

FIRST AMENDED AND RESTATED AGREEMENT

THIS FIRST AMENDED AND RESTATED AGREEMENT, hereinafter referred to as "First Amended and Restated Agreement," is made and entered into this 17th day of April, 2018, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and **MAXIM HEALTHCARE SERVICES, INC**, whose address is 6051 North Fresno Street, Suite 102, Fresno, California 93710, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY and CONTRACTOR entered into Procurement Agreement No. P-17-126-L, dated April 10, 2017 (hereinafter "Agreement") pursuant to which CONTRACTOR agreed to provide recruiting services for temporary staffing of Licensed Marriage and Family Therapists (LMFT), Licensed Clinical Social Workers (LCSW), Licensed Professional Clinical Counselors (LPCC), Licensed Vocational Nurses (LVN), Registered Nurses (RN), and Nurse Practitioners (NP) for the Department of Behavioral Health; and

WHEREAS, COUNTY and CONTRACTOR entered into a First Amendment to Agreement P-17-126-L effective January 2, 2018, (hereinafter "Amendment I") extending the original contract term seven (7) months, and increasing the maximum compensation under the agreement to \$99,999; and

WHEREAS, COUNTY and CONTRACTOR now desire to amend the Procurement Agreement P-17-126-L, and that upon execution of this First Amended and Restated Agreement, the Agreement shall be restated in its entirety, superseding Agreement P-17-126-L, including the First Amendment.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties hereto agree as follows:

1. RESPONSIBILITIES OF CONTRACTOR

A. CONTRACTOR shall perform the services as described in Exhibit "A" attached hereto and with this reference incorporated herein, at the rates set forth in Exhibit "A".

2. TERM

This Agreement shall become effective retroactive to the 1st day of November, 2017, and shall terminate on the 31st day of October, 2018.

1 **3. TERMINATION**

2 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
3 provided thereunder, are contingent on the approval of funds by the appropriating government
4 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
5 Agreement terminated at any time by giving the CONTRACTOR thirty (30) days advance written
6 notice.

7 B. Breach of Contract - COUNTY may immediately suspend or terminate this
8 Agreement in whole or in part, where in the determination of COUNTY there is:

- 9 1) A failure to comply with any term of this Agreement;
10 2) A substantially incorrect or incomplete report submitted to COUNTY.
11 3) Improperly performed service.

12 C. Without Cause - Under circumstances other than those set forth above, this
13 Agreement may be terminated by CONTRACTOR or COUNTY or COUNTY's DBH Director, or
14 designee, upon the giving of sixty (60) days advance written notice of an intention to terminate.

15 **4. COMPENSATION**

16 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive
17 compensation in accordance with the compensation rates attached hereto and referenced herein as
18 Exhibit B, "Services and Compensation."

19 A. Maximum Contract Amount – The maximum compensation under this
20 Agreement for the period November 1, 2017 through October 31, 2018 shall not exceed Two Million
21 Six Hundred Thousand and No/100 Dollars (\$2,600,000.00).

22 B. Payments by COUNTY to CONTRACTOR shall be in arrears, for services
23 provided during the preceding month, within forty-five (45) days after the date of receipt and approval
24 by COUNTY of the monthly invoicing as described in Section Five (5), INVOICING, herein. Payments
25 shall be made after receipt and verification of actual expenditures incurred by CONTRACTOR for
26 monthly costs, as identified in Exhibit B, in the performance of this Agreement and shall be
27 documented to COUNTY on a monthly basis by the twentieth (20th) of the month following the month
28 of said expenditures.

1 CONTRACTOR shall submit to the COUNTY by the tenth (10th) of each month a
2 detailed supporting documentation, itemizing costs incurred in the previous month. Failure to submit
3 supporting documentation shall be deemed sufficient cause for COUNTY to withhold payments until
4 there is compliance, as further described in Section Five (5) herein.

5 C. COUNTY shall not be obligated to make any payments under this Agreement if
6 the request for payment is received by COUNTY more than sixty (60) days after this Agreement has
7 terminated or expired.

