



SCHOOL STAFFING AGREEMENT

This School Staffing Agreement (hereinafter "Agreement") is entered into this 1st day of July, 2015, by and between **Milpitas Unified School District** located at 1331 E. Calaveras Blvd., Milpitas, CA 95035, referred to in this Agreement as "SCHOOL," and **Maxim Healthcare Services, Inc.**, a Maryland Corporation including its affiliates and subsidiaries, with an office located at 1101 S. Winchester Blvd., Suite F-164, San Jose, CA 95128, referred to in this Agreement as "MAXIM."

RECITALS

WHEREAS, SCHOOL requires health care personnel to provide nursing services to SCHOOL students (here in referred to as "STUDENT(s)") under the general supervision of the SCHOOL, and wishes to engage MAXIM to provide such personnel to supplement SCHOOL's staff.

WHEREAS, MAXIM employs health care personnel and is willing to provide such personnel to SCHOOL.

THEREFORE, in consideration of the above premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, and intending to be legally bound, SCHOOL and MAXIM hereby agree to the following terms and conditions.

ARTICLE 1. TERM OF AGREEMENT

Section 1.1 Term. This Agreement will be in effect for one (1) SCHOOL calendar year and will be automatically renewed at the end of the first year and each subsequent year unless terminated.

Section 1.2 Termination. Either party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other party. Such termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.

ARTICLE 2. RESPONSIBILITIES OF MAXIM

Section 2.1 Services. MAXIM will, upon request by SCHOOL, provide one or more licensed health care providers (i.e RNs, LP(V)Ns, and CNAs (collectively, "Personnel") to provide one-to-one nursing services to physically and/or mentally disabled SCHOOL STUDENT(s), subject to availability of qualified Personnel. Services will be provided according to SCHOOL calendar year and includes, but are not limited to traveling to and/or from SCHOOL on transportation provided by SCHOOL. Subject to the terms of Section 6.8 of this Agreement, to the extent that MAXIM is unable to provide the type of healthcare provider requested by SCHOOL, MAXIM will provide SCHOOL with a higher skilled healthcare provider. MAXIM must, however, bill that higher skilled provider at that provider's fair market value rate.

Section 2.2 Personnel. MAXIM will supply SCHOOL with Personnel who meet the following criteria:

- 1) Possess current state license/registration and/or certification, as applicable and appropriate for the services provided to SCHOOL.
- 2) Possess CPR certification, if required by applicable laws, regulations, or accreditation standards, to be presented to SCHOOL Administrator upon request.
- 3) Meet MAXIM and SCHOOL conditions of employment regarding health clearance (to include proof of pre-employment physical and TB skin testing), provision of professional references, and any other applicable hiring criteria, documentation of which will be kept in the MAXIM employee file.
- 4) Shall, preferably have at least one (1) year of relevant professional experience and one (1) year of specialty experience, which shall be documented by references and kept on file.

Section 2.3 Nurse Pool. MAXIM will establish a back-up Personnel pool to provide coverage in the event of Personnel sickness, vacation or unexpected termination, while still allowing for consistency in STUDENT's care.

Section 2.4 Insurance. MAXIM will maintain (at its sole expense), or require the individuals it provides under this Agreement to maintain, a valid policy of insurance evidencing general and professional liability coverage of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, covering the sole negligent acts or omissions which may give rise to liability for services provided under this Agreement. MAXIM will provide a certificate of insurance evidencing such coverage upon request by SCHOOL.

Section 2.5 Employment and Taxes. MAXIM will follow its standard employment policies and procedures to verify that all Personnel meet applicable licensing requirements. MAXIM, or its subcontractor, if applicable, will maintain direct responsibility as employer for the payment of wages and other compensation, and for any applicable mandatory withholdings and contributions such as federal, state, and local income taxes, social security taxes, worker's compensation, and unemployment insurance.

ARTICLE 3. RESPONSIBILITIES OF SCHOOL

Section 3.1 Responsibility for Patient Care. SCHOOL retains full authority for patient care while using MAXIM Personnel.

Section 3.2 Individual Education Programs (IEP). Services to be provided will be determined by the individual Student's IEP. SCHOOL will provide MAXIM with STUDENT's IEP and all duties will be carried out on SCHOOL premises including, but not limited to, the school bus or other mode of transportation when indicated by the student's IEP. SCHOOL agrees and guarantees, through all reasonable and necessary means, that the IEP will not contradict any aspect of STUDENT's plan of care, as established by STUDENT's physician.

