



INDEPENDENT CONTRACTOR AGREEMENT

“THE TOBY CENTER FOR FAMILY TRANSITIONS”

This Independent Contractor Agreement (“**Agreement**”) is entered into as of _____ (DATE) by and between **THE TOBY CENTER FOR FAMILY TRANSITIONS**, with a principal place of business at DELRAY BEACH, FLORIDA _____ (“**Company**”), and _____ an individual/corporation (“**Contractor**”).

1. Services.

1.1 Nature of Services. Contractor will perform the services, as more particularly described on Exhibit A, for Company as an independent contractor (the “**Services**”). The Services have been specially ordered and commissioned by Company. To the extent the Services include materials subject to copyright, Contractor agrees that the Services are done as “work made for hire” as that term is defined under U.S. copyright law, and that as a result, Company will own all copyrights in the Services. Contractor will perform such services in a diligent and workmanlike manner and in accordance with the schedule, if any, set forth in Exhibit A. The content, style, form and format of any work product of the Services shall be completely satisfactory to Company and shall be consistent with Company’s standards. Except as specified on Exhibit A, Company agrees that Contractor’s services need not be rendered at any specific location and may be rendered at any location selected by Contractor. Contractor hereby grants Company the right, but not the obligation, to use and to license others the right to use Contractor’s, and Contractor’s employees’, name, voice, signature, photograph, likeness and biographical information in connection with and related to the Services.

1.2 Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All Services shall be performed only by Contractor and Contractor’s employees. Under no circumstances shall Contractor, or any of Contractor’s employees, look to Company as his/her employer, or as a partner, agent or principal. Neither Contractor, nor any of Contractor’s employees, shall be entitled to any benefits accorded to Company’s employees, including without limitation worker’s compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor’s expense, and in Contractor’s name, unemployment, disability, worker’s compensation and other insurance, as well as licenses and permits usual or necessary for conducting the Services.

1.3 Compensation and Reimbursement. Contractor shall be compensated and reimbursed for the Services as set forth on Exhibit B. Completeness of work product shall be determined by Company in its sole discretion, and Contractor agrees to make all revisions, additions, deletions or alterations as requested by Company. No other fees and/or expenses will be paid to Contractor, unless such fees and/or expenses have been approved in advance by the appropriate Company executive in writing. Contractor shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to such compensation. Contractor hereby indemnifies and holds Company harmless from, any claims, losses, costs, fees, liabilities, damages or injuries suffered by Company arising out of Contractor’s failure with respect to its obligations in this Section 1.3.

1.4 Personnel. Contractor represents and warrants to Company that it or its employees performing Services

hereunder will have (a) sufficient expertise, training and experience to accomplish the Services; and (b) executed agreements which state that (i) all work done by the employee will be a work made for hire, as that term is defined under U.S. copyright law, and will be owned by Contractor; and (ii) the employee assigns all rights in and to all work done by the employee to Contractor. Contractor agrees that all its personnel shall be compensated, taxes withheld, and other benefits made available as required by applicable law and regulations. Contractor shall require all employees who perform Services and/or have performed Services hereunder to sign a copy of the form attached hereto as Exhibit C and Contractor shall forward copies of all of such forms to Company within five (5) days of executing the Agreement and/or within five (5) days of assigning a new employee to perform Services hereunder. **Background check.** All service staff will be required by Toby Center to obtain a criminal background check in order to meet the requirements of service delivery to children in the State of Florida. Background check expense is to borne by the Contractor with refund upon receipt by the Toby Center of acceptable background clearance. All service staff must secure a background check prior to work with clients. **Personnel File.** Each Contractor is to provide requested documentation in order to begin service with the Toby Center. Such documentation includes initial application, resume, letters of reference, proof of insurance, copy of driver's license or other ID with photograph.

