

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this 10th day of January, 2012, between THE SCHOOL BOARD OF ST. LUCIE COUNTY, a district school board constituted as provided in Article IX, Section 4, of the Florida Constitution (“Board”), and KidPro Therapies, Inc., a Florida corporation (“Contractor”).

WITNESSETH

1. **PURPOSE.** The Board is the governing body of the School District of St. Lucie County, Florida, which District is in turn a unit of government of the State of Florida. The Contractor agrees to provide certain professional services to the Board through the Contractor’s employee(s) Jennifer Wilde and the Board agrees to compensate the Contractor for such services.

2. **AGREEMENT.** The Board agrees to accept from the Contractor, and the Contractor agrees to provide to the Board, professional services subject to the following terms and conditions:

(a) The Contractor agrees to provide professional services to the Board as described in the attached Schedule. All services provided by the Contractor in accordance with this Agreement shall be performed by the Contractor’s employee(s) Jennifer Wilde, unless the Board agrees, in writing, to the Contractor's substitution of another individual to perform such services.

(b) The Board agrees to pay to the Contractor for professional services provided in accordance with this Agreement, and for expenses incurred in the provision of such services, as follows: Occupational Therapy Services at an hourly rate of \$56.00 per hour, not to exceed \$15,000.00 annually.

Each payment obligation of the Board under this Agreement is subject to the availability of funds that are appropriated or allocated for the payment of such services. If funds are not allocated and available, this Agreement may be terminated by the Board, without penalty, at the end of the period for which funds are available, provided, however, that the Board shall be responsible for amounts due for services performed prior to such termination. The Board shall notify the Contractor in writing as soon as practicable prior to any such termination becoming effective.

(c) The Contractor agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes. Unless otherwise exempt as provided by law, the Contractor, all employees of the Contractor, and all other individuals acting by or on behalf of the Contractor, who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of Board funds shall, prior to providing any services under this Agreement, (i) file a complete set of fingerprints, and (ii) receive clearance from the criminal background check in the same manner as required of Board employees whose positions involve direct

contact with students. In addition, if the Contractor will have direct, unsupervised contact with students, the Contractor shall, prior to providing services under this Agreement, submit to a drug screening in the same manner as required of Board employees whose positions involve direct contact with students. The Contractor shall bear all costs associated with compliance with screening requirements under this paragraph. Verification of compliance with these requirements shall be provided to the Contract Manager for the Board designated in paragraph 3 below. The parties agree that the failure of the Contractor to perform any of the duties described in this paragraph shall constitute a material breach of the Agreement, entitling the Board to terminate immediately with no further responsibilities or duties to perform under this Agreement. The Contractor agrees to indemnify and hold harmless the Board, its officers and employees from any liability in the form of physical or mental injury, death, or property damage resulting in the Contractor's failure to comply with the requirements of this paragraph.

(d) The names and other identifying information of all individuals who are acting by or on behalf of the Contractor and who are not subject to the background screening requirements set forth in subparagraph (c) above shall be subject to search by the Board against the registration information maintained by the Florida Department of Law Enforcement under Section 943.043, Florida Statutes, and by the United States Department of Justice under 42 U.S.C. § 14071.

(e) The Contractor agrees that each individual providing services to the Board in accordance with this Agreement shall meet all professional certification, licensing, and/or registration requirements applicable to the services provided by such individual ("Professional Requirements"). Prior to the term of this Agreement commencing as provided in paragraph 4 below, and not less than annually thereafter, the Contractor shall provide to the Board such documentation as the Contract Manager for the Board shall reasonably require demonstrating compliance with all Professional Requirements applicable to each such individual. If compliance with Professional Requirements is a prerequisite for or condition of the Board receiving funding or reimbursement for the services provided by such individual, then the Contractor shall refund to the Board any revenue lost, and shall hold the Board harmless from any loss or cost incurred, as a result of (i) any lapse in such Professional Requirements or (ii) any other error attributable to the action or inaction of the Contractor and subsequently identified in any audit conducted respecting funding received by the Board for such services.

3. **CONTRACT MANAGER.** The Contract Manager for the Board is Bill R. Tomlinson. The Contract Manager for the Contractor is Jennifer Wilde. The parties shall direct all matters arising in connection with the performance of this Agreement, other than notices, to the attention of the Contract Managers for attempted resolution or action. The Contract Managers shall be responsible for overall resolution, action, coordination, and oversight relating to the performance of this Agreement.

