

## AGREEMENT FOR SERVICES #301-183-M-E2011

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THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as COUNTY) and Maxim Healthcare Services, Inc., a Maryland Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 7227 Lee DeForest Drive, Columbia, MD 21046, and whose local place of business is 3013 Douglas Boulevard, Suite 160, Roseville, CA 95661, (hereinafter referred to as CONTRACTOR);

### RECITALS

WHEREAS, COUNTY has determined that it is necessary to obtain a contractor to provide personnel to supplement the Psychiatric Health Facility (PHF), Crisis Residential Treatment (CRT) facility and/or Psychiatric Emergency Services (PES) on an "as requested" basis for the Health Services Department, Mental Health Division; and

WHEREAS, CONTRACTOR has represented to COUNTY that it is specially trained, experienced, expert and competent to perform the special services required hereunder and COUNTY has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

WHEREAS, COUNTY has determined that the provision of these services provided by CONTRACTOR is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, COUNTY and CONTRACTOR mutually agree as follows:

**Article I. SCOPE OF SERVICES**

Section 1.01 CONTRACTOR agrees upon request by COUNTY to provide one (1) or more licensed health care providers as requested by the COUNTY Health Services Department, Mental Health Division, for supplemental staffing services, subject to availability of qualified personnel. CONTRACTOR shall supply personnel who meet the following criteria:

- 1) Possess current State license/registration and/or certification;
- 2) Possess CPR certification, as required by State law;
- 3) Meet applicable laws, regulations, and/or accreditation standards, to be presented to COUNTY Contract Administrator upon request;
- 4) Possess proof of pre-employment screening to include a physical (as applicable to State law) and TB skin test, professional references, criminal background check(s) (and drug screenings as applicable); and
- 5) Possess at least one (1) year of relevant professional experience and one (1) year of specialty experience.

Section 1.02 CONTRACTOR shall maintain direct responsibility as employer for payment of wages, and Federal, State and local income taxes, social security taxes, workers' compensation, and unemployment insurance. CONTRACTOR agrees to maintain documentation on all personnel provided by CONTRACTOR in an employee file.

Section 1.03 CONTRACTOR shall pay for any live scan testing which is required for their employees to work at COUNTY facilities.

Section 1.04 When applicable, CONTRACTOR agrees that in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, books, documents and records will be made available to the Comptroller General of the United States, the United States Department of Health and Human Services and their duly authorized representative until the expiration of four (4) years after the date on which such services were furnished under this Agreement.

Section 1.05 CONTRACTOR shall coordinate with COUNTY to promptly provide CONTRACTOR personnel with an orientation of COUNTY facility. CONTRACTOR shall review instructions regarding confidentiality (including patient and employee), and orient CONTRACTOR's personnel to the specific Exposure Control Plan of the facility as it pertains to OSHA requirements for bloodborne pathogens, as well as any of the facility's specific policies and procedures provided to CONTRACTOR for such purpose.

Section 1.06 COUNTY retains full authority and responsibility for professional and medical management of care for each of its patients and for ensuring that services provided by CONTRACTOR personnel under this Agreement are furnished in a safe and effective manner and in accordance with applicable standards.

Section 1.07 COUNTY shall use its best efforts to request personnel at least twenty-four (24) hours prior to reporting time in order to assure prompt arrival of assigned personnel. All information regarding reporting time and assignment shall be provided by COUNTY at the time of the initial request to CONTRACTOR.

Section 1.08 If COUNTY concludes, in its sole discretion, that any personnel provided by CONTRACTOR have engaged in misconduct, or have been negligent, COUNTY may require the individual to leave the premises and will notify CONTRACTOR immediately in writing, providing in reasonable detail the reason(s) for such dismissal. COUNTY's obligation to compensate CONTRACTOR for such individual's services will be limited to the number of hours actually worked. CONTRACTOR shall not reassign the individual to the facility without prior approval of the COUNTY.