8 All final claims shall be submitted by CONTRACTOR within sixty (60) days
9 following the final month of service for which payment is claimed. No action shall be taken by
10 COUNTY on claims submitted beyond the sixty (60) day closeout period. Any compensation which is
11 not expended by CONTRACTOR pursuant to the terms and conditions of this Agreement shall
12 automatically revert to COUNTY.

13 **5. INVOICING**

14 A. CONTRACTOR shall invoice COUNTY in arrears by the tenth (10th) day of each
15 month for the prior month's actual services rendered to DBHInvoices@co.fresno.ca.us.

16 B. At the discretion of COUNTY's DBH Director, or designee, if an invoice is
17 incorrect or is otherwise not in proper form or substance, COUNTY's DBH Director, or designee, shall
18 have the right to withhold payment as to only that portion of the invoice that is incorrect or improper
19 after five (5) days prior notice to CONTRACTOR. CONTRACTOR agrees to continue to provide
20 services for a period of ninety (90) days after notification of an incorrect or improper invoice. If after
21 the ninety (90) day period, the invoice(s) is still not corrected to COUNTY DBH's satisfaction,
22 COUNTY's DBH Director, or designee, may elect to terminate this Agreement, pursuant to the
23 termination provisions stated in Section Three (3) of this Agreement. In addition, for invoices received
24 ninety (90) days after the expiration of each term of this Agreement or termination of this Agreement,
25 at the discretion of COUNTY's DBH Director, or designee, COUNTY's DBH shall have the right to
26 deny payment of any additional invoices received.

27 C. CONTRACTOR shall submit monthly invoices and supporting documentation
28 that itemizes the charges for monthly service costs (per applicable compensation rates, as identified

1 in Exhibit B). The invoices and supporting documentation will serve as tracking tools to determine if
2 CONTRACTOR's service costs are in accordance with its negotiated maximum compensation, as set
3 forth in Section Four (4) Sub-Section A.

4 D. CONTRACTOR must maintain such financial records for a period of seven (7)
5 years or until any dispute, audit or inspection is resolved, whichever is later. CONTRACTOR will be
6 responsible for any disallowances related to inadequate documentation.

7 **6. INDEPENDENT CONTRACTOR**

8 In performance of the work, duties, and obligations assumed by CONTRACTOR under
9 this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of
10 CONTRACTOR's students, instructors, faculty, officers, agents, and employees will at all times be
11 acting and performing as an independent contractor, and shall act in an independent capacity and not
12 as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY.

13 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by
14 which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right
15 to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in
16 accordance with the terms and conditions thereof. CONTRACTOR and COUNTY shall comply with
17 all applicable provisions of law and the rules and regulations, if any, of governmental authorities
18 having jurisdiction over matters which are directly or indirectly the subject of this Agreement.

19 Because of its status as an independent contractor, CONTRACTOR, its instructors,
20 employees and students, shall have absolutely no right to employment rights and benefits available to
21 COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on
22 behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be
23 solely responsible and save COUNTY harmless from all matters relating to payment of
24 CONTRACTOR's employees, including compliance with Social Security, withholding, and all other
25 regulations governing such matters. As between COUNTY and CONTRACTOR, should the students
26 be deemed employees, by any governmental or regulatory body, the students shall be the employees
27 of CONTRACTOR. It is acknowledged that during the term of this Agreement, CONTRACTOR may
28 be providing services to others unrelated to COUNTY or to this Agreement.

1 **7. MODIFICATION**

2 Any matters of this Agreement may be modified from time to time by the written consent
3 of all the parties without, in any way, affecting the remainder.

4 **8. NON-ASSIGNMENT**

5 Neither party shall assign, transfer or subcontract this Agreement nor their rights or
6 duties under this Agreement without the prior written consent of the other party.

7 **9. HOLD-HARMLESS**

8 A. CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's
9 request, defend COUNTY, its officers, agents, employees from any and all costs and expenses,
10 including attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting
11 to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers,
12 agents, instructors, faculty, employees, students and volunteers under this Agreement, and from any
13 and all costs and expenses, including attorney fees and court costs, damages, liabilities, claims and
14 losses occurring or resulting to any person, firm or corporation who may be injured or damaged by
15 the performance, or failure to perform, of CONTRACTOR, its officers, agents, instructors, faculty,
16 employees, students and volunteers under this Agreement. In addition, CONTRACTOR agrees to
17 indemnify COUNTY for Federal, State of California and/or local audit exceptions resulting from
18 noncompliance herein on the part of CONTRACTOR.

