



AGREEMENT AND RELEASE FOR PROVISION OF PRIVATE THERAPY SERVICES IN SCHOOL SETTING

This Agreement is entered into on _____ [date of last signatory] between Shelby County Board of Education, operating as Memphis-Shelby County Schools, (“the District”), _____ [insert name of parent(s)/legal guardian(s)] (“Parent(s)”), individually and on behalf of their minor child, _____ (“Student”), and _____, [insert name of private behavioral therapy provider’s company/legal entity] (“Company”), its legal representatives, agents, partners, employees, successors, or assigns.

1. *Duties of Company.* Company provides private duty Applied Behavioral Analysis (ABA) Therapy Services (the “Services”). Parents of Student have engaged Company to provide private duty behavioral therapy services, during the school day, as well as before and after school, as needed. The District may permit Company’s licensed ABA therapists to provide the requested services on District premises, during the school day, at any District-sponsored events, and/or in any vehicle provided by or on behalf of the District to transport students, provided that the Company and Parent(s) agree to the terms and conditions set forth in this Release of Liability.

2. *Term.* This Agreement will commence on the date of the last signatory, and the Agreement will remain in full force for one year from the date of the last signatory or until June 30, 2027, whichever occurs first the period, but the Term shall not exceed one calendar year, except to the extent renewed for subsequent one-year period(s) by written agreement of all Parties. Any Party may terminate this Agreement, with or without cause, upon written notification to the other Parties. Any amendment to the Agreement must be made in writing and signed by all Parties.

3. *Relationship of the Parties.* The Company and the District do not have an employment relationship, joint employment relationship, or independent contractor relationship. The District shall not be liable in any way for any compensation, wages, or expenses of the employees, agents, or contractors of the Company in connection with providing the Company’s provision of Services to the Student. The Company is not to be considered an agent of the District and no employee, agent or contractor of the Company (“Company Employee(s)”) is entitled to participate in any pension plans, health insurance, or similar benefits that the District provides for its employees, and/or workers’ compensation insurance.

4. *Release of Liability.* The Company and the Parent(s) agree that the District shall not be liable for any injury, loss, damage, costs, fees, or any other claims brought by or against the Company, Company Employee(s), or Parent(s), individually and/or on behalf of Student that arise in anyway whatsoever from provision of Services. The Company and Company Employees must take all precautions necessary for the safety of and prevention of damage to District property, and for the safety of and prevention of injury to persons, including but not limited to Student, District employees, District independent contractors, District volunteers, visitors, vendors, and other students in which Company Employee(s) may encounter related or incidental to delivery of Services. All Services will be performed entirely at the Company and the Parent(s)’ risk, including but not limited to the risk of personal injury, property damage, and/or costs of Services or claims for subrogation. The District shall not be liable for any damages or injuries to the Student, the Company, or Company Employee(s) may sustain in connection with Company’s provision of the Services. The Parent(s) acknowledge and agree that use of a private ABA services is voluntary, and Parent(s)’s acknowledge and agree that the District has offered and made available required and necessary special education services and support to provide the Student with free appropriate public education related to the Services, including but not limited to access to that education, in accordance with the Individuals with Disabilities in Education Act (IDEA), Section 504 of the Rehabilitation Act (“Section 504”), and the



Americans with Disabilities Act (ADA). Parent(s) voluntarily elect to utilize private ABA Services provided by the Company paid at Parent(s)'s expense and/or through third party insurance available for Student. Services are intended to supplement Student's existing Individual Education Program IEP, Section 504 Plan, or similar services, such as a Behavior Intervention Plan ("BIP") or Behavior Support Plan ("BSP"). Accordingly, the Parent(s) acknowledge and agree that the District is not liable for providing the same or overlapping Services to Student during the Term of this Agreement. Parent(s) release, waive, and discharge any and all claims against the District related to or incidental to the provision of Services, including but not limited to the provision of or access to a free appropriate public education, negligence, gross negligence, reckless act, intentional act of any Company Employee(s) toward any persons, including but not limited to Student, other students, or MSCS employees, MSCS contractors, MSCS visitors, or MSCS volunteers, or allegation that any MSCS employees, MSCS contractors, MSCS visitors, or MSCS volunteers failed to exercise oversight or supervision of Company Employee(s).

