

Presence – Order Form

Customer Information

Legal Entity Name	University of North Texas at Dallas
Contact Person	[REDACTED]
Email	[REDACTED]
Phone	[REDACTED]
State <i>(and other contact info)</i>	TX

Order Information

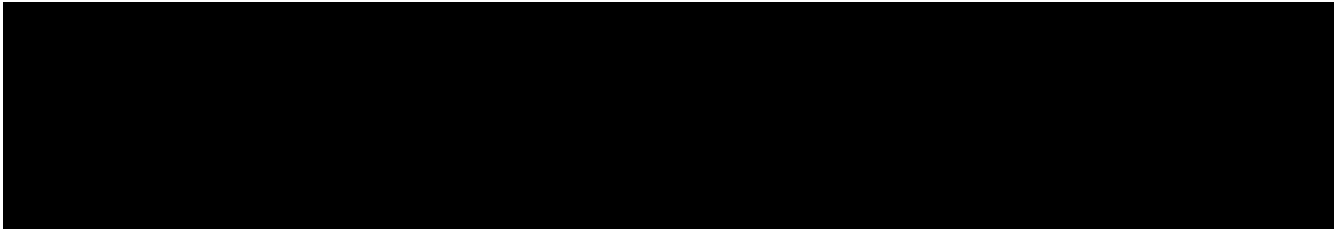
Student Count	3,000
Additional Campuses	0
Annual Subscription Rate	\$8,600
Setup, Implementation And Onboarding Rate	\$5,000
Length Of Subscription	3 years
Details Of Payment <i>(e.g. upfront, annually, or split – specify dates)</i>	<p>This agreement is for 3,000 students for 3 years at \$8,600/year with 10% discount for full upfront payment, and \$5,000 one-time Setup & Onboarding.</p> <p>Year 1: \$28,220 Year 2: \$0 Year 3: \$0</p>

By signing below, Customer’s authorized representative agrees on Customer’s behalf to all of the provisions of the terms and conditions attached hereto.

Addendum attached hereto and incorporated herein for all purposes.

“Customer”

“Presence”



printed name & title

printed name & title

11/13/2018

11/15/2018

date

date

These **Terms and Conditions** (this "Agreement") is made and entered into by and between **Open Presence, Inc.**, a Delaware corporation having an address at 100 7th Street South, Saint Petersburg FL 33701 ("Presence"), and the entity identified as "Customer" on the signed Presence Order Form attached hereto ("Order Form") as of the date the Order Form is executed by both Presence and Customer (the "Contract Date"). Customer and Presence hereby mutually agree to all of the provisions hereof.

1. *Order Form.* The Order Form is incorporated herein by reference. Capitalized terms appearing on the Order Form and used herein shall have the meanings ascribed to them respectively on the Order Form.
2. *Laws Applicable to this Agreement.* This Agreement is subject to any and all state and federal laws and regulations applicable to institutions such as Customer, and, to the extent that any provision hereof does not conform therewith, such provision shall without action by the parties automatically be deemed to be limited or stricken to the extent necessary to cause such provision to so conform.
3. *Roll-Out Date.* Upon or promptly after the Contract Date, Presence shall begin the setup, implementation, and onboarding process to make the App (defined below) ready for Customer's use. Customer shall work with Presence in good faith to assist therewith, and Customer and Presence shall mutually agree on the final date by which the App shall be fully ready for Customer's use (the "Roll-Out Date").
4. *Customer License.* Presence hereby grants to Customer, as of the Roll-Out Date and continuing for the Term of License, the limited, non-exclusive right and license to access and use Presence's web-based software application at **presence.io** together with any related downloadable software applications (collectively, the "App") in accordance herewith (the "License"). Subject to the License, as between Presence and Customer, Presence alone shall own all right, title, and interest in and to the App and all related Presence property.
5. *Authorized Users.* Customer may authorize any number of Customer's employees, contractors, faculty, and students ("Authorized Users") to access and use the App.
6. *Fees.*
 - a. As of the Contract Date, Customer shall pay to Presence the Setup, Implementation, And Onboarding Rate, and the Annual Subscription Rate.
 - b. Continuing for the Length Of Subscription from the Roll-Out Date, Customer shall pay to Presence the Annual Subscription Rate at such times and intervals as are in accordance with the Details Of Payment.
 - c. As of the Contract Date, the Annual Subscription Rate set forth on the Order form has been computed by Presence in light of the Student Count and Additional