Section 1.09 COUNTY may request the dismissal of any CONTRACTOR personnel for any reason. COUNTY agrees to notify CONTRACTOR of any such action immediately in writing, providing in reasonable detail the reason(s) for such dismissal. COUNTY shall be obligated to compensate CONTRACTOR personnel for all hours worked prior to dismissal.

Section 1.10 In all instances where personnel are supervised by COUNTY, COUNTY shall document and develop an incident report of any injury, illness, or ailment experienced by CONTRACTOR's personnel at the facility workplace in accordance with applicable Federal, State and local laws, rules and regulations.

Section 1.11 Neither CONTRACTOR nor COUNTY shall discriminate on the basis of age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era, or any other category protected by law.

**Article II. TERM**

This Agreement shall be effective May 1, 2011 and shall expire April 30, 2012 unless earlier terminated pursuant to the provisions under Article XIII or Article XIV herein.

**Article III. COMPENSATION FOR SERVICES**

Section 3.01 CONTRACTOR shall submit monthly invoices no later than thirty (30) days following the end of a "service month" except in those instances where CONTRACTOR obtains written approval from COUNTY Health Services Department (HSD) Director or Director's designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a "service month" shall be defined as a calendar month during which CONTRACTOR provides services in accordance with Article I – Scope of Services.

Section 3.02 For services provided herein, COUNTY agrees to pay CONTRACTOR monthly in arrears and within forty-five (45) days following the COUNTY's receipt and approval of itemized invoice(s) identifying services rendered.

Section 3.03 Rates: For the purposes of this Agreement, the billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

Section 3.04 Invoices shall be submitted to:

County of El Dorado  
Health Services Department, Mental Health Division  
Attn: Accounts Payable  
929 Spring Street  
Placerville, CA 95667

Section 3.05 The total amount of this Agreement shall not exceed \$58,000.

**Article IV. HIPAA COMPLIANCE**

By signing this Agreement, CONTRACTOR agrees to comply with Exhibit B, Business Associate Agreement, incorporated herein and made by reference a part hereof.

**Article V. RN's, LVN/LPT, MHW's – PLACEMENT FEE**

For a period of twelve (12) months following the date on which a CONTRACTOR personnel member last worked a shift at the COUNTY, COUNTY agrees that it will take no steps to recruit, hire or employ as its own employee or as a contractor those personnel provided by CONTRACTOR during the term of this Agreement. COUNTY understands and agrees that CONTRACTOR is not an employment agency and that personnel are assigned to the facility to render temporary service(s) and are not assigned to become employed by the COUNTY. The COUNTY further acknowledges and agrees that there is a substantial investment in business related costs incurred by CONTRACTOR in recruiting, training and employing personnel, which includes advertising, interviewing, evaluating, reference checking, training, and supervising personnel. In the event that COUNTY, or any affiliate, subsidiary, department, or division of COUNTY, hires, employs or solicits CONTRACTOR personnel, COUNTY will be in breach of this Agreement. In such an event COUNTY agrees to either:

- A. provide CONTRACTOR one hundred and eighty (180) days prior written notice of its intent to hire, and continue to employ staff personnel through CONTRACTOR for a minimum of thirty-six (36) hours per week through the one hundred and eighty (180) days notice period; or
- B. pay CONTRACTOR liquidated damages equal to the greater of: five thousand dollars (\$5,000) or the sum of thirty percent (30%) of such personnel's annualized salary (calculated as Weekday Hourly Pay Rate x 2080 Hours x 30%).

