shall pay Contractor a fee of \$20,000.

## 6. PARTIES' PROPRIETARY RIGHTS; USE OF THE BOARD INTELLECTUAL PROPERTY; CONTENT RESTRICTIONS; REMOVAL OF CONTENT; OTHER RIGHTS.

6.1 Parties' Proprietary Rights. Contractor owns all right, title, and interest in and to the Platform and retains all rights and title to all proprietary content in the Platform, including therapy playlists and related documents and content, and retains all right, title and interest to any work product or other intellectual property developed and/or created by, or on behalf of, Contractor (collectively, "PresenceLearning Intellectual Property"). The Board owns all right, title, and interest in and to any of the Board's proprietary content (collectively, "Board Intellectual Property").

6.2 Use of the Board Intellectual Property. During the Term, the Board grants to Contractor, solely in connection with Contractor's performance of its obligations hereunder, a non-exclusive, royalty-free license to modify, display, combine, copy, store, transmit, and otherwise use the Board's Intellectual Property that is uploaded to the Platform.

## 7. CONFIDENTIALITY.

7.1 Confidential Information. All information disclosed by one Party (in such capacity, the "Disclosing Party") to the other Party (in such capacity, the "Receiving Party") during the Term 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."

7.2 Exceptions. Information will not be considered Confidential Information if the information is or was: (i) publicly available through no act or omission of the Receiving Party; (ii) 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; (iii) lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (iv) independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information.

7.3 Nondisclosure. The Parties agree, that during the Term and for a period of one year thereafter (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. Each Party shall remain responsible for any breaches of this Section 7.3 by any of such Parties' Representatives.

8. **NOTICES.** All notices relating to the Agreement must be in writing, sent by postage prepaid first-class mail, courier service, or via email: To PresenceLearning, Inc., 530 Seventh Ave, Suite M1, New York, NY 10018, Attn: Legal Department or via email at legal@presencelearning.com. To the Board: Notices will be sent to the address provided in the Agreement.

9. **INDEPENDENT CONTRACTORS.** The Parties are and shall remain independent contractors and nothing in The 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.

10. **TERMINATION; EFFECTS OF TERMINATION.**

10.1 Termination. This Agreement may be terminated: (a) by either Party without cause upon sixty (60) calendar days prior written notice to the other Party; (b) by Presence upon any failure of Customer to pay when due any Fees (as defined in Section 2); provided, however, that in lieu of terminating the MSA or any Incorporated Document, Presence may, at its sole option, suspend Services, in whole or in part; (c) by either Party with cause upon a non-payment related material breach of the Agreement by the other Party which breach is not cured within fifteen (15) calendar days after the breaching Party receives written notice of the breach from the non-breaching Party; or (d) immediately by Customer upon a payment equal to the product of (x) eight (8) and (y) the Weekly Dedicated Hours (if Weekly Dedicated Hours are included in the Service Order).

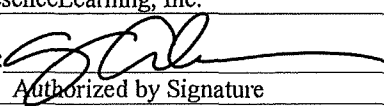
10.1 Effects of Termination. Upon the termination or expiration of the Agreement for any reason, (a) all Fees owed to Contractor that accrued before such termination or expiration will be immediately due and payable, except for any such amounts being disputed in good faith by the Board and (b) the Board shall not be entitled to a refund for any fees paid by the Board prior to the date of termination of the Agreement.

11. **ENTIRE AGREEMENT.** The Agreement and this Addendum, including any exhibits and schedules, 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.

12. **COUNTERPARTS; ELECTRONIC SIGNATURES.** The 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 The Agreement shall be valid and have the same force and effect as a manually signed original.

Agreed to:

Agreed to:

PresenceLearning, Inc.	Jefferson County Public Schools
By:  10/25/2023 Authorized by Signature Date	By: _____ Authorized by Signature. Date
Print Name: Anthony K. Alejandre	Print Name: Dr. Marty Pollio

## EQUIPMENT PURCHASE SCHEDULE

This Equipment Purchase Schedule (the "Equipment Purchase Schedule") is incorporated and made part of the \_\_\_\_\_ (the "Agreement") between Contractor and the Board and lists the terms and conditions upon which the Board may purchase hardware, Test Kits, OT Kits and materials (collectively "Equipment") from Contractor. Unless otherwise defined herein, capitalized terms shall have the definition set forth in the Agreement.

**1. Hardware Available for Purchase.** The Board may, at the Board's option, purchase the hardware set forth below at the purchase prices set forth opposite each hardware type (note that the listed prices do not include any applicable tax or shipping costs):

Equipment Type	Price per unit
Standard webcam with tripod	\$49.00
ANDREA Over Ear USB headset	\$29.00
ANDREA 455 Stereo headset	\$25.00
ANDREA Y-100B Splitter	\$5.00
ANDREA USB Sound Card Adapter	\$14.00
Document Camera	\$90.00

The Board is not restricted from purchasing hardware from any other vendor or any third-party. A list of the recommended hardware providers and specifications is provided at <https://presencelearning.com/tech-requirements/>.

### 2. WISC-V and WAIS-IV Kits.

**2.1 Purchase of WISC-V Kits and/or WAIS -IV Kits.** If the Board has access to WISC-V and/or WAIS-IV assessments, the Board may purchase WISC-V and/or WAIS-IV test kits (each, a "Test Kit") from Contractor. Test Kits are not included in the price of the assessments. Each Test Kit comes with one (1) set of Block Design Blocks and one (1) Block Design Stimulus Book for use in connection with the WISC-V and/or WAIS-IV assessments. Prices of the Test Kits will be reflected in the Service Order entered into at the time the Test Kits are to be purchased.