Parents and Company also understand and agree that the District is not responsible for constructing special facilities or physical space for the provision of Services or purchasing any special equipment for the delivery of Services, although the Company Employee(s) are permitted to have access to equipment such as school supplies, assistive technology, and/or other equipment, including computers that are otherwise available to Student in the school setting. Company Employees may not utilize or access MSCS computer systems, technology, computers or internet access/internet service provider(s) for delivery of Services, except to support or assist Student with access to such technology or equipment that would otherwise be utilized by Student for educational purposes and within MSCS's Acceptable Use Policy.

Company Employee(s) may have reasonable access to available physical space on an MSCS school campus during the school day, or at an MSCS event for delivery of Services, in accordance with the applicable District and school policies, procedures, or practices for reserving and/or utilizing such physical space, although use of such space for MSCS school events or other students receiving services delivered by MSCS or through its contractors, visitors, vendors, or volunteers, shall take priority over use for Services. Any injury, claim, or liability arising from use of such equipment or physical space on an MSCS school campus during the school day or event is waived, released, or discharged against MSCS, and Company shall be solely responsible for and indemnify MSCS for any injury, claim, or damage arising from Company or Company Employee(s) use of MSCS equipment, including computer(s) or technology, MSCS physical space, or entry on MSCS property, whether such injury is to Student, other students, MSCS employees, MSCS contractors, MSCS vendors, MSCS visitors, and/or MSCS volunteers.

Parents and Company also understand and agree that, when appropriate, as Determined by the District, Company Employee, will coordinate with Student's IEP Team, Section 504 Team, or other relevant school team, including but not limited to school administrators to integrate Services effectively into the Student's school day without disrupting the overall classroom environment, the delivery of instruction to Student, Student's access to the general curriculum, and to prevent consistently or unnecessarily fragmenting the Student's schedule in such a way that reduces access to, overrides, contradicts, alters, or undermines the general education program, core curriculum, or time needed to make progress towards IEP goals or special education programming, receive accommodations and modifications in accordance with Student's 504 Plan, receive English Learner services, or any other applicable individual plan or general education instructional objectives, curriculum or instructional strategies. If there is any determination by Student's teacher, school administrator, or multi-disciplinary team that Services conflict with said plans, objectives, curriculum, or instructional strategies, then the District's plans, objectives, curriculum, and instructional strategies take priority.



5. No Waiver of Immunity. No party hereto waives or relinquishes any immunity of defense on behalf of itself, its officials, officers, employees, and agents because of the execution of this Agreement and the performance of the covenants contained herein.

6. Indemnification. The Company and Parent(s), individually and on behalf of the Student, jointly and severally agree to indemnify and hold harmless the District and its subcontractors, agents, volunteers, visitors, servants, employees and officials against all claims, actions, or liabilities which may be asserted against them by third parties in connection with the Company's performance under this Contract. The District agrees to indemnify and hold harmless the Company and Parent(s) and its subcontractors, agents, volunteers, servants, employees and officials against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the negligent performance of this Contract by the District, its subcontractors, agents, volunteers, servants, employees and officials to the extent permitted by law without waiving the District's sovereign immunity as a governmental entity.

7. Insurance Requirements. Company Shall provide the liability insurance coverage listed below and shall name Memphis-Shelby County Schools as a named insured on its policy, as specified in Paragraphs 7, 8, and 9 of this Agreement and Release. This liability insurance shall be provided at the Company's expense and shall be in full force and effect during the term of this Agreement. Company shall provide proof of such liability insurance before beginning delivery of Services that meets the following standards:

- A. Workers Compensation coverage: Statutory
- B. Professional Liability coverage: Not less than \$1,000,000.00 per claim, \$3,000,000.00 aggregate
- C. General Liability coverage, to include the following:
 - i. \$1,000,000 bodily injury and property damage per claim.
 - ii. \$1,000,000 personal injury per person.
 - iii. \$1,000,000 aggregate products and completed operation; and
 - iv. \$1,000,000 general aggregate.
- D. Business Auto Liability (includes owned, non-owned and hired vehicles)
- E. Contractual Liability coverage:
 - i. Limits shall be the greater of the umbrella excess underwriter's requirement, or
 - ii. \$1,000,000 bodily injury and property damage per accident.