**Article VI. PHYSICIAN/PSYCHIATRIST PERMANENT RECRUITMENT AND NON-SOLICITATION**

Section 6.01 COUNTY may wish to enter into a direct long- or short-term relationship with a Physician/Psychiatrist who has worked with COUNTY or has been introduced through CONTRACTOR. CONTRACTOR's business depends on preserving their locum tenens network, which they have expended considerable resources to develop and maintain. Therefore, as separate consideration for their efforts in locating and referring a Physician/Psychiatrist to COUNTY, COUNTY agrees to pay CONTRACTOR a permanent recruitment fee in the amount of twenty-four thousand dollars (\$24,000) for any Physician/Psychiatrist introduced to COUNTY by CONTRACTOR. COUNTY must inform CONTRACTOR within twenty-four (24) hours if any Physician/Psychiatrist presented by CONTRACTOR is already known to the COUNTY. Otherwise, the Physician/Psychiatrist will be conclusively presumed to have been introduced by CONTRACTOR to COUNTY. The permanent recruitment fee applies to any Physician/Psychiatrist who has provided services for COUNTY through CONTRACTOR who:

- A. Accepts a position, during the term of this Agreement or within two (2) years after its termination, and whether or not in the area served by COUNTY's facility, practice where the Physician/Psychiatrist performed service(s), or was introduced to perform locum tenens services for COUNTY, with COUNTY or any affiliate (meaning any individual practice, group, clinic, or other organization that is owned, managed or operated, directly or indirectly, by COUNTY or by any persons or entities of which COUNTY is, directly or indirectly, an owner, partner, agent, employee or subsidiary, or with whom COUNTY regularly provides medical services through licensed Physician/Psychiatrist, or that is jointly owned or controlled by or with COUNTY); or
- B. Accepts a position in the area served by COUNTY's facility or practice in which the Physician/Psychiatrist provided locum tenens coverage under this Agreement, during the term of this Agreement or within two (2) years after its termination, if COUNTY assists in obtaining the position or receives any services or benefits as a result of the Physician/Psychiatrist placement; or
- C. Engages in locum tenens coverage, other than through CONTRACTOR, for COUNTY or any of COUNTY's affiliates (as defined above), whether or not in the area served by COUNTY practice or facility where the Physician/Psychiatrist performed locum tenens services for COUNTY, during the term of this Agreement or within two (2) years after its termination.

Section 6.02 If the Physician/Psychiatrist accepts a permanent position, the recruitment fee is due in full and payable on the first day the Physician/Psychiatrist performs services in the new permanent position. If the Physician/Psychiatrist provides services in any temporary position (including non-CONTRACTOR locum tenens coverage), the recruitment fee shall be paid to CONTRACTOR ratably, in amounts equal to the locum tenens fees that COUNTY would have paid if the services were performed under this Agreement.

Section 6.03 CONTRACTOR Agreements with Physician/Psychiatrist have similar limitations and conditions on accepting other positions with COUNTY or COUNTY affiliates and within COUNTY community.

Section 6.04 The restrictions and obligations of this Permanent Recruitment section will last during the term of this Agreement and for two (2) years after its termination, at any time or for any reason, and regardless of whether either CONTRACTOR or COUNTY is in breach of any other terms of this Agreement.

Section 6.05 For COUNTY protection, CONTRACTOR Physician/Psychiatrist Agreement requires COUNTY consent to any placement of, or practice by, the Physician/Psychiatrist within the area served by COUNTY facility or practice in which the Physician/Psychiatrist provides services under this Agreement during the term of this Agreement or for (2) years after the Physician/Psychiatrist contract with CONTRACTOR terminates (which may occur later than the date the Physician/Psychiatrist completes an assignment with COUNTY).

**Article VII. MANDATED REPORTER**

CONTRACTOR acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of: 1) the California Penal Code Section 11164 et seq., also known as the Child Abuse and Neglect Reporting Act and/or 2) Welfare and Institutions Code 15630 et seq. related to elder and dependent adults.

**Article VIII. DEBARMENT AND SUSPENSION CERTIFICATION**

Section 8.01 By signing this Agreement, the CONTRACTOR agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to Title 45 Code of Federal Regulations (CFR) 76.

Section 8.02 By signing this Agreement, the CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- B. Have not within a three (3) year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Paragraph b(2) herein;

- D. Have not within a three (3)-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- E. Shall not knowingly enter in to any lower tier covered transaction with a person who is proposed for debarment under Federal regulations (i.e., 48 CFR part 9, subpart 9.400), debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and
- F. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Section 8.03 If the CONTRACTOR is unable to certify to any of the statements in this certification, the CONTRACTOR shall submit an explanation to COUNTY.

