

## **AGREEMENT FOR THERAPLAY OCCUPATIONAL THERAPY SERVICES**

**THIS AGREEMENT** is made and entered in to this 13th day of August, 2009 by and between Monroe County Community School Corporation (“MCCSC”) and Theraplay (“Contractor”).

### **WITNESSETH:**

In consideration of the mutual covenants and conditions set forth herein, MCCSC and Contractor hereby agree as follows:

### **ARTICLE I**

Contractor covenants and agrees as follows:

**SECTION 1:** Contractor shall perform occupational therapy services to students (the “Work”) in accordance with the terms of this agreement. Contractor shall perform the Work as an independent contractor, to the satisfaction of the MCCSC’s representative. The Contractor shall provide services at designated schools that are part of the MCCSC school system on a schedule of approximately sixty (60) hours per week during the 2009-2010 MCCSC school year. The Contractor will maintain accurate, current and complete records on session topics and services provided and shall maintain all student and family records confidential as required by state and federal laws and regulations.

**SECTION 2:** Contractor shall in coordination with MCCSC furnish the time, and materials necessary to perform the Work.

**SECTION 3:** Contractor shall, and hereby does, warrant that all work done by Contractor in connection with the Work will be performed in a manner consistent with the professional standards of the Contractor and in accordance with approved methods employed at the time in the doing of like work and in the manner best suited to the conditions surrounding the performance of the Work.

**SECTION 4:** In performing its obligations under this agreement, Contractor shall act in good faith and with reasonable care and diligence, and Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations.

**SECTION 5:** Contractor shall not assign this agreement, nor shall Contractor engage any subcontractor to perform the Work or any portion thereof, without MCCSC’s prior written consent.

## ARTICLE II

MCCSC covenants and agrees as follows:

**SECTION 1:** MCCSC shall pay Contractor fifty-five dollars (\$55.00) per hour for occupational therapy services accordance with this agreement subject to submitting appropriate itemized time records and logs consistent with the hourly rate, duties and time restrictions set forth in the Agreement. Requests for payment shall be submitted to the director of special education for payment on not less than a bi-weekly basis.

## ARTICLE III

Contractor and MCCSC mutually covenant and agree as follows:

**SECTION 1:** The term of this agreement shall be for the student school calendar 2009-2010, unless sooner terminated pursuant to this agreement.

**SECTION 2:** Either party may terminate this agreement upon thirty (30) days' written notice to the other party. However, the parties' obligations regarding independent contractor status pursuant to Article III, Section 5, indemnification pursuant to Article III, Section 6, and attorney fees pursuant to Article III, Section 7 shall survive the termination or expiration of this agreement.

**SECTION 3:** Notices or communications herein required or permitted shall be given to the respective parties by hand delivery or by registered or certified mail (the notice being deemed given as of the date of mailing) at the following addresses unless either party shall otherwise designate its new address by written notice:

MCCSC  
Monroe County Community School Corporation  
315 North Drive  
Bloomington, Indiana 47401

Contractor  
Theraplay

**SECTION 4:** This agreement supersedes all previous contracts or agreements between the parties with respect to the same subject matter and constitutes the entire agreement between the parties. This agreement may be modified only with the prior written consent of the parties.

**SECTION 5:** When acting pursuant to this agreement, the parties agree that Contractor shall be at all times an independent contractor, and not an employee of MCCSC. The parties intend and agree that the payments to Contractor hereunder constitute ordinary income to Contractor and do not constitute wages for purposes of the Federal Insurance Contributions Act ("FICA"), but constitute earnings from self-employment for purposes of FICA. The parties agree to file tax returns and pay taxes consistent with such intentions, to resist (and cooperate with each other in

resisting) any assertion to the contrary by any governmental agency, and to indemnify each other from and against any loss or expense by reason of a breach of the foregoing.

**SECTION 6:** Contractor shall indemnify and hold harmless MCCSC against and in respect to all actions, suits, proceedings, demands, assessments, fines, judgments, costs and expenses, including without limitation reasonable attorneys' fees, whether brought by or on behalf of MCCSC's students or other third parties, incident to all liabilities resulting from or arising out of the services provided to MCCSC, or which should have been provided to MCCSC, by Contractor pursuant to this agreement. Additionally, the contractor shall carry general liability and professional liability insurance in an amount of \$1,000,000 or in an amount acceptable to MCCSC.

**SECTION 7:** If a suit or action is brought by any party under this agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys fees to be fixed by the trial court and/or appellate court.

**SECTION 8:** The waiver by either party of a breach or violation of any provision of this agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

**SECTION 9:** In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this agreement shall remain valid and enforceable according to its terms unless such enforcement would clearly violate the present legal and valid intention of the parties.

**SECTION 10:** This agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the state of Indiana, without regard to the conflicts of laws principles thereof and both parties agree to submit to the jurisdiction of the courts of Indiana and that any action arising under this agreement shall be brought in the State Courts of Indiana with proper venue being Monroe County.

**IN WITNESS WHEREOF**, the parties, who have read this agreement, fully understand it, and agree to be bound by its terms, have executed this agreement as of the date first set forth above.

**MCCSC**

**Contractor**

By: \_\_\_\_\_  
Jeannine Butler

\_\_\_\_\_

Its: School Board President

Theraplay