19 **10. INSURANCE**

20 Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or any
21 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the following
22 insurance policies or a program of self-insurance, including but not limited to, an insurance pooling
23 arrangement of Joint Powers Agreement (JPA) throughout the term of this Agreement:

24 A. Commercial General Liability

25 Commercial General Liability Insurance with limits of not less than One Million
26 Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million
27 Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis.
28 COUNTY may require specific coverage including completed operations,
 product liability, contractual liability, Explosion, Collapse, and Underground
 (XCU), fire legal liability or any other liability insurance deemed necessary
 because of the nature of this Agreement.

1 B. Automobile Liability

2 Comprehensive Automobile Liability Insurance with limits for bodily injury of not
3 less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five
4 Hundred Thousand Dollars (\$500,000) per accident and for property damages
5 of not less than Fifty Thousand Dollars (\$50,000), or such coverage with a
6 combined single limit of Five Hundred Thousand Dollars (\$500,000). Coverage
7 should include owned and non-owned vehicles used in connection with this
8 Agreement.

9 C. Professional Liability

10 If CONTRACTOR employs licensed professional staff (e.g. Ph.D., R.N.,
11 L.C.S.W., L.M.F.T.) in providing services, Professional Liability Insurance with
12 Limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three
13 Million Dollars (\$3,000,000) annual aggregate.

14 D. Worker's Compensation

15 A policy of Worker's Compensation Insurance as may be required by the
16 California Labor Code.

17 CONTRACTOR shall obtain endorsements to the Commercial General Liability
18 insurance naming the County of Fresno, its officers, agents, and employees, individually and
19 collectively, as additional insured, but only insofar as the operations under this Agreement are
20 concerned. Such coverage for additional insured shall apply as primary insurance and any other
21 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be
22 excess only and not contributing with insurance provided under CONTRACTOR's policies herein.
23 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
24 written notice given to COUNTY.

25 Within thirty (30) days from the date CONTRACTOR signs this Agreement,
26 CONTRACTOR shall provide certificates of insurance and endorsements as stated above for all of
27 the foregoing policies, as required herein, to the County of Fresno, Department of Behavioral Health,
28 3133 North Millbrook Avenue, Fresno, California, 93703, Attention: Contracts Division, stating that
29 such insurance coverage's have been obtained and are in full force; that the County of Fresno, its
30 officers, agents and employees will not be responsible for any premiums on the policies; that such
31 Commercial General Liability insurance names the County of Fresno, its officers, agents and
32 employees, individually and collectively, as additional insured, but only insofar as the operations

1 under this Agreement are concerned; that such coverage for additional insured shall apply as primary
2 insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents
3 and employees, shall be excess only and not contributing with insurance provided under
4 CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed without a
5 minimum of thirty (30) days advance, written notice given to COUNTY.

6 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as
7 herein provided, COUNTY may, in addition to other remedies it may have, suspend or terminate this
8 Agreement upon the occurrence of such event.

9 All policies shall be with admitted insurers licensed to do business in the State of
10 California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating
11 of A FSC VII or better.

12 **11. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

13 A. The parties to this Agreement shall be in strict conformance with all applicable
14 Federal and State of California laws and regulations, including but not limited to Sections 5328,
15 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of
16 Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, and the
17 Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320
18 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations, including, but not
19 limited to Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information Technology for
20 Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient
21 information, and the Genetic Information Nondiscrimination Act (GINA) of 2008 regarding the
22 confidentiality of genetic information.

23 Except as otherwise provided in this Agreement, CONTRACTOR, as a Business
24 Associate of COUNTY, may use or disclose Protected Health Information (PHI) to perform functions,
25 activities or services for or on behalf of COUNTY, as specified in this Agreement, provided that such
26 use or disclosure shall not violate the Health Insurance Portability and Accountability Act (HIPAA),
27 USC 1320d *et seq.* The uses and disclosures of PHI may not be more expansive than those
28 applicable to COUNTY, as the "Covered Entity" under the HIPAA Privacy Rule (45 CFR 164.500 *et*

1 seq.), except as authorized for management, administrative or legal responsibilities of the Business
2 Associate.