1.5 Representation of the Toby Center. All contract employees will identify themselves as professionals affiliated with the Toby Center when with clients and be asked to wear a badge identifying themselves as Toby Center affiliates. Any Contractor office will have Toby Center literature, business cards and literature for sharing with clients. A Contractor will be in violation of this agreement if they sell away or 'poach' or otherwise introduce Toby Center clients to other Contractor services which may or may not be services also provided by the Toby Center for Family Transitions, unless receiving written approval by Toby Center Executive Director.

1.6 Liability Insurance. Clinicians will provide proof of and maintain their own professional liability insurance. The Toby Center will not be held accountable or responsible for any incidents that occur while clients are under the care of the contracted clinician. Contracted employee agrees to hold Company harmless for any legal action brought upon them for misconduct by a client.

2. Protection of Company's Confidential Information.

2.1 Confidential Information. Company now owns and will hereafter develop, compile and own certain proprietary techniques, trade secrets, and confidential information which have great value in its business (collectively, "**Company Information**"). Company will be disclosing Company Information to Contractor during Contractor's performance of the Services. Company Information includes not only information disclosed by Company, but also information developed or learned by Contractor during Contractor's performance of the Services. Company 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 Company is engaged or contemplates engaging or the unauthorized disclosure of which could be detrimental to the interests of Company, whether or not such information is identified by Company. By way of example and without limitation, Company Information includes any and all information concerning discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, data, research techniques, client lists, marketing, sales or other financial or business information, scripts, and all derivatives, improvements and enhancements to any of the above. Company Information also includes like third-party information

which is in Company's possession under an obligation of confidential treatment.

2.2 HIPAA. Contractors who are clinically licensed are mandated by the State and Federal Government to follow the orders and statutes for medical and mental health record keeping including documentation, storage and file sharing. Contractor acknowledges by license and herein the obligations of HIPAA awareness and will strive under their license to protect Company client records according to these State and Federal laws. Contractor will hold the Toby Center harmless for any abandonment of these requirements as files may be maintained by the Contractor. It is recommended that Contractors participate in HIPAA training no less frequently than annually and notify the Executive Director of the Company upon completion.

2.3 Protection of Company Information. Contractor agrees that at all times during or subsequent to the performance of the Services, Contractor will keep confidential and not divulge, communicate, or use Company Information, except for Contractor's own use during the Term of this Agreement to the extent necessary to perform the Services. Contractor further agrees not to cause the transmission, removal or transport of tangible embodiments of, or electronic files containing, Company Information from Company's principal place of business, without prior written approval of Company.

2.4 Exceptions. Contractor's obligations with respect to any portion of the Company Information as set forth above shall not apply when Contractor can document that (i) it was in the public domain at the time it was communicated to Contractor by Company; (ii) it entered the public domain subsequent to the time it was communicated to Contractor by Company through no fault of Contractor; (iii) it was in Contractor's possession free of any obligation of confidence at the time it was communicated to Contractor by Company; or (iv) it was rightfully communicated to Contractor free of any obligation of confidence subsequent to the time it was communicated to Contractor by Company.

2.5 Company Property. All materials, including without limitation documents, drawings, drafts, notes, designs, computer media, electronic files and lists, including all additions to, deletions from, alterations of, and revisions in the foregoing (together the "**Materials**"), which are furnished to Contractor by Company or which are developed in the process of performing the Services, or embody or relate to the Services, the Company Information or the Innovations (as defined below), are the property of Company, and shall be returned by Contractor to Company promptly at Company's request together with any copies thereof, and in any event promptly upon expiration or termination of this Agreement for any reason. Contractor is granted no rights in or to such Materials, the Company Information or the Innovations, except as necessary to fulfill its obligations under this Agreement. Contractor shall not use or disclose the Materials, Company Information or Innovations to any third party.

