

## **BOARD OF EDUCATION OF THE COUNTY OF ROANE**

813 Capitol Street  
Spencer, West Virginia 25276  
(304) 927-6400

### **OCCUPATIONAL THERAPY SERVICES AGREEMENT**

This **OCCUPATIONAL THERAPY SERVICES AGREEMENT** (hereinafter "Agreement") is made and entered into on this the \_\_\_\_<sup>th</sup> day of June, 2019, by and between the **BOARD OF EDUCATION OF THE COUNTY OF ROANE** (hereinafter "Board"), of 813 Capitol Street, Spencer, West Virginia 25276, and **THERA-PEDICS, INC.** (hereinafter "Contractor") of P.O. Box 745, Oak Hill, West Virginia 25901.

**WHEREAS**, the Board had determined a need for occupational therapy services within its school system for two (2) days per week, and it desires to retain a qualified professional or professionals to provide such services to it and its students.

**WHEREAS**, the Contractor is a corporation organized under the laws of the State of West Virginia and is engaged in the business of providing professional occupational therapy services to one or more healthcare facilities and county school systems within the State of West Virginia.

**WHEREAS**, the Board and the Contractor wish to enter into an agreement whereby the Contractor will provide certain occupational therapy services, as described herein, to certain students enrolled in the school system managed by the Board.

**NOW, THEREFORE**, in consideration of the promises and of the mutual representations, warranties, and covenants contained herein, the parties hereby agree as follows:

1. **Services Provided.** The Contractor shall provide occupational therapy services to students identified by the Board a total of two (2) days day per week, approximately ten (10) hours per day.
  - (a) Services to be provided by the Contractor shall include, but will not be limited to, the following:
    - i. Direct occupational therapy with students;
    - ii. Evaluation of students (both school age and preschool);
    - iii. Consultation with physicians, school personnel, parents, and others as necessary concerning students;
    - iv. Development of an Individual Education Plan ("IEP") (Goals and objectives) for each student qualifying for occupational therapy services; and
    - v. Documentation of time.

- (b) Services may be for an individual student in a classroom setting and/or for other such services in a designated area within the school environment appropriate for the services being provided. Services may also include, but not be limited to, liaison for parents, program support, and assessments. Direct services to students require a student log to be documented and maintained in accordance with the State Department of Education regulations. Any such documentation shall become the property of the Board upon submission thereof.
  - (c) The two (2) days of services to be provided under this Agreement may either be performed by a single professional, whether an occupational therapist or a certified occupational therapy assistant, on the basis of twice weekly or by two (2) professionals, whether occupational therapists, certified occupational therapy assistants, or a combination thereof, rendering services during a single day.
- 2. **Compensation.** The Contractor shall be compensated at the rate of seventy-five dollars (\$75.00) per hour for all occupational therapy services performed under this Agreement. Said compensation shall specifically include, but not be limited to, all travel time to and from Roane County, as well as all travel time between individual schools. Completion of student evaluations and input of all IEP information into the online database will be billed outside of the regular work day at the rate of seventy-five dollars (\$75.00) per hour.
  - (a) The Contractor shall not be compensated for holidays, days upon school which is cancelled due to inclement weather, or other days in which students are not present or school is not in session.
  - (b) The Contractor shall not be separately compensated for mileage. As established hereinabove, however, the Contractor's hours shall include drive time to and from work sites and movement throughout the hours worked.
- 3. **Submission of Invoices.** The Contractor shall submit to the Board on or before the 5<sup>th</sup> day of each month an itemized invoice for occupational therapy services rendered during the previous month. Said invoice shall include the names of students to whom services were provided; the dates upon which services were provided; any necessary signatures from each student's parent, teacher, or principal; and the amount of time services were provided for each student. Student progress notes and Medicaid billing, if necessary, will accompany the invoice.
- 4. **Payment of Invoices.** The Board shall remit payment unto the Contractor on or before the 30<sup>th</sup> day of the month in which the invoice and accompanying documentation are submitted (*i.e.*, the month following actual completion of services described hereinabove).