Campuses reported by Customer. In the event that the Student Count or Additional Campuses numbers materially increase during the Length Of Subscription, Presence reserves the right to recompute the Annual Subscription Rate, whereupon Customer shall pay to Presence the difference between the recomputed and prior Annual Subscription Rates for the then-remaining portion of the Length of Subscription.

d. At or before such time as each payment is due and payable from Customer to Presence pursuant to Sections 6.a, 6.b, or 6.c, Presence shall invoice Customer for such payment, which such invoice shall be due and payable on a net-30 basis, unless otherwise designated in the Details Of Payment.

e. All amounts paid by Customer hereunder are nonrefundable. Fees may be allocated by Presence in whole or in part to the reservation of resources necessary to service Customer's needs, and such fees shall not be characterized as ongoing subscription fees. If an amount due and payable is not remitted in full or on time, Presence may suspend the provision of the App to Customer until such time as payment is made in full, whereupon Presence may charge Customer a reinstatement fee for the resumption of services. In the event any sales, use, or other taxes are required or assessed by state or federal authorities arising from Customer's use of the App or any other provisions hereof, Customer shall be solely responsible for the payment thereof.

7. *Service Level Objectives.* Presence understands the explicit trust Customer has extended to Presence to provide the App. Presence has built a fault-tolerant application from the physical layer through the application logic to extend 99.5% percent uptime for the App and certain interfaces (the "Service Level Objective"). Presence will use commercially reasonable efforts to meet the Service Level Objective. For each month during the Term that Presence fails materially to meet or maintain the Service Level Objective, if any, the Term of License may be extended by one (1) week if: (i) Customer submits a written request for the extension to Presence within thirty (30) days from the end of the Term of License; and (ii) upon review of applicable logs, which Presence may share with Customer in confidence, Presence in its commercially reasonable discretion agrees that the Service Level Objective was not materially met or maintained for the applicable month. The calculation of downtime shall not include any periods in which access to the App has been suspended based on scheduled maintenance events about which Customer has been notified in writing at least twenty-four (24) hours in advance. The Service Level Objective applies solely to server availability to process the App and application requests within the control of Presence, and does not apply to any aspect of connectivity outside the control of Presence, any actions or omissions of third parties, other causes beyond Presence's control, or any force majeure events. The Term of License extension described in this Section 7 shall be Customer's sole and exclusive remedy for any failure by Presence to meet the Service Level Objective.
8. *Customer Resources.* Customer shall provide appropriate resources, information, data, and assistance to Presence as Presence may reasonably request for Presence to perform its obligations hereunder. In the event that Customer fails to do so, Presence may, in Presence's

sole discretion, terminate this Agreement or suspend performance or provision of the App without any liability whatsoever until such resources are provided.