3 B. CONTRACTOR, including its subcontractors and employees, shall protect, from
4 unauthorized access, use, or disclosure of names and other identifying information, including genetic
5 information, concerning persons receiving services pursuant to this Agreement, except where
6 permitted in order to carry out data aggregation purposes for health care operations [45 CFR
7 Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any and all
8 persons receiving services pursuant to a COUNTY funded program. This requirement applies to
9 electronic PHI. CONTRACTOR shall not use such identifying information or genetic information for
10 any purpose other than carrying out CONTRACTOR's obligations under this Agreement.

11 C. CONTRACTOR, including its subcontractors and employees, shall not disclose
12 any such identifying information or genetic information to any person or entity, except as otherwise
13 specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law,
14 required by the Secretary, or authorized by the client/patient in writing. In using or disclosing PHI that
15 is permitted by this Agreement or authorized by law, CONTRACTOR shall make reasonable efforts
16 to limit PHI to the minimum necessary to accomplish intended purpose of use, disclosure or request.

17 D. For purposes of the above sections, identifying information shall include, but not
18 be limited to name, identifying number, symbol, or other identifying particular assigned to the
19 individual, such as finger or voice print, or photograph.

20 E. For purposes of the above sections, genetic information shall include genetic
21 tests of family members of an individual or individual, manifestation of disease or disorder of family
22 members of an individual, or any request for or receipt of, genetic services by individual or family
23 members. Family member means a dependent or any person who is first, second, third, or fourth
24 degree relative.

25 F. CONTRACTOR shall provide access, at the request of COUNTY, and in the
26 time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR
27 Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR
28 Section 164.524 regarding access by individuals to their PHI. With respect to individual requests,

1 access shall be provided within thirty (30) days from request. Access may be extended if
2 CONTRACTOR cannot provide access and provides individual with the reasons for the delay and the
3 date when access may be granted. PHI shall be provided in the form and format requested by the
4 individual or COUNTY.

5 CONTRACTOR shall make any amendment(s) to PHI in a designated record set
6 at the request of COUNTY or individual, and in the time and manner designated by COUNTY in
7 accordance with 45 CFR Section 164.526.

8 CONTRACTOR shall provide to COUNTY or to an individual, in a time and
9 manner designated by COUNTY, information collected in accordance with 45 CFR Section 164.528,
10 to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in
11 accordance with 45 CFR Section 164.528.

12 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or
13 reasonable belief that there has been unauthorized access, viewing, use, disclosure, security
14 incident, or breach of unsecured PHI not permitted by this Agreement of which it becomes aware,
15 immediately and without reasonable delay and in no case later than two (2) business days of
16 discovery. Immediate notification shall be made to COUNTY's Information Security Officer and
17 Privacy Officer and COUNTY's DPH HIPAA Representative, within two (2) business days of
18 discovery. The notification shall include, to the extent possible, the identification of each individual
19 whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used,
20 disclosed, or breached. CONTRACTOR shall take prompt corrective action to cure any deficiencies
21 and any action pertaining to such unauthorized disclosure required by applicable Federal and State
22 Laws and regulations. CONTRACTOR shall investigate such breach and is responsible for all
23 notifications required by law and regulation or deemed necessary by COUNTY and shall provide a
24 written report of the investigation and reporting required to COUNTY's Information Security Officer
25 and Privacy Officer and COUNTY's DPH HIPAA Representative. This written investigation and
26 description of any reporting necessary shall be postmarked within the thirty (30) working days of the
27 discovery of the breach to the addresses below:

28 ///

County of Fresno

Dept. of Behavioral Health
HIPAA Representative

(559) 600-6798
3147 N. Millbrook Ave.
Fresno, CA 93703

County of Fresno

Dept. of Public Health
Privacy Officer

(559) 600-6405
(559) 600-6439
P.O. Box 11867
Fresno, CA 93775

County of Fresno

Information Technology Services
Information Security Officer

(559) 600-5800
333 W. Pontiac Way
Clovis, CA 93612

H. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the requirements set forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, available to the United States Department of Health and Human Services (Secretary) upon demand.

