

Different Abilities Transportation and Care LLC Contractor Agreement

THIS AGREEMENT ("Agreement"), made and entered into on _____, (the "Effective Date"), is by and between Different Abilities Transportation and Care LLC, an Ohio limited liability company (the "Company"), and _____, an individual resident of the State of Ohio (the "Contractor"); the Company and the Contractor may be referred to in this Agreement from time to time collectively as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Company desires to engage Contractor in the provision of Services (defined below) to individuals/students needing tutoring services.

WHEREAS, Contractor desires to accept such engagement of Company upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants hereinafter set forth, Company and Contractor agree as follows:

1. **Engagement.** Company shall, and does hereby, engage the services of Contractor, and Contractor shall, and does hereby, accept the engagement of Company, to render programming, tutoring, or other related services to children with or without suspected of having developmental disabilities and their families and/or representatives on behalf of Company or any affiliate thereof whether now existing or hereafter formed, as provided in this Agreement (collectively, hereinafter, the "Services"). While the Contractor is free to accept other engagements that do not violate the restrictive covenants contained in this Agreement, the Contractor shall nonetheless provide Services to the Company as requested by the Company from time to time on a priority basis. The quality of the Services to be provided by the Contractor pursuant to this Agreement shall be not less than the highest professional standards applicable to the Services.
2. **Term.** The term of this Agreement ("Term") shall commence as of the Effective Date, and shall continue thereafter until the earliest to occur of: (a) the mutual concurrence of Company and Contractor; (b) immediate termination by either Company or Contractor; (c) immediately upon the final determination by any state or federal entity or in the ability to otherwise provide services to minors in the State of Ohio; (d) immediately upon an adjudication by a court of proper jurisdiction that the Contractor is incompetent or otherwise unable to provide the contracted services; (e) immediately upon any conviction of the Contractor for the commission of a felony; (f) immediately upon the Company having a reasonable suspicion that the Contractor is an abuser of any controlled substance; (g)

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immediately upon a determination by Company that the Contractor's practice methods or other behavior creates a risk to Company's clients or their families or representatives or diminishes Company's standing in the ABA therapy community; (h) immediately upon the Contractor's death, disqualifying disability, or retirement; (i) immediately upon the substantial violation by Contractor of any covenant set forth in this Agreement or the failure or refusal of Contractor to perform any one or more of Contractor's obligations under this Agreement; or (j) immediately upon the voluntary or involuntary termination of Company's contract with any client to the extent Company has engaged Contractor to provided services solely for such client.

3. **Contractor's Duties.** Contractor shall provide Services, on behalf of the Company, at the home of the Company's client or any location designated by Company and the Contractor's duties shall include, but are not limited to, the duties set forth Exhibit A attached hereto and incorporated herein by reference.
4. **Payment of Fees.** Only Company shall be entitled to claim and receive all fees and charges attributable to the Services. In the event that the Contractor shall receive any funds directly from the Company's clients derived from the Services, the Contractor shall be considered to be doing so on behalf of Company; and the Contractor shall pay over to Company all funds received by the Contractor in connection therewith, regardless of when actually received by the Contractor.
5. **Consideration.** In consideration of the Contractor's performance of this Agreement and provided that the Contractor shall not be in breach of this Agreement, the Company shall pay the Contractor the hourly rate of _____. The aforesaid rate shall be and is hereby subject to change solely upon mutual agreement of the Parties. Contractor acknowledges that Company shall have no obligation to provide Contractor with any minimum number of hours or otherwise be required to use a minimum amount of Services.
6. **Independent Contractor.** The Contractor acknowledges that the Contractor has insisted that the Contractor's relationship with Company be that of an independent contractor and not as an employee. Accordingly, the Contractor shall: (a) not be eligible for, and shall not participate in any benefit plan or other arrangement maintained by Company for its employees; (b) file income tax returns, and pay all taxes, arising out of the Contractor's income derived from this Agreement; (c) indemnify Company, and its officers, directors and members, against any claim by any governmental authority that the relationship between

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the Contractor and Company should be classified as other than that of an independent contractor, as well as against any claim against Company arising out of Contractor's services. For information about what being an Independent Contractor means for Company, refer to Company's "What it Means to Be an Independent Contractor," and "Independent Contractor Guidelines," incorporated into this Agreement by reference and attached as Exhibit B.