9. *Customer Data.* Customer's information, or any derivatives thereof, contained in or added to the App ("Customer Data") shall be and remain the sole and exclusive property of Customer. Customer hereby grants to Presence a non-exclusive, perpetual, irrevocable, royalty-free, fully-paid and worldwide license to use Customer Data for the purposes of providing the App to Customer and for all other legal purposes. Presence shall comply with all applicable laws and regulations regarding Customer Data including, without limitation, the provisions of the Family Educational Rights and Privacy Act.
10. *GDPR Compliance.* To the extent that the European Union's General Data Protection Regulation ("GDPR") applies to any Customer Data: (i) the parties hereby agree that Customer is the "Controller" and that Presence is the "Processor" pursuant to the GDPR; and (ii) each party hereby represents and warrants to the other that it is and shall be compliant with its respective obligations as set forth in the GDPR. Notwithstanding any other provisions hereof, to the extent Customer seeks to question or dispute any aspect of Presence's handling of Customer Data, Customer may summarize such concern by email to privacy@presence.io.
11. *Confidential Information.* The parties acknowledge and agree that in their performance hereof, each ("Recipient") may receive or be exposed to the proprietary and confidential information of the other ("Owner") that is designated orally or in writing as being confidential ("Confidential Information"). Recipient shall use Owner's Confidential Information solely in furtherance of Recipient's performance hereunder and for no other purpose whatsoever. Recipient shall not disclose Owner's Confidential Information to any third parties except to Recipient's trusted employees and contractors having a legitimate need to know in furtherance of Recipient's performance hereunder and who are bound by confidentiality obligations at least as restrictive as those hereof. Confidential Information shall not include information that: (i) was lawfully known by Recipient without an obligation of confidentiality before its receipt from Owner; (ii) is independently developed by Recipient without reliance on or use of Owner's Confidential Information; (iii) is or becomes publicly available without a breach by Recipient of this Agreement; or (iv) is disclosed to Recipient by a third party under no obligation to maintain its confidentiality. If Recipient is requested to disclose any Confidential Information as part of an administrative or judicial proceeding, Recipient shall, to the extent permitted by applicable law, promptly notify Owner of that request and cooperate with Owner, at Owner's expense, in seeking a protective order or similar confidential treatment for the Confidential Information. If no protective order or other confidential treatment is obtained, Recipient shall disclose only that portion of Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information which is required to be disclosed. Each party acknowledges that the Confidential Information of Owner is unique and valuable, and that remedies at law will be inadequate to protect Owner from any actual or threatened breach of this Section 11 by Recipient and that any such breach would cause irreparable and continuing injury to Owner. Therefore, Owner shall be entitled to seek equitable relief with respect to the enforcement of this Section 11 without

any requirement to post a bond, in addition to all other remedies available to Owner at law or in equity.

12. *Miscellaneous Intellectual Property Issues.* Any requests or suggestions by Customer for modifications or enhancements to the App will be entertained by Presence in its sole discretion, and ownership of any resulting modifications or enhancements shall be and remain solely with Presence. Customer hereby grants Presence the right to identify Customer as a customer of Presence's in Presence's marketing materials in all media and to use Customer's name, logo, and other trademarks solely for such purpose at all times in accordance with Customer usage guidelines applicable thereto.
13. Disclaimer of Warranties. THE APP IS MADE AVAILABLE ON AN "AS IS" BASIS. PRESENCE MAKES NO WARRANTIES, CONDITIONS, INDEMNITIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE AS TO ANY MATTERS, INCLUDING WITHOUT LIMITATION NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, INTEGRATION, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OTHER THAN AS MAY BE EXPRESSLY SET FORTH HEREIN. CUSTOMER REMAINS SOLELY RESPONSIBLE FOR OPERATING CUSTOMER'S BUSINESS RESPONSIBLY.
14. Limitation of Liability. OTHER THAN AS MAY BE SET FORTH HEREIN, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGE OR LOSS ARISING IN CONNECTION WITH THE APP OR PRESENCE'S PERFORMANCE HEREUNDER SHALL BE CUSTOMER'S DIRECT DAMAGES, NOT TO EXCEED A PRORATED PORTION OF THE FEES PAID BY CUSTOMER FOR THE AFFECTED PORTION OF THE LENGTH OF SUBSCRIPTION. UNDER NO CIRCUMSTANCES SHALL PRESENCE BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES RELATED TO CUSTOMER'S USE OR RELIANCE UPON THE APP, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.
15. *Indemnification.* Each party shall defend, protect, indemnify, and hold harmless the other party from and against all third-party claims, damages, expenses (including reasonable attorney fees and court costs) incurred by the indemnified party arising from any act or omission of the indemnifying party constituting gross negligence or willful misconduct.
16. *Term & Termination.* The period of time during which the Agreement is in force and effect (the "Term") shall begin on the Contract Date and shall end on the last day of the Term of License as the same may be extended pursuant to Section 7 or suspended pursuant to Sections 6 or 8. Upon the expiration or termination of this Agreement for any reason, Customer shall pay to Presence all amounts due and payable (including without limit all fees, costs, and expenses)

