**INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor. Agreement ("Agreement") is entered into as of , 202\_\_ by and between O'Brien Speech, Language and Learning, PLLC ("O'Brien"), with its principal place of business at 7 High Street, Suite #201, Huntington, New York and ("Independent Contractor Provider" or "ICP").

1. **Services.**
   1. **Nature of Services.** ICP will provide professional physical, occupational, speech and language therapy, social work, and/or psychological services to children with special needs. ICP will provide services in accordance with the care plan prescribed by Suffolk County Department of Early Intervention (the "County"). Th. e County, which assigns cases to O'Brien, a County-approved vendor, determines the scope of services to be rendered to each child, which the ICP executes in his/her professional judgment. ICP will perform such services in a diligent and professional manner. ICP will meet directly with the child's family and determine how and when to implement the therapy plan. ICP determines day, time and location of all services provided. ICP will provide all equipment in connection with the services provided. JCP agrees to comply at all times with the provisions of the Public Health Law and Education Law of the State of New York, and the rules, regulations and standards of the Departments of Health and Education of the State of New York.
   2. **Relationship of the Parties.** ICP enters into this Agreement as, and shall continue to be, an independent contractor. *All* Services shall be performed only by ICP and ICP's employees. Under no circumstances shall ICP, or any of ICP's employees, look to O'Brien as his/her employer, or as a partner, agent or principal. Neither ICP, nor any of ICP's employees, shall be entitled to any insurance and benefits accorded to O'Brien's employees, including without limitation, workers' compensation insurance, disability insurance, vacation or sick pay; such insurance and benefits shall be given exclusively to ICP's employees by ICP. Neither ICP, nor any of ICP's employees, shall have the authority to assume or incur any obligation or responsibility for, on behalf of, or in the name of O'Brien, or to bind or attempt to bind O'Brien in any manner whatsoever. ICP shall be responsible for providing, at ICP's expense, and in ICP's name, unemployment, disability, workers' compensation and other insurance, as well as licenses and permits usual or necessary for conducting the Services.

O'Brien and ICP agree that, subject to the covenants set forth herein, ICP is not restricted from providing services to other parties and is not required to devote any minimum or maximum amount of time to performing services for O'Brien. ICP is free to make his/her own schedule, appointments, connections and decisions and is not required to perform any services for or in connection with O'Brien during any specified hours, or any specified day or days, or in any specified location. ICP acknowledges and agrees that O'Brien does not have any obligation, whether express or implied to engage with ICP, nor does O'Brien have any obligation to utilize ICP's services.

**c. Compensation and Reimbursement.** O'Brien has agreed to pay ICP the rates set forth in Exhibit A. ICP will submit billing statements to O'Brien in accordance with relevant Suffolk County, New York State and school district guidelines. Additionally, ICP's billing statements will conform with any insurance-mandated and/or O'Brien guidelines, which may be in effect from time to time. ICP shall be compensated for the Services as set forth on Exhibit A. No other fees and/or expenses will be paid to ICP, unless such fees and/or expenses have been approved in advance by the appropriate O'Brien executive in writing. ICP shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes appJicable to such compensation, including but not limited to any federal, state or local taxes. ICP hereby indemnifies and holds O'Brien and O'Brien's officers, directors, agents and employees harmless from, any claims, suits, liens, judgments, expenses, losses, costs, fees, liabilities, damages, attorneys' fees and costs, or injuries arising out of ICP's acts, omissions, breach, default, or errors in connection with the performance of any work performed by ICP or ICP's officers, directors, agents, employees and/or subcontractors.

d. **Licenses and Insurance.** ICP will maintain all applicable professional licenses in good standing during the term of this Agreement. ICP will furnish O'Brien with copies of such licenses prior to commencement of services under this Agreement and shall furnish current copies of such licenses to O'Brien upon renewal. Licensed professional ICPs, except Special Educators will obtain and keep in force a professional liability insurance policy in the amount of $2,000,000.00 per occurrence, $4,000,000.00 in the aggregate. Certified Special Educators will obtain and keep in force a professional liability insurance policy in the amount of $1,000,000.00 per occurrence, $3,000,000.00 in the aggregate. ICP hereby agrees that it will obtain and keep in force an insurance policy or policies to cover its liability hereunder in the minimum amounts of $1,000,000 per occurrence (or another appropriate agreed upon amount) and will defend and hold harmless O'Brien and owner for personal injury, bodily injury and property damage. All insurance policies shall name O'Brien and owner as additional insured and shall be primary to any other insurance policies. ICP will obtain and keep in force Workers Compensation insurance including Employees Liability to the full statutory limits and Motor Vehicle Insurance in form as required by State law. ICP

shall furnish to O'Brien Certificates of lnsurance evidencing that the aforesaid insurance coverage is in full force.