Section 8.04 The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549 (1986) as amended by Federal Executive Order 12689 (1989).

Section 8.05 If the CONTRACTOR knowingly violates this certification, in addition to other remedies available to the Federal Government, COUNTY may terminate this Agreement for cause or default.

**Article IX. CHANGES TO AGREEMENT**

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**Article X. CONTRACTOR TO COUNTY**

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from COUNTY and its staff. It is further agreed that in all matters pertaining to this Agreement, CONTRACTOR shall act as Contractor only to COUNTY and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONTRACTOR's responsibilities to COUNTY during term hereof.

**Article XI. ASSIGNMENT AND DELEGATION**

CONTRACTOR is engaged by COUNTY for its unique qualifications and skills as well as those of its personnel. CONTRACTOR shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of COUNTY.

**Article XII. INDEPENDENT CONTRACTOR/LIABILITY**

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. CONTRACTOR exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONTRACTOR shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. COUNTY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONTRACTOR or its employees.

**Article XIII. FISCAL CONSIDERATIONS**

The parties to this Agreement recognize and acknowledge that COUNTY is a political subdivision of the State of California. As such, County of El Dorado is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of COUNTY business, COUNTY will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, COUNTY shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and COUNTY released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any COUNTY department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the COUNTY, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

**Article XIV. DEFAULT, TERMINATION, AND CANCELLATION**

Section 14.01 Default

Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of



time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, COUNTY reserves the right to take over and complete the work by contract or by any other means.

**Section 14.02 Bankruptcy**

This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

**Section 14.03 Ceasing Performance**

COUNTY may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

**Section 14.04 Termination or Cancellation without Cause**

COUNTY may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by COUNTY without cause. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

**Article XV. NOTICE TO PARTIES**

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to COUNTY shall be addressed as follows:

COUNTY OF EL DORADO  
HEALTH SERVICES DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: NEDA WEST, DIRECTOR

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

MAXIM HEALTHCARE SERVICES, INC.  
7227 LEE DEFOREST DRIVE  
COLUMBIA, MD 21046  
ATTN: CONTRACTS DEPARTMENT

or to such other location as the CONTRACTOR directs.

**Article XVI. INDEMNITY**

The CONTRACTOR shall defend, indemnify, and hold the COUNTY harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the CONTRACTOR's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, the CONTRACTOR, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the COUNTY, its officers and employees, or as expressly prescribed by statute. This duty of CONTRACTOR to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

**Article XVII. INSURANCE**

Section 17.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California; and
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage;
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.

Section 17.02 In the event CONTRACTOR is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.

Section 17.03 CONTRACTOR shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

Section 17.04 The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

Section 17.05 CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CONTRACTOR agrees that no work or services shall be performed prior to the giving of such approval. In the event the CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

Section 17.06 The certificate of insurance must include the following provisions stating that:

- A. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to COUNTY, and;
- B. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

Section 17.07 The CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

Section 17.08 Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Section 17.09 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or volunteers.

Section 17.10 The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

Section 17.11 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 17.12 In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

Section 17.13 Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the COUNTY.

**Article XVIII. INTEREST OF PUBLIC OFFICIAL**

No official or employee of COUNTY who exercises any functions or responsibilities in review or approval of services to be provided by CONTRACTOR under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of COUNTY have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**Article XIX. INTEREST OF CONTRACTOR**

CONTRACTOR covenants that CONTRACTOR presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall be employed by CONTRACTOR.

**Article XX. CONFLICT OF INTEREST**

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. CONTRACTOR attests that it has no current business or financial relationship with any COUNTY employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. COUNTY represents that it is unaware of any financial or economic interest of any public officer or employee of CONTRACTOR relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

**Article XXI. CALIFORNIA RESIDENCY (FORM 590)**

All independent Contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or COUNTY shall withhold seven (7) percent of each

payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

**Article XXII. TAXPAYER IDENTIFICATION NUMBER (FORM W-9)**

All independent Contractors or corporations providing services to the COUNTY must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

**Article XXIII. COUNTY BUSINESS LICENSE**

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County business license unless exempt under County Code Section 5.08.070.