hereunder, and the provisions of Sections 11, 13, 14, 15, 17, and this Section 16 shall survive such termination. The parties may renew, extend, or modify the Term by mutually executing an additional Order Form, to which all of the provisions hereof shall thereupon apply.

17. *General.*

- a. Governing Law; Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State designated on the Order Form without regard to its conflicts of laws provisions. The parties submit to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located nearest to Customer's primary place of business within State to hear and resolve disputes arising hereunder.
- b. *Interpretation.* This Agreement: (i) sets forth the complete understanding between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous, written and oral agreements, proposals, communications, and understandings respecting such subject matter; (ii) may be assigned by each party to its successor-in-interest by way of merger or acquisition upon notice to the other party; (iii) shall be binding on each party's successors and assigns; (iv) may be executed by facsimile, digital scan, or in two or more counterparts, each of which shall be deemed a duplicate original; (v) may not be amended or waived except in a mutually-signed writing; and (vi) shall not be construed against either party as the drafter hereof.
- c. *Parties.* The parties are independent contractors and are not employees/employers, partners, or joint venturers.
- d. *Severability.* If any provision of this Agreement is for any reason held to be invalid, illegal, or unenforceable, such provision shall be treated as modified to the least extent necessary to rectify its invalidity, illegality, or unenforceability, and shall be enforced as so modified. If no feasible modification shall save such provision, it will be severed from the remainder of this Agreement. The remaining provisions of this Agreement shall be unimpaired, and remain in full force and effect.
- e. *Notices.* Any and all notices, demands, consents, and other communications required or permitted under this Agreement shall be deemed given if in writing and delivered either in person, by reasonably confirmed email, or by mail or overnight commercial carrier, addressed to the recipient of the notice as set forth on the Order Form or as may be publicly available, full pre-paid, and registered or certified with return receipt requested as applicable and shall be deemed to have been given upon the date of actual receipt or refusal, except that whenever under this Agreement a notice is either received on a day that is not a business day or is required to be delivered on or before a specific day that is not a business day, the day of receipt or required delivery shall automatically be extended to the next business day.

Open Presence

Terms and Conditions

- f. *Force Majeure*. Except for Section 6, neither party shall be liable for, or be considered in breach of or default under this Agreement on account of any delay or failure to perform as required by this Agreement resulting from any external causes or conditions beyond such party's reasonable control that such party is unable to overcome by the exercise of reasonable diligence.

STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System (“UNTS”) and the University of North Texas at Dallas (“UNTD”) are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. In accordance with Chapter 2251 of the Texas Gov’t Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNTD; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

Eligibility to Receive Payment. Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov’t Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Tax Exempt. UNTD is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against UNTD. Chapter 2260 of the Texas Gov’t Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov’t Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNTD that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Dallas County, Texas, and venue for any suit filed against UNTD shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, UNTD’s continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNTD shall issue written notice to Vendor that UNTD may terminate the Agreement without further duty or obligation.

Travel Expenses. Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

Delivery. Delivery shall be FOB Destination.

Insurance. UNTD, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNTD shall, without further requirement, satisfy all insurance obligations of UNTD under the Agreement.

Public Information. UNTD shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNTD in an electronic format.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNTD is required by Texas Gov’t Code Section 2261.253 to post each contract it enters into for the purchase of goods or services from a private vendor on its internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. Pursuant to Texas Gov’t Code section 2270.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

Limitations. UNTD is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNTD property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney’s fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNTD, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

Vendor: Open Presence, Inc. DocuSigned by: UNIVERSITY OF NORTH TEXAS AT DALLAS

Date: 11/15/2018

Date: _____