7. **Liability Insurance.** The Contractor shall maintain on the Contractor's behalf liability insurance coverage in amounts that are comparable to those maintained by Company for services rendered by it directly to its clients. The Contractor shall cause such coverage to continue after the termination of this Agreement for a period equal to one (1) year; such period to be deemed to commence as of the date of such termination. In the event that the Contractor shall fail to maintain such coverage as aforesaid, then Company may, at its option, do so, in which event the Contractor shall reimburse Company for the cost thereof; and, in all events, the Contractor shall indemnify and hold Company harmless from any liability that might accrue to Company as a consequence of the lack of coverage for the Contractor. The provisions of this Section of this Agreement shall survive any termination of this Agreement.

8. Restrictive Covenants.

a. **Non-solicitation.** The Contractor shall not, either during the Term or for a period of twenty-four (24) months after the expiration or earlier termination of the Term: (a) influence any client or customer of the Company to transfer such customer's patronage to an third party including, but not limited to, Contractor; (b) solicit any person who is or was a client or customer of the Company at any time during the Term for the provision of services that are similar or competitive to those offered by the Company; or (c) accept any offer by any client or customer of the Company to transfer such customer's patronage from the Company to the Contractor; or (d) solicit for employment or hire any person employed by or contracted by the Company at any time during the Term unless the Company otherwise gives the Company's prior written consent to such solicitation or employment; or (e) influence any employee or contractor of the Company to terminate his or her employment or relationship with the Company.

b. **Non-Disclosure of Confidential and / or Proprietary Information.**

"Confidential and/or Proprietary Information" includes, but is not limited to, all information and materials belonging to, used by, or in the possession of

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the Company, relating to the Company's services, processes, behavior plans and programming, program lists, multiple target lists, visual schedules, products, systems, technology, designs, inventions (regardless of whether patentable and whether developed by the Company or the Contractor pursuant to this Agreement and whenever developed), patents, copyrights, ideas, contracts, financial and business information, developments, process and procedures, business strategies, pricing, current and prospective clients and customers, client and customer information, marketing plans, and trade secrets (within the meaning of the Ohio Uniform Trade Secrets Act) of every kind and character.

c. **Disclosure.** During or in connection with the Contractor's performance of this Agreement, the Company may from time to time intentionally disclose Proprietary Information and/or inadvertently disclose Confidential Information to the Contractor.

d. **Permitted Use.** The Contractor expressly acknowledges and agrees that the Contractor has no property right or interest whatsoever in the Confidential and/or Proprietary Information, or any improvements thereon, and is provided access to this solely for the benefit of the Company. The Contractor shall use Proprietary Information only in connection with the Contractor's provision of Services to the Company. The Contractor shall have no authority to, and shall not, use the Proprietary Information for any other purpose or in any other manner, unless otherwise expressly agreed in writing by the Company in advance thereof; which the Company may withhold in the Company's sole and absolute discretion. The Contractor shall have no authority to, and shall not, divulge Confidential Information of the Company. The Contractor agrees to secure and safeguard the Confidential and/or Proprietary Information and shall protect it against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as the Contractor uses or any other prudent person would use to protect its own confidential and/or proprietary information. The Contractor shall only permit access to the Proprietary Information to those clients, employees, agents or subcontractors of the Contractor, if any, who need such access to perform their job duties relating to the provision of Services. The Contractor warrants that all employees, agents and subcontractors of the Contractor, if any, who work with the Proprietary Information shall be made aware of the obligations contained in this Agreement and shall be under strict legal obligation not

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to copy, disclose or transfer the Information, or make any other use of the Information other than as specifically described in this Agreement.