4. **TERM; TERMINATION.** The term of this Agreement shall be from the date of execution by both parties through and including June 30, 2012, unless renewed in accordance with paragraph 9 below, provided, however, and notwithstanding any other provision, this

Agreement may be terminated by either party with or without cause upon thirty (30) days written notice to the other party.

5. **CONSIDERATION.** The parties agree that the consideration for this Agreement shall be, for the Board, the professional services provided by the Contractor, and for the Contractor, the sums paid by the Board.

6. **PUBLIC RECORDS.** The Contractor shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Board in conjunction with this Agreement.

7. **CONTRACTOR RESPONSIBILITY.**

(a) The Contractor is an independent contractor and is not an employee or agent of the Board. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Board, on the one hand, and the Contractor and the Contractor's employees, agents, or subcontractors, on the other, during or after the performance of this Agreement. The Contractor shall take the whole responsibility and shall bear all losses resulting to the Contractor on account of errors or omissions.

(b) The Contractor shall comply with all applicable provisions of safety laws, rules, ordinances, regulations, and orders of duly constituted public authorities and agencies exercising regulatory authority over the Contractor. The Contractor assumes all risk of loss, damage, and destruction to all of the Contractor's materials, tools, appliances, property of every description, and that of the Contractor's respective employees or agents or subcontractors and each of their respective employees or agents, and injury to or death of the Contractor's employees or agents, subcontractors, or their respective employees or agents, including legal fees, court costs or other legal expenses, arising out of or in connection with the performance of this Agreement.

(c) In accordance with federal and state law, 20 U.S.C. § 1232g, 34 C.F.R. Part 99, and Sections 1002.22 and 1002.221, Florida Statutes, any and all personally identifiable records of a student are confidential, and the Contractor shall access such records in the course of providing professional services under this Agreement only if and to the extent the Contractor and the Contractor's employees have a legitimate educational interest in the information contained in such records. The Contractor shall implement operating practices and procedures that will (i) maintain the confidentiality and assure the physical security of all student records accessed and used in the course of providing professional services under this Agreement; (ii) prohibit the release or disclosure of such records to anyone except authorized Board personnel, (iii) prevent any unauthorized access to such records, and (iv) preclude the unauthorized use, release, or disclosure of the information contained in such records.

(d) The Contractor agrees forever to save and keep harmless and fully indemnify the Board, its officers, employees, and agents of and from all losses, liabilities, damages, claims, actions, legal proceedings, settlements, judgments, recoveries, costs, and

expense because of or resulting from (i) loss of, or damage to, property, or injury to or deaths of persons in any way arising out of or in connection with the performance of this Agreement and attributable to the negligence or other wrongful conduct of the Contractor or the Contractor's employees, agents, or subcontractors, including but not limited to any loss or action resulting from the failure of the Contractor to comply with the Contractor's obligations under this Agreement, (ii) infringement by the Contractor of any third-party patent, copyright, or trademark, (iii) misappropriation by the Contractor of any third-party trade secret, or (iv) any copyrighted, service marked, trademarked, patented, or unpatented invention, process, article, or work manufactured or used in the performance of this Agreement, including such use by the Board. If the Contractor uses any design, device, materials, or works covered by letters, service mark, trademark, patent, copyright, or any other intellectual property right in the performance of this Agreement, the Contractor agrees that the amounts paid by the Board include all royalties or costs arising from the use of such design, device, or materials.

8. **INSURANCE.** The Contractor shall maintain insurance, through the term of this Agreement, as follows:

(a) Commercial General Liability Insurance, including Contractual Liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage - any 1 fire	\$100,000
Medical expense - any 1 person	\$10,000

Notwithstanding the foregoing, on a case-by-case basis, the Contract Manager for the Board may determine that commercial general liability coverage is preferred and recommended but not mandatory for a Contractor as professional service provider when (i) the Contractor furnishes in-service training or other non-instructional services to Board staff members but not to Board students, and (ii) all employees of the Contractor remain physically present with and under the direct supervision (within the line of sight) of a Board employee at all times students may be accessible to Contractor employees.

(b) Business Automobile Liability for any auto (all owned, hired, and non-owned autos) with limits of not less than \$1,000,000 per accident. In the event the Contractor does not own any automobile, the Board will accept proof of hired and non-owned Auto Liability only.

(c) Worker's Compensation Insurance with limits equal to Florida statutory requirements. Employer's Liability must include limits of at least \$100,000 each accident, \$100,000 each disease/employee, \$500,000 each disease/maximum. Alternatively, if all employees of the Contractor qualify for and have elected exemption from the provisions of the Worker's Compensation statutes, the Contractor shall provide to the

Board, for all such employees, copies of the current notices of election for exemption that are on file with the Florida Department of Financial Services.