Section 3.3 Right to Dismiss. If SCHOOL's Board or designee determines that anyone provided by MAXIM is incompetent, has engaged in misconduct, or has been negligent, SCHOOL may require such Personnel to leave the premises and will notify MAXIM immediately. SCHOOL's obligation to compensate MAXIM for such

Personnel's services will be limited to the number of hours actually worked. MAXIM will not reassign such Personnel to SCHOOL without prior approval of the SCHOOL's Board or designee. MAXIM has the right to cure such incompetence by replacing incompetent Personnel with competent Personnel.

Section 3.4 Insurance. SCHOOL will maintain at its sole expense valid policies of general and professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering the acts or omissions of its employees, contractors and agents which may give rise to liability in connection with the services under this Agreement. SCHOOL will give MAXIM prompt written notice of any material change in SCHOOL coverage.

Section 3.5 Placement Fee. For a period of twelve (12) months following that date on which MAXIM Personnel last work at shift at SCHOOL, SCHOOL agrees that it will take no steps to recruit, hire, or employ as its own employees or as a contractor, those Personnel provided by MAXIM during the term of this Agreement. SCHOOL understands and agrees MAXIM is not an employment agency and that Personnel are assigned to the SCHOOL to render temporary service(s) and are not assigned to become employed by the SCHOOL. The SCHOOL further acknowledges agrees that there is a substantial investment in business related costs incurred by MAXIM in recruiting, training and employing Personnel, to include advertisement, recruitment, interviewing, evaluation, reference checks, training, and supervising Personnel. In the event that SCHOOL, or any affiliate, subsidiary, department, or division of SCHOOL hires, employs, or solicits MAXIM Personnel, SCHOOL will be in breach of this Agreement. SCHOOL agrees to either (a) give MAXIM one hundred eighty (180) days notice of its intent to hire, continuing to staff Personnel through MAXIM for a minimum of thirty-six (36) hours per week through the one hundred eighty (180) days notice period OR (b) pay MAXIM a placement fee equal to the greater of five thousand dollars (\$5000.00) or the sum of thirty percent (30%) of such Personnel's annual salary (calculated as Hourly Pay Rate x 2080 Hours x 30%).

ARTICLE 4. MUTUAL RESPONSIBILITIES

Section 4.1 Orientation. SCHOOL will promptly provide MAXIM Personnel with an adequate and timely orientation to SCHOOL. SCHOOL shall review instructions regarding confidentiality (including patient and employee), and orient MAXIM Personnel to the specific Exposure Control Plan of the SCHOOL as it pertains to OSHA requirements for bloodborne pathogens, as well as any of the SCHOOL's specific policies and procedures provided to MAXIM for such purpose.

Section 4.2 Non-discrimination. Neither MAXIM nor SCHOOL will 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 5. COMPENSATION

Section 5.1 Invoicing. MAXIM will supply Personnel under this Agreement at the rates listed in Attachment A. MAXIM will submit invoices to SCHOOL every week for Personnel provided to SCHOOL during the preceding week. Invoices shall be submitted to the following address:

**Milpitas Unified School District
1331 E. Calaveras Blvd.**

Milpitas, CA 95035
ATTN: Cary Matsuoka

- Section 5.2** **Payment.** All amounts due to MAXIM are due and payable within thirty (30) days from date of invoice. SCHOOL will send all payments to the address set forth on the invoice.
- Section 5.3** **Late Payment.** Payments not received within thirty (30) days from the applicable invoice date will accumulate interest, until paid, at the rate of one and one-half percent (1.5%) per month on the unpaid balance, equating to an annual percentage rate of eighteen percent (18%) or the maximum rate permitted by applicable law, whichever is less.
- Section 5.4** **Rate Change.** MAXIM will provide SCHOOL least thirty (30) days advance written notice of any change in rates.

ARTICLE 6. GENERAL TERMS

- Section 6.1** **Independent Contractors.** MAXIM and SCHOOL are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither MAXIM nor SCHOOL nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.
- Section 6.2** **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, and such consent will not be unreasonably withheld. No such consent will be required for assignment to an entity owned by or under common control with assignor or in connection with any acquisition of all of the assets or capital stock of a party; provided however, the assigning party will provide notice of such transaction to the other party and remain fully responsible for compliance with all of the terms of this Agreement.
- Section 6.3** **Indemnification.** MAXIM agrees to indemnify and hold harmless SCHOOL, and its directors, officers, and agents from and against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the sole negligent performance of MAXIM, its directors, officers, employees, or agents under this Agreement only. SCHOOL agrees to indemnify and hold harmless MAXIM, its directors, officers, shareholders, employees, and agents from and against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the negligent performance of SCHOOL, its directors, officers, employees, contractors, or agents under this Agreement.
- Section 6.4** **Attorney's Fees.** In the event either party is required to obtain legal assistance (including in-house counsel) to enforce its rights under this Agreement, or to collect any monies due to such party for services provided, the prevailing party shall be entitled to receive from the other party, in addition to all other sums due, reasonable attorney's fees, court costs and expenses, if any, incurred enforcing its rights and/or collecting its monies.
- Section 6.5** **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the

address to which notices are sent by sending written notice of such change of address to the other party.