CONTRACTOR shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the CONTRACTOR's normal business hours, however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to CONTRACTOR and in possession of a subcontractor, it must certify efforts to obtain the information to the Secretary.

I. Safeguards

CONTRACTOR shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement. CONTRACTOR shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidential, integrity and availability of electronic PHI. CONTRACTOR shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's

operations and the nature and scope of its activities. Upon COUNTY's request, CONTRACTOR shall provide COUNTY with information concerning such safeguards.

CONTRACTOR shall implement strong access controls and other security safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the following administrative and technical password controls for all systems used to process or store confidential, personal, or sensitive data:

1. Passwords must not be:

a. Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;

b. A dictionary word; or

c. Stored in clear text

2. Passwords must be:

a. Eight (8) characters or more in length;

b. Changed every ninety (90) days;

c. Changed immediately if revealed or compromised; and

d. Composed of characters from at least three (3) of the following

four (4) groups from the standard keyboard:

1) Upper case letters (A-Z);

2) Lowercase letters (a-z);

3) Arabic numerals (0 through 9); and

4) Non-alphanumeric characters (punctuation symbols).

CONTRACTOR shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

1. Network-based firewall and/or personal firewall;

2. Continuously updated anti-virus software; and

1 3. Patch management process including installation of all operating
2 system/software vendor security patches.

3 CONTRACTOR shall utilize a commercial encryption solution that has received
4 FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable
5 electronic media (including, but not limited to, compact disks and thumb drives) and on portable
6 computing devices (including, but not limited to, laptop and notebook computers).

7 CONTRACTOR shall not transmit confidential, personal, or sensitive data via
8 e-mail or other internet transport protocol unless the data is encrypted by a solution that has been
9 validated by the National Institute of Standards and Technology (NIST) as conforming to the
10 Advanced Encryption Standard (AES) Algorithm. CONTRACTOR must apply appropriate sanctions
11 against its employees who fail to comply with these safeguards. CONTRACTOR must adopt
12 procedures for terminating access to PHI when employment of employee ends.

13 J. Mitigation of Harmful Effects

14 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that
15 is suspected or known to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or
16 breach of PHI by CONTRACTOR or its subcontractors in violation of the requirements of these
17 provisions. CONTRACTOR must document suspected or known harmful effects and the outcome.

18 K. CONTRACTOR's Subcontractors

19 CONTRACTOR shall ensure that any of its CONTRACTORS, including subcontractors, if applicable,
20 to whom CONTRACTOR provides PHI received from or created or received by CONTRACTOR on
21 behalf of COUNTY, agree to the same restrictions, safeguards, and conditions that apply to
22 CONTRACTOR with respect to such PHI and to incorporate, when applicable, the relevant provisions
23 of these provisions into each subcontract or sub-award to such agents or subcontractors..

24 L. Employee Training and Discipline

25 CONTRACTOR shall train and use reasonable measures to ensure compliance
26 with the requirements of these provisions by employees who assist in the performance of functions or
27 activities on behalf of COUNTY under this Agreement and use or disclose PHI and discipline such
28 employees who intentionally violate any provisions of these provisions, including termination of

1 employment.

2 M. Termination for Cause

3 Upon COUNTY's knowledge of a material breach of these provisions by
4 CONTRACTOR, COUNTY shall either:

5 1. Provide an opportunity for CONTRACTOR to cure the breach or end the
6 violation and terminate this Agreement if CONTRACTOR does not cure the breach or end the
7 violation within the time specified by COUNTY; or

8 2. Immediately terminate this Agreement if CONTRACTOR has breached a
9 material term of these provisions and cure is not possible.