**Article XXIV. ADMINISTRATOR**

The County Officer or employee with responsibility for administering this Agreement is Barry Wasserman, Manager of Mental Health Programs, Health Services Department, Mental Health Division, or successor.

**Article XXV. AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**Article XXVI. PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**Article XXVII. VENUE**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in County of El Dorado, California, and shall be resolved in accordance with the laws of the State of California.

**Article XXVIII. ENTIRE AGREEMENT**

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: Neda West Dated: 4-6-11  
Neda West, Director  
Health Services Department

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: Theresa R. Daly Dated: 6/17/11  
Theresa R. Daly, Purchasing Agent  
Chief Administrative Office  
COUNTY

-- CONTRACTOR --

MAXIM HEALTHCARE SERVICES, INC.  
A MARYLAND CORPORATION

By: Mike Hemelt Dated: 6/2/11  
Mike Hemelt  
Controller  
"CONTRACTOR"

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Corporate Secretary

**EXHIBIT A**  
**FEE SCHEDULE**

Charges will be based on the following hourly rate schedule:

<b>SERVICE:</b>	<b>COST:</b>
Physicians/Psychiatrists *	\$125.00 to \$160.00 per hour
Registered Nurses - Weekday	\$58.00 per hour
Registered Nurses – Weekend	\$63.00 per hour
Licensed Vocational Nurses/ Licensed Psychiatric Technicians	\$47 per hour
Mental Health Workers	\$27 per hour

\* Physician/Psychiatrist rates may vary within the ranges listed above based on Physician/Psychiatrist experience, assignment requirements, market conditions, etc.

Weekend rates for Registered Nurses will apply to shifts beginning at 12 midnight on Friday and ending at 8:00 a.m. on Monday.

**General Policies – Physician/Psychiatrist**

Physician/Psychiatrist providing weekend coverage will be paid for 12 hours per weekend at the rate listed above according to the following schedule:

Friday – 2 hours on call  
Saturday – 2 hours on call and 2 hours at facility  
Sunday – 2 hours on call and 2 hours at facility  
Monday – 2 hours on call

Weekend coverage is from Friday at 8:00 a.m. until the following Tuesday at 8:00 a.m. During this period the Physician/Psychiatrist will visit the Psychiatric Health Facility (PHF) to conduct rounds for two (2) hours on Saturday and two (2) hours on Sunday and will be available by phone the rest of the time specified. Any change to hours at facility must be authorized in writing, in advance, by the supervisor on duty at the PHF.

Each individual physician/psychiatrist will be confirmed in writing (assignment confirmation letter) with the specific hourly rates to be charged for a specific physician/psychiatrist to work a specific assignment. County will sign the confirmation letter and return it to Contractor at the following address:

Maxim Physician Resources, LLC  
5001 LBJ Freeway, Suite 900  
Dallas, TX 75244  
Fax (214) 741-0701

Return of a signed confirmation letter will serve as acceptance of the rates and terms for that assignment.

Contractor reserves the right to require County to pay, upon acceptance of physician/psychiatrist, a deposit of ten (10) times the daily rate as listed in the assignment confirmation letter (maximum of ten days) to apply, at the County's discretion, against either the last two (2) weeks of coverage and/or any applicable costs. Any required deposits will be discussed prior to arrangement of assignment and included in the assignment confirmation letter.

Contractor reserves the right to require a minimum amount of hours be scheduled per day, to be determined on a per assignment basis. In the event physician/psychiatrist does not work the minimum required amount of scheduled hours for any reason other than dereliction of duties, gross negligence, loss of hospital privileges or other related acts of omission, Contractor will bill for, and County will be liable to pay the amount of hours agreed upon as a daily minimum. Any minimums will be agreed upon prior to the arrangement of the assignment and will be confirmed in the assignment confirmation letter.