8. Evidence of Insurance. Evidence of satisfactory insurance coverage shall be provided to the District prior to the commencement of Services on the District's property, at any District sponsored event, and/or in any vehicle provided by, or on behalf, of the District to transport students, including Student, but in any event within fifteen (15) days of the Execution Date. Evidence can be shown by submitting one copy of properly endorsed insurance certificate issued by a company authorized to write insurance in the State of Tennessee. The District reserves the right to make direct inquiry to the insurance carrier for an explanation of coverages and the Company agrees to assist in obtaining any such desired information. Company acknowledges that failure to provide the mandated insurance on behalf of the District constitutes a material breach of contract and subjects it to liability for damages, indemnification, and all other legal remedies available to the District.

9. Additional Insured. The District shall be named as additional insured on Company's Liability Policies. Cancellation of any insurance required by this Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the party and the District at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice.



10. *Company Employees or Contractors.* Company agrees that the District may at any time, with or without cause, notify Company to remove an individual provided by Company for the performance of Services under this Agreement. In such event, Company shall immediately remove Company Employee(s), agent, or contractor from District premises without liability to the District. The Company may seek review and/or appeal of any such removal for any Company Employee(s) through MSCS by presenting a current copy of this Agreement and Release with written notice to MSCS's Office of General Counsel.

11. *District Policies.* The Company agrees to cause Company Employee(s) to comply with all District rules, regulations, and policies while on District property, including but not limited to District school campuses, or while attending District-related or District-sponsored events with the Student or while Student is being transported using District approved transportation. The Company acknowledges that the District has informed the Company of the applicable school rules, regulations, and policies by providing the Company with a written copy of the applicable rules, regulations, and policies, including but not limited Vendor, Visitor, or Volunteer policies, available at <https://www.scsk12.org/eda/?PN=353> and Memphis-Shelby County Schools Board Policies available <https://go.boarddocs.com/tn/scsk12/Board.nsf/Public?open&id=policies>, which are subject to update, revision, or amendment at any time, and incorporated herein by reference.

- a. Failure to comply with District rules, regulations or policies, as determined by a school administrator, may result in the Company not being permitted to perform services for Student or other students for which the Company and/or Company Employee(s) provides similar Services, on District premises, including but not limited to District school campuses, at District events, or on a vehicle provided on behalf of the District to transport Student and/or at District related or District sponsored events. School-level determinations that Services should be discontinued based on failure to comply with District rules, regulations, or policies or the terms and conditions of this Agreement, are subject to appeal in the form of review by an authorized MSCS district-level employee.
- b. Company and/or Company Employees agree to conduct themselves in a professional manner and respond to and cooperate with the reasonable requests or directives of school administrators, teacher(s), and/or MSCS staff, when necessary to effectuate the operations of Student's school and classroom, including but not limited to Company Employees avoiding conduct that is disruptive to or interferes with Student's educational or school environment or the educational or school environment of other students.
 - i. Company and Company Employees are prohibited from disclosing, discussing, collecting any data from other students, including but not limited to discussing the confidential information of other students with anyone or with Student, except that Company Employees may discuss data or information of Student with Student's parent(s) and/or school or District personnel with a legitimate interest in the confidential information.
 - ii. Company and Company Employees are prohibited from using school access to solicit, recruit, or attempting to solicit, recruit or obtain additional clients while on premises or at school or District events to recruit students or families for private pay behavioral services.
 - iii. Company and Company Employees are prohibited from taking video, audio, or any other types of recordings of Student or other students.
 - iv. All Company and Company Employees written or electronic communications with school personnel must include the school administrator designated by the



school principal. If no such person has been specified, all written or electronic communications to school personnel must include the School Principal.