WISC-V / WAIS -IV	Price per unit
Block Design only Stimulus Book	\$11.00
Block Design Blocks	\$46.00

**2.2 Tracking and Return of Kits.** The Board understands and acknowledges that the Test Kits are considered trade secrets by their respective publishers and will make commercially reasonable efforts to retrieve the Test Kit from each student who received one. After a Test Kit has been used by a student, the Board must arrange for the return of the Test Kit directly to the Board. On a quarterly basis, the Board will acknowledge and confirm to Contractor that the Test Kits are in the Board's possession (in a mutually agreed upon manner). At no time will a Test Kit remain in the possession of the Board's student once it has been used.

**3. OT Kits.** The Board may purchase Occupational Therapy Kits (each, an "OT Kit") for a fee of \$85.00 per OT Kit. Each OT Kit includes materials that may be utilized in occupational therapy sessions.

### 4. Delivery and Delivery Address; Title; Risk of Loss.

**4.1 Delivery and Delivery Address.** Contractor will ship Equipment to the addresses provided by the Board. The Board is solely responsible for providing the correct shipping address for each addressee that is to receive the Equipment. If the Board provides an incorrect address, then the Board will purchase replacement Equipment that will be delivered to the correct address. If Equipment is misdelivered due to Contractor's error, Contractor will promptly ship replacement Equipment to the correct address at no cost to the Board.

**4.2 FOB.** Contractor shall ship and deliver the Equipment FOB destination, and the title to and risk of loss of the Equipment will pass to the Board upon delivery.

**4.3 Delivery Dates.** All delivery dates are approximate. Contractor shall not be liable for any losses, damage, penalties or expenses for failure to meet any expected delivery date.



4.4 Received and Accepted. Equipment is deemed received and accepted upon delivery to the address provided by Board.

**5. Inspection of Goods.** The Board has the right to examine the Equipment upon receipt and has 3 days in which to notify Contractor of any claim for damages based on the condition of the Equipment. Such notice must specify in detail the particulars of the claim. Failure to provide such notice within the requisite time period constitutes irrevocable acceptance of the equipment. Defective Equipment must be returned to Contractor in accordance with accepted trade practices.

**6. Fees; Payment.** The Board agrees to pay for the Equipment according to the terms set forth in the applicable Service Order. The Board is responsible for all taxes and shipping, which fees may vary based on shipment destination.

**7. Disclaimer of Warranty.** Contractor is not the manufacturer of the Equipment, and the Equipment is being sold "as is," and Contractor disclaims all warranties of quality, whether express or implied, including the warranties of merchantability and fitness for particular purpose.

**8. Delay or Failure to Perform.** Contractor will not be liable to the Board for any delay, non-delivery or default due to labor disputes, transportation shortage, Acts of God, or any other causes outside of Contractor's control. Contractor shall notify the Board immediately upon realization that it will not be able to deliver the Equipment as promised.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
07/06/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Willis Towers Watson Southeast, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	<b>CONTACT NAME:</b> Willis Towers Watson Certificate Center <b>PHONE (A/C, No, Ext):</b> 1-877-945-7378 <b>FAX (A/C, No):</b> 1-888-467-2378 <b>E-MAIL ADDRESS:</b> certificates@willis.com
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INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Hartford Fire Insurance Company	19682
INSURER B: Trumbull Insurance Company	27120
INSURER C: Twin City Fire Insurance Company	29459
INSURER D: Indian Harbor Insurance Company	36940
INSURER E:	
INSURER F:	

**COVERAGES** **CERTIFICATE NUMBER: W29572831** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			10 UUN DL6578	07/01/2023	07/01/2024	EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000	
							MED EXP (Any one person) \$ 10,000	
							PERSONAL & ADV INJURY \$ 1,000,000	
							GENERAL AGGREGATE \$ 2,000,000	
							PRODUCTS - COMP/OP AGG \$ 1,000,000	
							\$	
B	AUTOMOBILE LIABILITY			10 UEN DL6556	07/01/2023	07/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$	
	<input type="checkbox"/> OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				SCHEDULED AUTOS	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				NON-OWNED AUTOS ONLY	PROPERTY DAMAGE (Per accident) \$
								\$
	UMBRELLA LIAB						EACH OCCURRENCE \$	
	EXCESS LIAB						AGGREGATE \$	
	DED	RETENTION \$					\$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			10 WE AR8DR4	07/01/2023	07/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000	
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000	
D	Cyber Security Liability			MTP9041106 03	07/01/2023	07/01/2024	Comb. Pol. Agg \$5,000,000	
							Retention \$250,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Media Liability Limit \$5,000,000 Retention \$250,000  
 Privacy Regulatory Defense Limit \$5,000,000 Retention \$250,000  
 Supplemental Third Party Liability Prevention Limit \$5,000,000 Retention \$250,000  
 PCI Fines and Costs Limit \$5,000,000 Retention \$250,000

JEFFERSON COUNTY PUBLIC SCHOOLS is included as an Additional Insured as respects to General Liability.

CERTIFICATE HOLDER	CANCELLATION
Board of Education of Jefferson County Attn: Insurance/Real Estate Dept 3332 Newburg Road Louisville, KY 40218	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 