When applicable, County agrees to pay Contractor for all fees incurred in obtaining hospital privileges for locum tenens physicians/psychiatrists.

#### **General Policies – All Positions**

Contractor shall bill County for the entire shift if an order for staff is made less than two (2) hour(s) prior to the start of the shift, as long as the individual reports for work within a reasonable prompt period of time under existing conditions after receiving notice of the assignment.

If County changes or cancels an order less than four (4) hours prior to the start of a shift, Contractor shall bill County for four (4) hours at the established fee for each scheduled personnel. Contractor shall be responsible for contacting Contractors' personnel prior to reporting time.

Overtime rates are charged for all hours worked in excess of forty (40) hours per week or according to applicable state law. Overtime must have County's supervisory approval. The overtime rate is one and one-half (1-1/2) times the regular billing rate for such hours. Double time shall be billed for hours in excess of twelve (12) hours in accordance with state law.



Holiday rate will apply to shifts beginning at 12 midnight the night before the holiday through 12 midnight the night of the holiday. Time and one-half will be charged for the following holidays:

New Year's Eve (from 3 p.m.)  
New Year's Day  
Memorial Day  
Independence Day  
Easter  
Martin Luther King Day

Thanksgiving  
Labor Day  
Christmas Eve (from 3 p.m.)  
Christmas Day  
Presidents Day

## Exhibit B HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

### RECITALS

WHEREAS, COUNTY and CONTRACTOR (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to COUNTY, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the COUNTY and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

WHEREAS, COUNTY is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

WHEREAS, BA, when a recipient of PHI from COUNTY, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

WHEREAS, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

WHEREAS, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

WHEREAS, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI
- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the COUNTY, Privacy Rule, Security Rule, or the HITECH Act.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
  - (3) disclose PHI as necessary for BA's operations only if:
    - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
      - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
      - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
  - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing COUNTY with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by COUNTY.
  - (5) not disclose PHI disclosed to BA by COUNTY not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by COUNTY.
  - (6) de-identify any and all PHI of COUNTY received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from COUNTY, or from another business associate of COUNTY, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by COUNTY to BA, BA agrees to:
  - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
  - B. Report to COUNTY within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to COUNTY in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the COUNTY, BA may be required to reimburse the COUNTY for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the COUNTY and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by COUNTY to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
  - A. Provide access, at the request of COUNTY, within five (5) days, to PHI in a Designated Record Set, to the COUNTY, or to an Individual as directed by the COUNTY. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable COUNTY to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
  - B. Within ten (10) days of receipt of a request from COUNTY, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule

in the event that the PHI in BA's possession constitutes a Designated Record Set.

- C. To assist the COUNTY in meeting its disclosure accounting under HIPAA:
  - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
  - (2) Within in 30 days of notice by the COUNTY, BA agrees to provide to COUNTY information collected in accordance with this section to permit the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.
  
- D. Make available to the COUNTY, or to the Secretary of Health and Human Services (the "Secretary"), BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide COUNTY a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of COUNTY.

- A. COUNTY agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by COUNTY that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  
- B. COUNTY agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  
- C. COUNTY agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

- D. COUNTY shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COUNTY, except as may be expressly permitted by the Privacy Rule.
- E. COUNTY will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the COUNTY to BA, or created or received by BA on behalf of the COUNTY, is destroyed or returned to the COUNTY, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the COUNTY's knowledge of a material breach by the BA, the COUNTY shall either:
  - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the COUNTY.
  - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the COUNTY shall report the violation to the Secretary.
- C. Effect of Termination.
  - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of COUNTY, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the COUNTY determines that returning or destroying the PHI is infeasible, BA shall provide to the COUNTY notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If COUNTY elects destruction of the PHI, BA shall certify in writing to COUNTY that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "COUNTY") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the COUNTY in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of COUNTY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of COUNTY as set forth herein. BA's obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the COUNTY herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the COUNTY to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.