5. **Coordination of Services.** The scheduling of occupational therapy services shall be coordinated by the Contractor with consideration given to each school's specific scheduling needs.
6. **Inclement Weather Schedule and Partial School Days.** The Contractor will not be compensated for days in which school is cancelled for inclement weather. However, if any services are missed as the result of inclement weather or work stoppage within the school system, those services shall be made up by the Contractor on a day-for-day basis. Any and all makeup services shall be performed on dates selected by the Contractor and, if necessary, may be performed within any school calendar extension. If the Contractor travels to or is present at a school which cancels a portion of the school day or dismisses students early, the Contractor shall be fully compensated pursuant to Paragraph 2 hereinabove. In the event that commencement of a school day is delayed (e.g., two-hour delay for inclement weather) on a day in which the Contractor is scheduled to provide services, the decision as to whether services will be provided on that day will rest in the sole discretion of the Contractor.
7. **IEP Meetings & Information.** The Board shall notify the Contractor, in writing, at least two (2) weeks prior any IEP meeting so that the Contractor may have time to update and furnish any information and/or documentation necessary for the meeting. Said written notice shall be sufficient if provided via email or via written notice to the Contractor's address specified in Paragraph 21 hereinbelow.
8. **Determination of Need or Qualification for Services.** The determination concerning a student's need or qualification for occupational therapy services shall be the sole responsibility of the Board, and the Board shall assume any and all liability associated therewith.
9. **Time and Place for Services to be Rendered.** Occupational therapy services shall be provided within the school system operated by the Board. The location of said services shall be at individual schools within the county or at the homes of the students, as necessary, and the time of said services shall be during normal school hours as permitted by administration of the individual schools. Students may be provided services in group session if they share similar needs and goals. The occupational therapy services will be temporarily suspended during times school is not in session (i.e., summer vacation unless specified by IEP; Thanksgiving, Christmas, and spring breaks; scheduled holidays; and snow days).
10. **Independent Contractor Status.** The Contractor acknowledges status as an independent contractor and not as an employee or partner of, or joint venture with, the Board. Nothing in this Agreement is intended to or shall be construed to create an employee-employer relationship, partnership, landlord-tenant relationship, agency relationship, or any joint venture business relationship.

- (a) The Contractor acknowledges sole responsibility for all taxes, including, but not limited to, income, payroll, Social Security, and Medicare, that may become due and owing in connection with the fees paid for services rendered under this Agreement.
  - (a) The Contractor shall be free to perform services for any third parties, including other county boards of education, when not performing services for the Board as described hereinabove.
- 11. **Professional Liability Insurance Coverage.** During the term of this Agreement, the Contractor shall, at its own expense, maintain professional liability insurance coverage throughout the term of this Agreement covering professional errors, omissions, negligence, incompetence, and malfeasance. The professional liability insurance coverage shall be in an amount not less than one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) per annual aggregate. Upon request by the Board, the Contractor shall provide the Board with written proof of the existence of such coverage.
- 12. **Professional Compliance.** During the term of this Agreement, the Contractor shall, at its own expense, maintain all licensures, certifications, qualifications, and registrations required to provide occupational therapy services under any statute, regulations, rule, or law of the State of West Virginia and under any law or regulation administered by the United States Department of Health and Human Services. Said licensures, certifications, qualifications, and registrations shall include, but not be limited to, a valid West Virginia Business License and requisite West Virginia Worker's Compensation coverage.
- 13. **Compliance with Applicable Laws, Rules, & Regulations.** During the term of this Agreement, the Contractor shall comply with all federal, state, and local laws, rules, and regulations that may regulate performance under this Agreement. The Contractor shall maintain records evidencing such compliance, and, upon request, shall furnish proof of such compliance to the Board. Said compliance shall include, but not be limited to, the following:
  - (a) Compliance with all rules and regulations set forth by the West Virginia Board of Occupational Therapy and the National Board for Certification in Occupational Therapy for the supervision of occupational therapy caseloads.
  - (b) Compliance with all requirements of West Virginia State Board of Education Policy 4336 (126 CSR 92).
  - (c) Compliance with the requirements and restrictions concerning disclosure of student information as contained in the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and the Individuals with Disabilities Education Act regulations (34 C.F.R. 300.560 – 300.576). Specifically, the Contractor shall not disclose any student information that may be acquired in

connection with the performance of this Agreement without first obtaining the written consent of the student's parent(s) or custodial guardian(s).