1. **Restrictive Covenants.**
   1. **Confidential Information.** O'Brien may disclose Confidential Information to ICP during ICP's performance of the Services. Confidential Information is to be broadly defined and includes all information which has or could have commercial value or other utility in the business in which O'Brien is engaged or contemplates engaging or the unauthorized disclosure of which could be detrimental to the interests of O' Brien, whether or not such information is identified by O'Brien. By way of example and without limitation, Confidential Information includes any and all information concerning clients' financial, business, and protected health information, and all derivatives, improvements and enhancements to any of the above. Confidential Information also includes like third-party information that is in O'Brien's possession under an obligation of confidential treatment. ICP agrees that at all times during or subsequent to the performance of the services under this Agreement, ICP will keep confidential and not divulge, communicate, or use Confidential Information, except for ICP's own use during the Term of this Agreement to the extent necessary to perform said services. ICP further agrees not to cause the transmission, removal or transport of Confidential Information without prior written approval of O'Brien.
   2. **Exceptions.** The foregoing confidentiality agreement shall not apply if the communication or use (i) is required in the course of performing Services as an ICP hereunder, (ii) is made with the written consent of Geraldine McManus O'Brien (iii) relates to information that is or becomes generally known by the public other than as a result of a breach of this Agreement by ICP and through no fault of ICP, or (iv) is required to be disclosed by law,r judicial or administrative process; provided, that, in the case of clause (iv), ICP provides O'Brien with prompt prior written notice of such requirement and the terms of and circumstances surrounding such requirement so that O'Brien may seek an appropriate protective order or other remedy, or waive compliance with the terms of this Agreement, and JCP shall provide such cooperation with respect to obtaining a protective order or other remedy as O'Brien shall reasonably request. If a protective order or other remedy is not obtained, or if O'Brien is required to waive compliance with the provisions hereof, ICP will furnish only that portion of such confidential information or trade secrets which, as ICP is advised in a written opinion by its counsel, it is legally required to furnish.
   3. **Other Commitments.** ICP represents that ICP has no other agreements, relationships or commitments to any other person or entity which conflict with ICP's obligations to O'Brien under this Agreement. ICP agrees not to enter into any agreement, either written or oral, in conflict with this Agreement.
   4. **Non-Disparagement.** During the period ICP provides the Services hereunder and thereafter, ICP shall not disparage, defame, or discredit any member or employee of O'Brien or engage in any activity which would have the effect of disparaging, defaming, or discrediting O'Brien, its members, officers, directors, employees or agents in any way .
   5. **Non-Solicitation of Clients.** JCP covenants and agrees that he/she will not during the term of this Agreement and for twelve months after the termination thereof within Suffolk County, directly or indirectly, without O'Brien's prior written consent, solicit or seek to provide professional services to any client to which the ICP was referred by O'Brien within the last 12 months of the Agreement period. This Agreement shall not prohibit ICP from working with any client to which ICP was not referred by O'Brien.
   6. **No Interference with O'Brien Contractors.** ICP agrees that he/she shall not seek, directly or indirectly, to induce or persuade any other person or entity with whom or with which O'Brien maintains a contractual relationship to provide professional services; to breach, in whole or in part, its contract with O'Brien or to terminate or fail or refuse to renew, any contract; and ICP shall not interfere in any manner for any reason with any contract while it is in effect for 12 months following the termination of this Agreement within Suffolk County.
2. **Enforcement of Covenants.** In the event any covenant contained in Section 2 shalt be construed by any court of competent jurisdiction as overbroad in area or time, or both, or otherwise to any extent held invalid, then those portions thereof which may be construed to be invalid or unenforceable shall be severed and the remaining portions thereof shall continue in full force and effect.