- e. **Transfer.** The Contractor shall hold Proprietary and/or Confidential Information in strict and absolute confidence and shall not trade, give away, barter, lend, send, sell or otherwise disclose (collectively "Transfer") any of this Information to any third party and shall not make additional copies of the Proprietary and/or Confidential Information in any medium whatsoever except as absolutely required for the provision of Services. In the event that the Contractor generates any Proprietary and/or Confidential Information in any medium whatsoever, then the Contractor hereby agrees that all such Information shall be covered by the provisions of this Agreement including, but not limited to, the provisions pertaining to the protection of Proprietary and/or Confidential Information.
 - f. **Return or Destruction.** Upon completion of the provision of Services, upon any termination of this Agreement, or upon the Company's request, the Contractor shall promptly return to the Company all copies of the Proprietary and/or Confidential Information in the Contractor's possession or in the possession of the Contractor's affiliates or agents including, without limitation, all notes, memoranda, specifications, designs, writings, software, devices, documents and all other media which reflect or contain Proprietary and/or Confidential Information, as well as all analyses, compilations, studies or other tangible or intangible, written, electronic or other documents or files prepared by or for the Contractor for the Contractor's use which reflect or contain any Proprietary and/or Confidential Information. The Contractor shall not retain any such materials.
9. **Breach.** In the event of any breach of the provisions of the immediately preceding Section of this Agreement by the Contractor, then the Contractor shall indemnify Company from all loss or damage to Company that results therefrom. The Contractor acknowledges and agrees that: (a) the provisions of the immediately preceding Section of this Agreement were negotiated at arm's length and are (1) required for the fair and reasonable protection of Company's legitimate business interests, and (2) no greater than is required for the protection of such legitimate interests and are not unduly burdensome to the Contractor; (b) any breach of the provisions of the immediately preceding Section of this Agreement will cause Company to suffer immediate and irreparable

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damage; and (c) Company shall be entitled to equitable relief including, but not limited to, injunctive relief or an order for specific performance, without the necessity of posting bond, in addition to all other legal or equitable remedies available to Company.

10. Indemnification.

- a. **By the Company.** The Company shall indemnify, defend and hold the Contractor harmless from and against any and all claims, demands, actions, causes of action, damages, losses, liability, costs and expenses (including reasonable attorneys' fees), which the Contractor may suffer or incur arising out of or related to the acts or omissions of the Company in connection with: (A) the Company's performance or breach of this Agreement, or (B) any litigation, investigation, or other expenditure related directly thereto, including any civil action instituted to enforce the Company's obligations under this Agreement.
- b. **By the Contractor.** The Contractor shall indemnify, defend and hold the Company harmless from and against any and all claims, demands, actions, causes of action, damages, losses, liability, costs and expenses (including reasonable attorneys' fees), which the Company may suffer or incur arising out of or related to the acts or omissions of the Contractor in connection with: (A) the Contractor's performance or breach of this Agreement, or (B) any litigation, investigation, or other expenditure related directly thereto, including any civil action instituted to enforce the Contractor's obligations under this Agreement.
- c. **Survival.** In the event of any expiration or earlier termination of this Agreement for any reason, then Section 5, Section 6, Section 7, Section 8, Section 9, and Section 10 of this Agreement shall survive such expiration or termination and remain in full force and effect.
- d. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, Company and the Contractor and their respective heirs, executors, administrators, legal representatives and their successors and assigns, as the case may be.
- e. **No Assignment.** Neither this Agreement nor any rights under this Agreement may be assigned by the Contractor, nor may any duties under this Agreement be delegated by the Contractor, without the prior written

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consent of Company, which may be withheld at Company's discretion.

- f. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio.
- g. **Severability.** In the event that any provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, then, nevertheless, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather, the same shall be enforced to the fullest extent, or to the fullest lesser extent, permitted by law.
- h. **Titles.** The headings and captions set forth in this Agreement are for convenience of reference only, and the same shall not affect the interpretation of any provision set forth and contained in this Agreement.
- i. **Waiver.** The failure by either Company or the Contractor to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any right or power under this Agreement at any time be deemed a waiver or relinquishment of such right or power at any other time.

IN WITNESS WHEREOF, Company and Contractor, by and through their respective duly authorized officers, have executed this Agreement as of the day and year first above written.

Company: Different Abilities Transportation and Care LLC.

By: _____
Jenae Stephens, Owner

Contractor: Printed name: _____

Signature: _____

Date: _____