3. Prior Knowledge and Relationships.

3.1 Other Commitments. Except as disclosed on Exhibit D to this Agreement, which may be added later as a condition of Contractor partnership, Contractor has no other agreements, relationships or commitments to any other person or entity which conflict with Contractor's obligations to Company under this Agreement. Contractor agrees not to enter into any agreement, either written or oral, in conflict with this Agreement. Contractor may not hold themselves out to the same entities, personal, business, agency or corporate in direct competition with and in order to place themselves in competition with the Toby Center. This means that all forms of advertising, social media and other marketing which excludes Contractor identification with the Toby Center is a violation of this agreement. The Toby Center will provide

marketing of services for all affiliated Contractors and provide Contractor with first option to accept a case.

3.2 Representations and Warranties. Contractor represents and warrants to Company that (a) Contractor has full power and authority to enter into this Agreement including all rights necessary to make the foregoing assignments to Company; that in performing under the Agreement; (b) Contractor will not violate the terms of any agreement with any third party; and (c) the Services and any work product thereof are the original work of Contractor, do not and will not infringe upon, violate or misappropriate any patent, copyright, trade secret, trademark, contract, or any other publicity right, privacy right, or proprietary right of any third party. Contractor shall defend, indemnify and hold Company and its successors, assigns and licensees harmless from any and all claims, actions and proceedings, and the resulting losses, damages, costs and expenses (including reasonable attorneys' fees) arising from any claim, action or proceeding based upon or in any way related to Contractor's, or Contractor's employees, breach or alleged breach of any representation, warranty or covenant in this Agreement, and/or from the acts or omissions of Contractor or Contractor's employees.

4. Termination of Agreement.

4.1 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 Company exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately, except that Company shall be obligated to compensate Contractor for work performed up to the time of termination. If Contractor does not perform according to Toby Center protocols, timely report filings, or other requests by Toby Center Administration, Company reserves the right to terminate this agreement. If Contractor exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately. Additionally, this Agreement shall automatically terminate upon Contractor's death. In such event, Company shall be obligated to pay Contractor's estate or beneficiaries only the accrued but unpaid compensation and expenses due as of the date of death.

4.2 Non-Compete. During period of this agreement, Contractor may not hold themselves out as a provider of the same services to the publics and marketplaces shared by the Toby Center. Following termination of this contract, the Contractor may not hold themselves out to the provision of same services for period of twenty-four months.

5. Additional Provisions.

5.1 Governing Law and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its choice of law principles. The parties consent to exclusive jurisdiction and venue in the federal and state courts sitting in Palm Beach County, Florida. 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 attorney's fees, costs and other expenses.

5.2 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. Contractor 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 Company's prior written consent which may be withheld as Company determines in its sole discretion.

Any such purported assignment shall be void.

5.3 Severability. If any provision of this Agreement shall be found invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties.

5.4 Entire Agreement. This Agreement, including the Exhibits, constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties.

5.5 Injunctive Relief. Contractor acknowledges and agrees that in the event of a breach or threatened breach of this Agreement by Contractor, Company will suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

5.6 Contractor’s Remedy. Contractor’s remedy, if any, for any breach of this Agreement shall be solely in damages and Contractor shall look solely to Company for recover of such damages. Contractor waives and relinquishes any right Contractor may otherwise have to obtain injunctive or equitable relief against any third party with respect to any dispute arising under this Agreement. Contractor shall look solely to Company for any compensation which may be due to Contractor hereunder.

5.7 Agency. Contractor has limited role as Company’s agent or representative and has no authority to bind or commit Company to any agreements or other obligations. Contractor may collect payments from clients. Upon receipt of client fees, Contractor must deposit funds to applicable Toby Center account, fax time sheet to Toby Center and or arrange to meet to hand over the fees to Program Director, Supervisor, CEO or other Company appointed official with fiduciary management.

5.8 Amendment and Waivers. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

5.9 Time. Contactor agrees that time is of the essence in this Agreement.

5.10 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.

CAUTION: THIS AGREEMENT AFFECTS YOUR RIGHTS TO INNOVATIONS YOU MAKE PERFORMING YOUR SERVICES, AND RESTRICTS YOUR RIGHT TO DISCLOSE OR USE COMPANY’S CONFIDENTIAL INFORMATION DURING OR SUBSEQUENT TO YOUR SERVICES.