The covenants set forth in Section 2 are and shall be construed as independent covenants and shall survive the expiration or sooner termination of ICP's services hereunder. In addition, it is specifically agreed that damages would be inadequate to compensate O'Brien for any breach or threatened breach by ICP of any such covenants and that such damages would also be difficult if not impossible to ascertain and that the breach by ICP of any of such covenants will result in irreparable harm and injury to O'Brien. Therefore, ICP agrees and consents that O'Brien shall, in addition to and without limiting any other remedy or right it may have been entitled to such equitable and injunctive relief as may be available to restrain or prevent a breach or contemplated breach of any such covenant, such right to be cumulative and in addition to any other remedy O'Brien may have in the premises, including the recovery of damages by O'Brien.

1. **Termination of Agreement.**
   1. **Term.** This Agreement shall be effective from the date first listed above for the period set forth on Exhibit **A,** or until completion of the Services, as applicable, unless sooner terminated by either party in accordance with the terms and conditions of this Agreement ("Term"). This Agreement is terminable by either party at any time, with or without cause, effective upon notice to the other party. If O'Brien exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately, except that O'Brien shall be obligated to compensate ICP for work performed up to the time of termination. ICP may terminate this Agreement by providing O'Brien 7 days advance written notice. If ICP exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately following the expiration of the seven day notice period. Additionally, this Agreement shall automatically terminate upon ICP's death. In such event, O'Brien shall be obligated to pay ICP's estate or beneficiaries only the accrued but unpaid compensation and expenses due as of the date of death.
   2. **Continuing Obligations of ICP.** The provisions of Sections 2 and 4 shall survive expiration

or termination of this Agreement for any reason.

1. **Additional Provisions.**
   1. **Arbitration of Disputes.** Except as provided in Section 3, any controversy or claim arising out of or relating to this Agreement, or the breach thereof shall be settled by arbitration administered by the American Arbitration Association under its commercial arbitration rules and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof The costs of any such arbitration shalt be shared equally by the parties. Any such arbitration shall take place in the State of New York, County of Suffolk.
   2. **Governing Law and Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its choice of law principles. The parties consent to exclusive jurisdiction and venue in the federal and state courts sitting in Nassau or Suffolk County, New York. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.
   3. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and permitted assigns of the parties hereto. This Agreement may be assigned by O'Brien to any of its subsidiaries or affiliates, without the consent of ICP. ICP shall have no right to (a) assign this Agreement, by operation of law or otherwise; or (b) subcontract or otherwise delegate the performance of the Services without O'Brien's prior written consent which may be withheld as O'Brien determines in its sole discretion. Any such purported assignment by ICP shall be void.
   4. **Severability.** If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.
   5. **Entire Agreement.** This Agreement, including Exhibit A, shall supersede all prior agreements, negotiations, or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, premise, or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

f. **O'Brien's Remedy.** ICP acknowledges and agrees that in the event of a violation of this Agreement by ICP, ICP shall be liable to O'Brien for any damages caused thereby. Further, ICP agrees that any breach of this Agreement could result in irreparable injury to O'Brien for which monetary damages alone may be insufficient or difficult to ascertain and that O'Brien will be entitled to enforce such provisions without the necessity of posting a bond by obtaining an injunction (temporary or permanent restraining order), order for specific performance or other equitable relief.

1. **ICP's Remedy.** ICP's remedy, if any, for any breach of this Agreement shall be solely in damages and ICP shall look solely to O'Brien for recover of such damages. ICP waives and relinquishes any right ICP may otherwise have to obtain injunctive or equitable relief against any third party with respect to any dispute arising under this Agreement. ICP shall look solely to O'Brien for any compensation which may be due to ICP hereunder.
2. **Agency.** ICP is not O'Brien's agent or representative and has no authority to bind or commit O'Brien to any agreements or other obligations.
3. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion sha11 not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

j. **Notices.** Any notice, demand, or request with respect to this Agreement shall be in writing and shall be effective only if it is delivered by personal service, by air courier with receipt of delivery, or mailed, certified mail, return receipt requested, postage prepaid, to the address set forth above. Such communications shall be effective when they are received by the addressee; but if sent by certified mail in the manner set forth above, they shall be effective five (5) days after being deposited in the mail. Any party may change its address for such communications by giving notice to the other party in conformity with this section.

k. **No Third Party Beneficiaries.** Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest, or remedy for the benefit of any person other than as otherwise provided in this Agreement.

* 1. **Amendments.** No modification, termination, or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

m. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an

original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

O'BRIEN SPEECH, LANGUAGE AND LEARNING, PLLC

Geraldine McManus O' Brien Independent Contractor Provider (print name)

Independent Contractor Provider (signature)