

**T**HIS AGREEMENT executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ but agreed to be effective from and after \_\_\_\_\_, 20\_\_ , by and between \_\_\_\_\_ (“Parents”), and \_\_\_\_\_ (“Therapist”).

WHEREAS, Therapist represents that she has received training in Applied Behavioral Analysis (“ABA”).

WHEREAS, Parents need an independent contractor to provide ABA therapy to their child \_\_\_\_\_.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, Parents hire Therapist, and Therapist agrees to work for Parents, for the benefit of \_\_\_\_\_ (“Student”) under the terms and conditions hereby agreed upon by the parties:

## **SECTION 1 - WORK TO BE PERFORMED**

**1.1 Term.** Parents agree to hire Therapist, at will, for a term commencing on \_\_\_\_\_, 20\_\_ and continuing until terminated in accordance with Section 4.

**1.2 Duties.** Therapist agrees to perform work for the Parents on the terms and conditions set forth in this agreement, and agrees to devote all necessary time and attention (reasonable periods of illness excepted) to the performance of the duties specified in this agreement. Therapist’s duties shall be as follows:

- a. Provide Applied Behavioral Analysis (“ABA”) therapy (hereafter “therapy” or ABA therapy) to Student as instructed by \_\_\_\_\_ (agency) or other Parent selected program consultant (hereafter collectively referred to as “Program Consultant”).
- b. Assist in preparation of stimulus material as directed by Program Consultant and/or Parents;
- c. Clean up work area and leave materials organized before leaving ABA therapy session;
- d. Attend all staff/clinic meetings as scheduled by Program Consultant and/or Parents;
- e. Attend all workshop trainings as scheduled by Program Consultant and/or Parents;
- f. Follow all procedures as specified in ABA Therapy logbook including accurate record keeping, prompting, and reinforcement.

Therapist further agrees that in all such aspects of her work, Therapist shall comply with the policies, standards, regulations of the Program Consultant and/or Parents, and shall perform the duties assigned professionally, faithfully, intelligently, to the best of her ability, and in the best interest of Student.

## **SECTION 2 - CONFIDENTIALITY**

**2.1 Confidentiality.** Therapist acknowledges and agrees that all records, including but not limited to medical and psychological reports, videotapes, DVDs, photographs, voice recordings, data and information related to Student (“Confidential Information”) are property of the Parents. Therapist shall not, during the term of this Agreement or after the termination of this Agreement, disclose any Confidential Information to any person or use any Confidential Information for the benefit of Therapist or any other person, except with the prior written consent of the Parents.

**2.2 Return of Documents or Media.** Therapist acknowledges and agrees that all originals and copies of records, reports, documents, lists, plans, memoranda, notes and other documentation, voice recordings, photographs, likeness, videotaped images or other media related to the Student or containing any Confidential Information shall be the sole and exclusive property of the Parents, and shall be returned to the Parents upon the termination of this Agreement or upon the written request of the Parents.

**2.3 Injunction.** Therapist agrees that it would be difficult to measure damage to the Parents from any breach by Therapist of Section 2.1 or 2.2 and that monetary damages would be an inadequate remedy for such breach. Accordingly, Therapist agrees that if Therapist shall breach Section 2.1 or 2.2, the Parents shall be entitled to, in addition to all other remedies it may have at law or equity, an injunction or other appropriate orders to restrain any such breach, without showing or proving actual damages sustained by the

Parents.

**2.4 No Release.** Therapist agrees that the termination of this Agreement shall not release Therapist from any obligations under Section 2.1 or 2.2.

### SECTION 3 - COMPENSATION

**3.1 Compensation.** In consideration of services to be rendered by Therapist to the Parents, the Parents shall pay to the Therapist the sum of \$\_\_\_\_\_ per hour worked for ABA Therapy services and \$\_\_\_\_\_ per hour for all training sessions attended by Therapist, provided by Program Consultant and/or Parents. Therapist will submit an invoice to Parents on the 21<sup>st</sup> day of the month in which therapy services are rendered (hereafter referred to as the "Invoice"). The Invoice will detail the dates and number of hours worked by Therapist and payment on the Invoice will be due to Therapist within thirty (30) days of the Invoice date.

**3.2 Withholding; Other Benefits.** Compensation paid pursuant to this Agreement shall not subject to the customary withholding of income taxes and other employment taxes. Therapist shall be solely responsible for reporting and paying any such taxes and will be issued an Internal Revenue Service ("IRS") form 1099 at the end of the taxable year. The Parents shall not provide Therapist with any coverage or participation in accident and health insurance, life insurance, disability income insurance, medical expense reimbursement, wage continuation plans, or other fringe benefits.

**3.3 Expenses.** Parents shall reimburse Therapist all reasonable and necessary expenses incurred by Therapist in connection with the performance of her duties hereunder, provided Parents have approved such expenses in advance.