- c. The Parties agree and acknowledge that nothing contained in Paragraph 11 or this Agreement creates an employment, joint employment or agency relationship between the Company/Company Employees and the District. Company Employees are the agents of Company and/or Parent(s) as it relates to Student. The Parties acknowledge and agree that while Services are delivered, Student is in the custody and control of the Company Employee(s), and the Company Employee(s) is directly and solely responsible for the supervision of the Student. Any conduct of Company Employee(s) that would qualify as an isolation or restraint of Student under Tennessee law or federal law is not imputed to MSCS nor is it the responsibility of MSCS to identify, report, or intervene in said isolation or restraint except that MSCS is not relieved of its duty to report suspected child abuse or neglect in accordance with Tennessee law.

12. *Criminal Background Check.* The Company agrees to submit any and all Company Employee(s) assigned to a Student or who will be on a school campus or attending a school event for the purpose of delivering or supervising Services to a fingerprint background check that meets the requirements set forth in Tenn. Code Ann. 49-5-413 to provide all information necessary to secure the fingerprint background check through the Tennessee Bureau of Investigation or the Federal Bureau of Investigation. The Company shall provide the District with a copy of any and all assigned therapist's license, regardless of their licensure type or level of credentials, with the State of Tennessee. No Company Employee shall provide Services to Student until a background check meeting District standards has been completed and approved and the appropriate licensure has been provided and approved.

13. *Terms to be Exclusive.* The entire agreement between the parties with respect to the subject matter under this Agreement is contained in this Agreement. Except wherein provided for the contrary, the provisions of this Agreement are for the benefit of the parties solely and not for the benefit of any other person, persons, or legal entities.

14. *Governing Law.* This Agreement is made according to the laws of the State of Tennessee. The parties expressly agree that this Agreement is governed by and will be construed and enforced in accordance with Tennessee law. The Parties consent and agree that all legal proceedings related to the subject matter of this Agreement and all disputes arising from this Agreement shall be maintained in courts sitting within the State of Tennessee, and the Parties consent and agree that jurisdiction for such proceedings and disputes shall lie exclusively with such courts and venue shall be in Memphis, Tennessee.

15. *Assignment.* This Agreement may not be assigned without express written consent of the District.

16. *Confidentiality.* It is understood that as a part of this Agreement, the District may disclose to Company, its employees and/or agents, various confidential information relating to the District's business, facilities and plans, student information and records and that data, findings and conclusions will be valuable confidential information belonging to the District or students and/or their parents/legal guardians. Accordingly, Company agrees that all persons employed by Company, included but not limited to Company Employee(s), will keep in strictest confidence all such information relating to the District and all such information relating to services, and to cause Company Employee(s) to be bound by the same obligation of confidentiality to which the Company is bound. Company and Company Employee(s) shall not communicate the District's information, including student/parent information, in any form to any third party without the District's prior written consent. Upon termination of this Agreement, Company and Company Employees: (i) will continue to hold all such information in the strictest confidence, and (ii) will promptly



return to the District any and all confidential information and documents belonging to the District (including copies, extracts, summaries and/or statements of such confidential information which may have been made).