10 3. If neither cure nor termination is feasible, the COUNTY's Privacy Officer
11 shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

12 N. Judicial or Administrative Proceedings

13 COUNTY may terminate this Agreement in accordance with the terms and
14 conditions of this Agreement as written hereinabove, if: (1) CONTRACTOR is found guilty in a
15 criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a
16 finding or stipulation that the CONTRACTOR has violated a privacy or security standard or
17 requirement of the HITECH Act, HIPAA or other security or privacy laws in an administrative or civil
18 proceeding in which the CONTRACTOR is a party.

19 O. Effect of Termination

20 Upon termination or expiration of this Agreement for any reason,
21 CONTRACTOR shall return or destroy all PHI received from COUNTY (or created or received by
22 CONTRACTOR on behalf of COUNTY) that CONTRACTOR still maintains in any form, and shall
23 retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend
24 the protections of these provisions to such information, and limit further use of such PHI to those
25 purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI
26 that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR. If
27 CONTRACTOR destroys the PHI data, a certification of date and time of destruction shall be
28 provided to the COUNTY by CONTRACTOR.

1 P. Disclaimer

2 COUNTY makes no warranty or representation that compliance by
3 CONTRACTOR with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be
4 adequate or satisfactory for CONTRACTOR's own purposes or that any information in
5 CONTRACTOR's possession or control, or transmitted or received by CONTRACTOR, is or will be
6 secure from unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR is solely
7 responsible for all decisions made by CONTRACTOR regarding the safeguarding of PHI.

8 Q. Amendment

9 The parties acknowledge that federal and state laws relating to electronic data
10 security and privacy are rapidly evolving and that amendment of these provisions may be required to
11 provide for procedures to ensure compliance with such developments. The parties specifically agree
12 to take such action as is necessary to amend this agreement in order to implement the standards and
13 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to
14 the security or privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days written
15 notice in the event that CONTRACTOR does not enter into an amendment providing assurances
16 regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to satisfy the
17 standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

18 R. No Third-Party Beneficiaries

19 Nothing express or implied in the terms and conditions of these provisions is
20 intended to confer, nor shall anything herein confer, upon any person other than COUNTY or
21 CONTRACTOR and their respective successors or assignees, any rights, remedies, obligations or
22 liabilities whatsoever.

23 S. Interpretation

24 The terms and conditions in these provisions shall be interpreted as broadly as
25 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws.
26 The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved
27 in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

28 T. Regulatory References

1 A reference in the terms and conditions of these provisions to a section in the
2 HIPAA regulations means the section as in effect or as amended.

3 U. Survival

4 The respective rights and obligations of CONTRACTOR as stated in this Section
5 shall survive the termination or expiration of this Agreement.

6 V. No Waiver of Obligations

7 No change, waiver or discharge of any liability or obligation hereunder on any
8 one or more occasions shall be deemed a waiver of performance of any continuing or other
9 obligation, or shall prohibit enforcement of any obligation on any other occasion.

10 **12. DATA SECURITY**

11 For the purpose of preventing the potential loss, misappropriation or inadvertent
12 disclosure of COUNTY data including sensitive or personal client information; abuse of COUNTY
13 resources; and/or disruption to COUNTY operations, individuals and/or agencies that enter into a
14 contractual relationship with the COUNTY for the purpose of providing services under this Agreement
15 must employ adequate data security measures to protect the confidential information provided to the
16 CONTRACTOR by the COUNTY, including but not limited to the following:

17 A. CONTRACTOR-Owned Mobile, Wireless, or Handheld Devices

18 CONTRACTOR may not connect to COUNTY networks via personally-owned
19 mobile, wireless or handheld devices except: 1) when authorized by COUNTY for telecommuting
20 purposes; 2) if virus protection software currency agreements are in place; 3) if a secure connection
21 is used; and 4) a secure connection is used.

22 B. CONTRACTOR-Owned Computers or Computer Peripherals

23 CONTRACTOR may not bring CONTRACTOR-owned computers or computer
24 peripherals into the COUNTY for use without prior authorization from the COUNTY's Chief
25 Information Officer, or designee(s), including but not limited to mobile storage devices. If approved to
26 be transferred, data must be stored on a secure server approved by the COUNTY and transferred by
27 means of a virtual private network (VPN) connection or another type of secure connection. Said data
28 must be encrypted.