CONTRACTOR HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS ITS TERMS.
CONTRACTOR HAS COMPLETELY FILLED OUT EXHIBIT D TO THIS AGREEMENT.

CONTRACTOR

The Toby Center for Family Transitions, Inc.

CONTRACTOR (Print Name)

By: _____
TOBY CENTER DIRECTOR (Print Name)

SIGNATURE OF CONTRACTOR

SIGNATURE

EXHIBIT A
Description of Services

Independent Contractor Agreement between THE TOBY CENTER FOR FAMILY TRANSITIONS, INC., a not-for-profit corporation (“**Company**”), and _____ (“**Contractor**”) dated as of _____, _____.

Services to be provided by Contractor: Additional Services may be added by parties by mutual agreement in writing.

Term of Agreement: from signature date until willful or ordered termination.

Work product to be delivered by Contractor (Check boxes as applicable, and set forth details as desired in space provided):

- Oral recommendations/reports
- Client Intakes for a) client folder and b) Toby Center administration
- Written reports (including visitation field notes and therapy client case notes)
- Daily – field/treatment notes concurrent with clinical session and therapeutic visitation
- Weekly (Compensation/Schedule Report – to Toby Center administration)
- Monthly
- Upon Completion of provided service
- Other: Parent Sign In sheets for each clinical and/or other service session
- Supervised visitation
- Therapeutic Supervised visitation
- Therapy
- Notes, Drafts, Working Papers, etc.
- Consultation
- Training – must meet Toby Center requirements for service and administrative training
- Other – compliance with Toby Center protocols, including current and modified

Schedule for Completion of Services:

Company Information (as defined in Section 2.1 of the Independent Contractor Agreement) may be utilized:

- Only at Company's business premises
- At Contractor's business premises provided that appropriate confidentiality procedures and arrangements are observed
- Other: Availability of Toby Center primary service location, Contractor’s office, and/or location in the community

Exhibit A

EXHIBIT B
Payment

Independent Contractor Agreement between THE TOBY CENTER FOR FAMILY TRANSITIONS, a not-for-profit corporation (“Company”), and _____ (“Contractor”) dated as of _____, _____.

Compensation

Company shall pay *fully licensed and insured Contractor* the sum of sixty-five Dollars (\$ 65.00) minimum per clinical service hour or seventy percent of billable fees which shall be due and payable to Contractor _____ within fourteen business days following service delivery, or upon receipt of reimbursed funds from third party agency as CBC (community based care) funding agency. (Child Net is the CBC for Palm Beach and Broward Counties). Reimbursement from Child Net is received approximately 45 days from the close of month when service provided or when invoice submitted to them by the Toby Center. Toby Center will process compensation by withholding individual taxes and directly depositing earned payroll in client checking account through its payroll service company, J&M Accounting, Coconut Creek, FL or any subsequent payroll firm.

All non-clinical service sessions to be earned by clinical independent contractor will be \$25 per hour or as agreed to by Toby Center management.

Licensed Therapist’s will be paid the sum of Sixty-five Dollars (\$65.00) minimum per service hour. All professional registration must be provided the Toby Center.

Compensation will be owed upon the Company receiving client fees. Fees may be collected in cash, check, money order or credit card. Care should be maintained in providing credit card payment information. Only Toby Center administration should collect the credit card information or anyone so delegated for processing credit card payments.

Contractors must keep all client payments received separate from their other professional and or personal accounts. All payments received must be directed to the Toby Center and turned in or deposited to Toby Center bank account within 48 hours of providing service.

All check payments must be issued to the Toby Center, not payable to the individual Contractor.

Time sheets for clients must be faxed or emailed to the Toby Center on a weekly basis in order to provide reports to Child Net or Toby Center CEO of client relations, revenue and other purposes.