17. HIPAA and FERPA. Unless otherwise permitted by applicable law, the Company and Company Employee(s) will not use or disclose confidential, proprietary and non-public financial or other information concerning patients in violation of the requirements of 45 CFR 165.504 and 164.506(e)(1), known as the Health Insurance Portability and Accountability Act of 1996, Privacy and Security Standards ("HIPAA"), which are incorporated herein by reference. To the extent applicable, Company and Company Employee(s) agree to comply with applicable HIPAA standards, including the implementation of all necessary safeguards to prevent such disclosure. The Parties further agree and acknowledge that the performance of Services may result in the Company and/or Company Employees, learning or becoming aware of confidential information protected by Family Educational Rights Privacy Act (FERPA), 20 U.S.C. 1232(g) and 34 C.F.R. 99, and/or the Individuals with Disabilities in Education Act, (IDEA), 20 U.S.C. § 1400 et seq., related to Student or other students or the parents/legal guardians of other students. Neither the Company nor Company Employees, will disclose personally identifiable information (PII), confidential educational records, and the educational information or health information of other students or Student, except as Student's Parent(s) authorize for Student. The Company and/or Company Employees acknowledge and agree that other students and their parents/legal guardians have a reasonable expectation of privacy as it relates to information that can be observed, learned about, or related to other students through the performance of Services for Student, whether or not information about or related to other students is expressly prohibited from disclosure by state or federal law. The Company and/or Company Employees agree to keep information related to or about other students confidential, whether or not said information is expressly protected from disclosure under federal or state law, except in instances where disclosure is otherwise mandated by federal or state law.

18. Public Records Act. The District is subject to the Tennessee "Public Records Act." Accordingly, no claim of confidentiality of proprietary information in all or any portion of information submitted by Company to the District, except as otherwise provided in this Agreement, will be honored unless a specific exemption from the Public Records Act applies.

19. Press Releases. Company shall not refer to the existence of the Agreement, nor use the name of or refer to the District for any purpose in any releases for public or private dissemination, advertising, or other materials, without the prior written consent of the District. Company acknowledges that remedies at law may be inadequate to provide the District with full compensation in the event of Company's breach of this provision, and that the District shall be entitled to seek injunctive relief in the event of any such breach.

20. Use of the District Resources. Regardless of the location from which Services shall be provided, Company Employees shall not misuse the District resources. Misuse includes, but is not limited to, unauthorized access to data files; use of computer hardware and software; use of the District's telecommunication or wi-fi network(s); use of office supplies and other materials; and use of clerical support staff members. Company Employees who misuse the District's resources are subject to removal, without liability to the District. Company agrees to reimburse the District for the cost of misused resources.

21. Information Resources Policy. Company Employees' use of the District information resources shall be in accordance with the District's standards. Company Employees who access to the District's network, computer, and telecommunications resources, for the purpose of supporting or assisting Student's educational access to agree to abide by the District Information Systems standards and acceptable use policies.



22. Notices. All notices required or permitted to be given by one party to the other under this Agreement shall be sufficient if sent by express delivery of confirmed facsimile, or certified mail, return receipt requested, to the Parties at the respective address set forth below or to such other address as the party to receive the notice has designated by notice to the other party.

The Company:

Company Name

Therapist Name(s)

Company Address

Company Address

Company Phone Number

Company Email Address

The Student's Parent(s)/Legal Guardian(s):

Parent/Legal Guardian Name

Parent/Legal Guardian Name

Parent/Legal Guardian Address

Parent/Legal Guardian Address

Parent/Legal Guardian Phone Number

Parent/Legal Guardian Email Address



Shelby County Schools Board of Education:

Memphis-Shelby County Schools
Department of Exceptional Education
Dr. Tiffany Pointer-Luckett,
2930 Airways Blvd., Bond Bldg.
Memphis, TN 38116
901-416-5600; 901-416-5815
lucketttl@scsk12.org
MSCS_privatebehaviorservices@scsk12.org

Memphis-Shelby County Schools
Office of General Counsel
160 Glenn Rodgers Sr. Street
Suite 218, Coe Bldg.
Memphis, TN 38112
generalcounsel@scsk12.org

[signatures follow on next page]



The Parties have made and executed this Agreement on these date(s) stated below:

For: Private Provider

Date: _____

By: _____

Title: _____

For: Parent(s)/Legal Guardian(s) of Student and by my signature below I give written permission for the Services to be provided by the Company and Company Employee(s) as stated in this Agreement.

Date: _____

By: _____

Parent/Legal Guardian

For: SHELBY COUNTY BOARD OF EDUCATION, operating as MEMPHIS-SHELBY COUNTY SCHOOLS

Date: _____

By: _____

Title: _____

Approved as to Legal Form:

Date: _____

By: _____

Title: _____