### SECTION 4 - TERMINATION

**Termination at Will.** This Agreement may be terminated by the Parents immediately, at will, and in the sole discretion of the Parents. Therapist may terminate this Agreement upon thirty (30) days written notice to the Parents. This Agreement also may be terminated at any time upon the mutual written agreement of the Parents and Therapist.

### SECTION 5 – INDEPENDENT CONTRACTOR STATUS

Therapist acknowledges that she is an independent contractor and is not an agent, partner, joint venturer nor employee of Parents. Therapist shall have no authority to bind or otherwise obligate Parents in any manner nor shall Therapist represent to anyone that she has a right to do so. Therapist further agrees that in the event that the Parents suffer any loss or damage as a result of a violation of this provision Therapist shall indemnify and hold harmless the Parents from any such loss or damage.

### SECTION 6 - REPRESENTATIONS OF WARRANTIES OF THERAPIST

**6.1** Therapist represents and warrants to the Parents that there is no employment contract or other contractual obligation to which Therapist is subject, which prevents Therapist from entering into this Agreement or from performing fully Therapist's duties under this Agreement.

**6.2** Therapist represents and warrants to Parents that she has not been charged or convicted of a misdemeanor or felony. Therapist also represents that she is not required to register as a sex offender pursuant to the *California Penal Code*.

### SECTION 7—PERMISSION TO USE NAME AND LIKENESS

- 7.1 Therapist agrees to give Parents and Program Consultant the irrevocable right and permission to use any name, nickname, voice, experience and reputation, photograph, likeness, recorded video image and any other identifying characteristics (hereafter “video recording”) of Therapist, taken during the course of therapy sessions, and for the sole, non-commercial purpose of training, research and educational planning for Student. Therapist understands and agrees that Parents and/or Program Consultant may, in their sole discretion and from time to time take video recording(s) of Therapist with or without Therapist’s knowledge during the course of Student’s therapy sessions.
- 7.2 Therapist hereby freely and without restraint consents to and grants Parents the right in perpetuity to own and utilize any video recording in exchange for Parents’ agreement not to use and/or release videos containing Therapist recording for commercial purposes. Therapist agrees that she shall have no rights in or to any video recording of her taken during therapy sessions and shall not be entitled to any compensation for their use.
- 7.3 Therapist hereby waives to the fullest extent that she may lawfully do so, any causes of action in law or equity she may have or may hereafter acquire against Parents for defamation, invasion of privacy, right of publicity, false light or intentional infliction of emotional distress arising out of or in connection with the utilization of her video recording.

## **SECTION 8—RELEASE OF LIABILITY**

Therapist releases Parents from all claims for damages, death or injury to persons or property including without limitation all consequential damages, from any cause whatsoever arising from or connected with Therapist’s service hereunder, whether or not resulting from the negligence of the Parents, their agents, contractors or employees.

Therapist shall indemnify, defend, and hold harmless the Parents from and against any and all claims or demands, and every liability, loss, damages or expense, causes of action, lawsuits, complaints, losses, costs, or any other legal proceedings or relief, including, but not limited to, state or federal income tax actions, complaints, claims, assessments, liens, costs, or damages, attorneys’ fees and costs, arising out of the acts or omissions of Therapist in the course of Therapist’s rendering of service(s) under this Agreement, and shall further indemnify and hold harmless Parents from any negligence of Therapist and from and against all costs, attorneys’ fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Parents by reason of any such claim, upon notice from the Parents, the Therapist shall defend the same at the Therapist’s expense.

## **SECTION 9 - MISCELLANEOUS PROVISIONS**

- 9.1 The provisions of this Agreement shall be binding upon and inured to the benefit of the heirs, personal representatives, successors and assigns of the parties. Any provision hereof which imposes upon Therapist or Parents an obligation after termination or expiration of this Agreement shall survive termination or expiration hereof and be binding upon Therapist or Parents.
- 9.2 In the event of a default under this Agreement, the defaulted party shall reimburse the non-defaulting party or parties for all costs and expenses reasonably incurred by the non-defaulting party or parties in connection with the default, including without limitation, attorney’s fees. Additionally, in the event a suit or action is filed to enforce this Agreement or with respect to this Agreement, the prevailing party or parties shall be reimbursed by the other party for all costs and expenses incurred in connection with the suit or action, including without limitation, reasonable attorney’s fees at the trial level and on appeal.
- 9.3 No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 9.4 This Agreement shall be governed by and shall be construed in accordance with the laws of the State of

California.

**9.5** This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties.

PARENTS:

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Dated: \_\_\_\_\_ By: \_\_\_\_\_

THERAPIST:

Dated: \_\_\_\_\_ By: \_\_\_\_\_