(d) Professional Liability coverage with limits of at least \$1,000,000 each claim and in the aggregate. If professional services provided in accordance with this Agreement include contact with students, the required professional liability insurance must include coverage for corporal punishment.

(e) Certificates of all insurance shall be provided to and approved by the Contract Manager for the Board prior to the term of this Agreement commencing as provided in paragraph 4 above. The Board shall be listed as an Additional Insured under both the General Liability and Auto Liability Insurance Policies. The policies must be specifically endorsed to grant the Board the same notification rights provided to the first named insured as respects cancellation and nonrenewal. This endorsement must be attached to the certificate of insurance. A waiver of subrogation shall be provided under the General Liability, Auto Liability, and Worker's Compensation Insurance Policies. Coverage applies on a primary basis.

9. **RENEWAL OR EXTENSION.** This Agreement may be renewed or extended for successive terms of one year each upon written agreement of the parties.

10. **NONDISCRIMINATION.** The Contractor covenants and agrees not to discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, or disability (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin, or ancestry.

11. **AUDIT.** The Contractor agrees that until the expiration of three years after expenditure of funds under this Agreement, the Board and any of the Board's duly authorized representatives shall have access to and the right to examine any and all directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement. The Contractor agrees that payments made under this Agreement shall be subject to reduction for amounts charged that are found on the basis of audit examination not to constitute allowable fees or costs. All required records shall be maintained until an audit is completed and all questions arising from such audit are resolved, or until five (5) years after completion of all work under this Agreement, whichever last occurs.

12. **VERIFICATION OF EMPLOYMENT STATUS.** The Contractor agrees to bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons the Contractor employs in the performance of this Agreement.

13. **ASSIGNMENT.** The Contractor shall not assign this Agreement to any other person or firm without first obtaining the Board's written approval.

14. **ATTORNEYS' FEES AND COSTS.** In the event either party defaults in the performance of any of the terms, covenants, and conditions of this Agreement, the defaulting

party agrees to pay all damages and costs incurred by the other party, including reasonable attorneys' fees.

15. **NOTICES.** All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail, return receipt requested, and addressed as follows:

If to the Board:
Bill R. Tomlinson, Asst. Superintendent
Division of Student Services
4204 Okeechobee Road
Fort Pierce, FL 34947

With copies to:

If to the Contractor:
Jennifer Wilde, President
KidPro Therapies, Inc.
10702 SW Elsinore Dr.
Port St. Lucie, FL 34987

With copies to:

16. **INDULGENCE NOT WAIVER.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time of the breach or failure occurs, or at any time throughout the term of this Agreement.

17. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements between the parties. This Agreement may only be amended by written document, properly authorized, executed, and delivered by both parties.

18. **INTERPRETATION; VENUE.** This Agreement shall be interpreted as a whole unit, and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. Each party has had ample opportunity to seek the advice of legal counsel prior to entering this Agreement, which shall not be construed against the party responsible for drafting the instrument. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court.

19. **NO THIRD PARTY BENEFICIARY.** This Agreement does not confer any right or obligation enforceable by a third party. Nothing in this Agreement shall be construed as consent by an agency or subdivision of the State of Florida to be sued by a third party in any matter arising out of any contract.

20. **SEVERABILITY.** In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

21. **SURVIVAL.** The covenants, warranties, representations, indemnities, and undertakings of the parties that create obligations extending beyond the term of this Agreement shall survive the expiration or termination of this Agreement regardless of the reason for such expiration or termination.

IN WITNESS WHEREOF, the parties to this Agreement have set their hands and seals on the date first above-written.

ATTEST:

**SCHOOL BOARD OF ST. LUCIE
COUNTY, FLORIDA**

MICHAEL J. LANNON, Superintendent
and Ex Officio Secretary

By: _____
CAROL HILSON, Board Chair

(Seal)

CONTRACTOR:

ATTEST:

KidPro Therapies, Inc.

Print Name: _____
Secretary

By: _____
Print Name: _____
Title: _____

(Seal)

SCHEDULE OF PROFESSIONAL SERVICES

Provision of Occupational Therapy Services to identify Students with Disabilities at an hourly rate of \$56.00 an hour, not to exceed \$15,000.00 annually, on an as needed basis during the 2011-2012 school year.

Contractor may not bill for, nor will Board pay for, mileage, meals or travel.