Expenses

All consideration for expenses must be approved in advance with the Company.

Exhibit B
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EXHIBIT C
Form of Confidentiality and Work for Hire Agreement

The undersigned (“Individual”) has sought employment (or continued employment as the case may be) with _____ (“**Contractor**”) and Contractor has offered to engage (or continue the engagement of) the services of Individual on terms, including as to compensation, that are satisfactory to both, and for a period terminable at will by either party; and

In connection with such relationship, Company wishes to have Individual provide certain services for the benefit of a client of Consultant, _____ (“Company”);

NOW THEREFORE, in consideration of the mutual covenants and benefits contained herein (e.g., Individual being permitted to work, at least for some period, on the Company account), the parties agree as follows:

1. Confidential Information. Individual acknowledges that through the relationship described herein, Individual will obtain access to certain “Confidential Information” regarding the business affairs of Company or its affiliates, including without limitation information relating to discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, data, research techniques, customer and supplier lists, marketing, sales or other financial or business information, scripts, any all derivatives, improvements and enhancements to any of the above, and other proprietary information of a similar nature. Confidential Information shall not include any information which (a) at the time of disclosure, is in the public domain through no fault of Individual; (b) Individual can show was in its possession at the time of disclosure or is independently derived or developed by Individual, and was not acquired, directly or indirectly, from Company; or (c) was received by Individual from a third party having the legal right to transmit the same. It is agreed that all such Confidential Information is special, unique and an asset owned solely by Company.

2. Covenant of Non-Disclosure. Individual agrees that Individual will retain all Confidential Information in confidence; not disclose any Confidential Information to any third party without Company’s permission; not use any Confidential Information for any purpose other than performing Individual’s duties as a Company employee on behalf of Company; use Individual’s best efforts to limit access to Confidential Information to those who have a need to know the information for the business purposes of Company; return all tangible objects and copies thereof containing Confidential Information to Company upon request by the Company or Company; and upon termination of the Individual’s relationship with the Company or upon termination of the relationship between the Company and Company, not duplicate any Confidential Information without prior approval from the Company; and honor Individual’s promises under this Agreement both during and after the employment relationship. Notwithstanding the provisions of this Paragraph, Individual shall not be deemed in violation of this Paragraph for disclosing Confidential Information pursuant to a subpoena or court order, provided that Individual provides Company with reasonable prior notice of such subpoena or court order so that Company may challenge such subpoena or court order.

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3. Ownership of Creations. Individual agrees that all developments, ideas, copyrightable creations, works of authorship, and other contributions (herein collectively referred to as “Creations”), whether or not copyrighted or copyrightable, conceived, made, developed, created or acquired by Individual, either individually or jointly, during any employment by or under any agreement with Consultant and which relate in any manner to the Individual’s work for Company on Consultant’s behalf (regardless of the extent developed at Company facilities, at Individual’s home, or elsewhere), shall be deemed to be a work made for hire initially owned by Consultant (subject to Consultant’s obligation to assign it to Company). To the extent that this provision does not effectively transfer such rights, Individual does hereby sell, assign, and transfer to the Company Individual’s entire right, title and interest (worldwide) in and to such Creations and all intellectual property rights thereto.

4. Severability; Assignability. If any term or provision of this agreement or its application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of the agreement shall not be affected thereby, and each term and provision of this contract shall be valid and enforceable to the fullest extent permitted by law. The covenants and agreements contained herein shall be assignable to, inure to the benefit of and may be enforced by the successors and assigns of the Company and Company.

CONTRACTOR

Name: _____ Title: _____ Date: _____

Signature: _____

Address: _____ Apt/Suite No. _____

City _____ State _____ Zip _____

Phone Number: _____ Email _____

APPROVED BY:

TOBY CENTER CEO/PROGRAM DIRECTOR/SUPERVISOR

Name: _____ Title _____ Date: _____

Signature: _____

As witness: Yes/No

Other _____

Exhibit C
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