1 C. COUNTY-Owned Computer Equipment

2 CONTRACTOR, or anyone having an employment relationship with the
3 COUNTY, may not use COUNTY computers or computer peripherals on non-COUNTY premises
4 without prior authorization from COUNTY's Chief Information Officer, or designee(s).

5 D. CONTRACTOR may not store COUNTY's private, confidential or sensitive data
6 on any hard-disk drive, portable storage device, or remote storage installation unless encrypted.

7 E. CONTRACTOR shall be responsible to employ strict controls to ensure the
8 integrity and security of the COUNTY's confidential information and to prevent unauthorized access
9 viewing, use or disclosure of data maintained in computer files, program documentation, data
10 processing systems, data files and data processing equipment which stores or processes COUNTY
11 data internally and externally.

12 F. Confidential client information transmitted to one party by the other by means of
13 electronic transmissions must be encrypted according to Advanced Encryption Standards (AES) of
14 128 BIT or higher. Additionally, a password or pass phrase must be utilized.

15 G. CONTRACTOR shall be responsible to immediately notify COUNTY of any
16 violations, breaches or potential breaches of security related to COUNTY's confidential information,
17 data maintained in computer files, program documentation, data processing systems, data files and
18 data processing equipment which stores or processes COUNTY data internally or externally.

19 H. COUNTY shall provide oversight to CONTRACTOR's response to all incidents
20 arising from a possible breach of security related to COUNTY's confidential client information
21 provided to CONTRACTOR; however, CONTRACTOR will be responsible to issue any notification to
22 affected individuals as required by law or as deemed necessary by COUNTY in its sole discretion.
23 CONTRACTOR will be responsible for all costs incurred as a result of providing said required
24 notification.

25 **13. NON-DISCRIMINATION**

26 During the performance of this Agreement, CONTRACTOR shall not unlawfully
27 discriminate against any employee or applicant for employment, or recipient of services, because of
28 race, religion, color, national origin, ancestry, physical disability, medical condition, marital status,

sexual orientation, age or gender, pursuant to all applicable State of California and Federal statutes and regulations.

14. SELF-DEALING TRANSACTION DISCLOSURE (FINANCIAL)

Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Exhibit C, which is attached hereto and incorporated herein) and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter

15. AUDITS AND INSPECTIONS

CONTRACTOR shall at any time during business hours, and as often as COUNTY may deem necessary, make available to COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. CONTRACTOR shall, upon request by COUNTY, permit COUNTY to audit and inspect all such records and data necessary to ensure CONTRACTOR compliance with the terms of this Agreement.

If this Agreement exceeds Ten Thousand and No/100 Dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under contract (Government Code section 8546.7).

16. NOTICES

The persons having authority to give and receive notices under this Agreement and their addresses include the following:

COUNTY

Director, County of Fresno
Department of Behavioral Health
4441 E. Kings Canyon
Fresno, CA 93703

CONTRACTOR

Rodrigo Robles, Business Development Manager
Maxim Healthcare Services, Inc.
6051 N. Fresno St., Ste. 102
Fresno, CA 93710

Any and all notices between COUNTY and CONTRACTOR provided for or permitted under this Agreement or by law, shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party.

17. GOVERNING LAW

The parties agree, that for the purposes of venue, performance under this Agreement is to be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

18. SEVERABILITY

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in the Agreement shall not affect the other provisions.

19. ENTIRE AGREEMENT

This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

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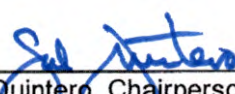
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1 IN WITNESS WHEREOF, the parties hereto have executed this First Amended and Restated
2 Agreement as of the day and year first hereinabove written.

3 **CONTRACTOR:**
4 **MAXIM HEALTHCARE SERVICES, INC.**

COUNTY OF FRESNO

5
6 By 

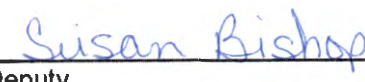
By: 
Sal Quintero, Chairperson of the
Board of Supervisors of the
County of Fresno

7
8 Print Name: Joseph Kulwicki

9 Title: Asst. Controller

Date: 4-17-18

10
11 **ATTEST:**
Bernice E. Seidel
12 Clerk of the Board of Supervisors of the
County of Fresno

13
14 By: 
Deputy

15 Date: 4-17-18

16
17 Mailing Address:
18 6051 N. Fresno St., Ste. 102
19 Fresno, CA 93710

20
21 Fund/Subclass: 0001/10000
22 Organization: 56302007
23 Account #: 7295

24
25
26
27
28 E.G.