14. **Disclosure of Information.** The Contractor shall not disclose or reveal to any third party any information about the Board's operations that the Contractor may learn during the course of performing services under this Agreement. Likewise, the Board shall not disclose or reveal to any third party any information about the Contractor's operations, business models, or business strategies that the Board may learn during the term of this Agreement.
15. **Non-Solicitation.** During the term of this Agreement and for a period of two (2) calendar years following termination of this Agreement, the Board shall not directly or indirectly hire, retain, or enter into any contractual agreement with any employee or subcontractor of the Contractor for the purpose of providing any occupational therapy services described herein.
16. **Term.** The term of this Agreement shall commence on July 1, 2019 and shall end on June 30, 2020.
17. **Termination.** Either party may terminate this Agreement for any reason prior to the end of the term of this Agreement by serving the other party with sixty (60) days written notice to the other party. Any such written notice shall be served via certified or registered mail to the party's address specified in Paragraph 21 hereinbelow.
  - (a) The Board may elect to provide such notice to terminate this Agreement based upon its intention to rebid the contract or any other reasons within its sole discretion.
  - (b) The Board may terminate this Agreement for cause based upon deficiencies in the Contractor's record or failure to observe the contractual obligations set forth herein.
  - (c) The Contractor may terminate this Agreement for cause based upon any failure by the Board to fulfill the contractual obligations set forth herein. Said obligations include, but are not limited to, the payment of invoices as established in Paragraph 4 hereinabove.
18. **Entire Agreement.** This Agreement and the documents delivered concurrently herewith shall constitute the entire agreement and understanding between the parties hereto and shall supersede any prior agreements and/or understandings relating to the subject matter of this Agreement. By affixing their signatures hereto, the parties expressly warrant that there are no additional terms, representations, agreements, or promises made by either party that have not been memorialized within the language of this Agreement.

19. **Assignment.** Neither party may assign any rights or delegate any duties/obligations assumed hereunder absent the express written consent of the other party.
20. **Modification.** No revision or modification of this Agreement shall be effective unless in writing and executed by duly authorized agents or representatives of the Board and the Contractor.
21. **Notice.** Any notice or communication required or permitted hereunder shall be sufficiently given if sent by certified or registered mail, postage prepaid, with return receipt requested:
- (a) To the Board at:
- The Board of Education of the County of Roane  
813 Capitol Street  
Spencer, West Virginia 25276
- (b) To the Contractor at:
- Thera-Pedics, Inc.  
c/o Ashley Lilly-Queen  
P.O. Box 745  
Oak Hill, WV 259091
22. **Waiver.** Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party of any right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.
23. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, and assigns of the parties hereto.
24. **Construction and Jurisdiction.** The terms and conditions of this Agreement shall be governed by the laws of the State of West Virginia and, if necessary, shall be enforceable in any Circuit Court within the State of West Virginia where jurisdiction and venue would be considered proper under the laws of the State of West Virginia.
25. **Severability.** In the event that any term, condition, or provision of this Agreement is found to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the enforceability of the other provisions, terms, or conditions of this Agreement.

26. **Further Effect.** The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, provided that the terms and provisions of the other documents are fully consistent with the terms of this Agreement.
27. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts. Each counterpart shall be deemed an original, and all of the counterparts together shall constitute but one and the same instrument.
28. **Captions/Headings.** The captions and headings used in this Agreement are used solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction, or effect.
29. **Use of Pronouns within Agreement.** Whenever the context so requires, the male gender when used herein shall be deemed to include the female gender, the female gender shall be deemed to include the male gender, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular.

The signatures below indicate approval and agreement to the terms of this Agreement. Furthermore, the signature of the Board representative indicates authority to enter into this Agreement by and on behalf of the Board.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Agreement as of the day and year first written above and acknowledged by the following signatures and seals:

\_\_\_\_\_  
**THE BOARD OF EDUCATION  
OF THE COUNTY OF ROANE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**THERA-PEDICS, INC.**

By: Ashley Lilly-Queen  
Its: President and CEO

\_\_\_\_\_  
**DATE**