SCOPE OF SERVICES

RECRUITMENT OF LMFT, LCSW, LPCC, LVN, RN, and NP-- RECRUITING SERVICES

Maxim Healthcare Services, Inc. is a temporary staffing recruiting firm specializing in the recruitment of Licensed Marriage and Family Therapist (LMFT), Licensed Clinical Social Worker (LCSW), Licensed Professional Clinical Counselor (LPCC), Licensed Vocational Nurse (LVN), Registered Nurse (RN), and Nurse Practitioner (NP) classifications, which will assist in providing services for clients of the Department of Behavioral Health (DBH), County of Fresno.

Upon request of County's DBH Director, or designee, Contractors shall identify and recruit qualified candidates who satisfy the criteria as established by the County of Fresno. DBH shall arrange interviews with candidates, and advance timely offers when appropriate.

Agency Requirements:

1. Ability to provide one or more of the identified staff classifications for a pre-determined, temporary basis.
2. Refer qualified individuals that meet the specific criteria of their identified classification.
3. Ensure acknowledgment with candidates, that all candidates are independent contractors, thus not employees of the County of Fresno, as stated in Section 6 of the Agreement.
 - Although not employees of the County, candidates are to abide by all County rules and regulations upon commencing work duties with DBH.
4. Provide information regarding number of temporary staff available (by classification) upon request from DBH.
 - Since candidates will not be County employees, staff wages will be paid by Maxim Healthcare Services, Inc., which will be reflected on invoices submitted by Contractor to DBH.
5. Provide assistance to DBH during the required Managed Care credentialing process.
 - Assist the candidates in completing the credentialing packet to be submitted to DBH for Managed Care processing.
 - Remain available to be the liaison between DBH and candidates during the credentialing process.
 - If any edits need to be made to the credentialing packet, it is the responsibility of Maxim Healthcare Services, Inc. to partner with candidates to update the credentialing packet to be returned to DBH.
6. Each candidate shall abide by all Health Insurance Portability and Accountability Act (HIPAA), and all other confidentiality requirements, as set forth in Section 11 of the Agreement.
7. Each candidate is to remain in compliance with all professional certifications, licenses, and any credentials required as part of their respective job classification.
8. DBH has the authority to dismiss any candidate deemed incapable of performing duties set forth within the specifications of their respective job classification.
9. It is to be acknowledged that staffing services are to be on a temporary basis. At the point DBH no longer needs staffing services, DBH will notify the Contractor immediately that staff will no longer be needed to report moving forward. The Contractor will be compensated by County for all staffing costs incurred to the point of termination of the candidate.

Qualifications:

Prior to providing candidates, Contractor shall be required to present credentials, screen all candidates, provide complete background checks, curriculum vitae, and licensure of candidates to DBH. Contractors shall provide qualified candidates licensed to practice in the State of California and specializing in adult and/or child counseling/nursing and who are not debarred, excluded or suspended by any local, State, or Federal regulatory agency from practicing or billing for services to Medi-Cal. They must also be acceptable to County's DBH Director, or designee. Once a candidate is chosen, County staff will notify Maxim Healthcare Services, Inc. of a start date for the candidate.

SERVICES AND COMPENSATION

Contractor will provide temporary medical staffing to the County of Fresno, Department of Behavioral Health in accordance with the rates listed below.

Compensation: The hourly rate of pay is not to exceed the following for each position:

<u>POSITION</u>	<u>RATES</u>
Licensed Marriage & Family Therapist	\$90.00
Licensed Clinical Social Worker	\$90.00
Licensed Professional Clinical Counselor	\$90.00
Licensed Vocational Nurse	\$46.00
Registered Nurse	\$68.00
Nurse Practitioner	\$105.00

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	