Milpitas Unified School District
1331 E. Calaveras Blvd.
Milpitas, CA 95035
ATTN: Cary Matsuoka

Maxim Healthcare Services, Inc.
7227 Lee Deforest Dr.
Columbia, MD 21046
ATTN: Contracts Department

COPY TO:

Maxim Healthcare Services, Inc.
1101 S. Winchester Blvd. Suite F-164
San Jose, CA 95128
ATTN: **Brendon Whitesell**

- Section 6.6 Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
- Section 6.7 Entire Contract; Counterparts.** This Agreement constitutes the entire contract between SCHOOL and MAXIM regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document. No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of both parties, except as provided in Section 6.9.
- Section 6.8 Availability of Personnel.** The parties agree that MAXIM's duty to supply Personnel on request of SCHOOL is subject to the availability of qualified MAXIM Personnel. The failure of MAXIM to provide Personnel or the failure of SCHOOL to request Personnel results in no penalty to SCHOOL or any party claiming by or through it and shall not constitute a breach of this Agreement.
- Section 6.9 Compliance with Laws.** MAXIM agrees that all services provided pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, MAXIM reserves the right to notify SCHOOL in writing of any modifications to the Agreement in order to remain in compliance with such law, rule, or regulations.
- Section 6.10 Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
- Section 6.11 Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Maryland, without regard to its principles of conflict of laws. Any dispute or claim from this Agreement shall be resolved exclusively in the federal and state courts of the State of Maryland and the parties hereby irrevocably submit to the personal jurisdiction of said courts and waive all defenses thereto.
- Section 6.12 Limitation on Liability.** Neither MAXIM nor SCHOOL will be responsible for special, indirect, incidental, consequential, or other similar damages, including but

not limited to lost profits, that the other party may incur or experience in connection with this Agreement or the services provided, however caused, even if such party has been advised of the possibility of such damages.

ARTICLE 7. CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION

Section 7.1 Confidentiality.

A. MAXIM/SCHOOL Information. The parties recognize and acknowledge that, by virtue of entering into this Agreement and providing services hereunder, the parties will have access to certain information of the other party that is confidential and constitutes valuable, special, and unique property of the party. Each of the parties agrees that neither it nor his/her staff shall, at any time either during or subsequent to the term of this Agreement, disclose to others, use, copy, or permit to be copied, except pursuant to his duties for or on behalf of the other party, any secret or confidential information of the party, including, without limitation, information with respect to the party's patients, costs, prices, and treatment methods at any time used, developed or made by the party during the term of this Agreement and that is not available to the public, without the other party's prior written consent.

B. Terms of this Agreement. Except for disclosure to his/her legal counsel, accountant or financial or other advisors/consultants neither party nor its respective staff shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide the party with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with the provisions stated herein.

C. Patient/Customer Information: Neither party nor its employees shall disclose any financial or medical information regarding patients/customers treated hereunder to any third-party, except where permitted or required by law or where such disclosure is expressly approved by SCHOOL, MAXIM and patient/customer in writing. Further, each party and its employees shall comply with the other party's rules, regulations and policies regarding the confidentiality of such information as well as all federal and state laws and regulations including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH").

D. The obligations set forth in this Section shall survive the termination of this Agreement.

Section 7.2 HIPAA/HITECH Obligations. Each party and its respective staff shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of the other party, regarding the confidentiality of patient information, to include, without limitation, HIPAA and HITECH. In addition, if necessary, the parties agree to resist any effort to obtain access to such records or information in judicial proceedings, except such access as is expressly permitted by federal/state regulations.

To the extent that SCHOOL may be a "Covered Entity" as defined by HIPAA, and would therefore be subject to applicable requirements, including, but not limited to, requirements to enter into certain contracts with their "business associates," by HIPAA, the parties acknowledge that a business associate agreement is not

needed due to the nature of services provided by MAXIM. Specifically, the parties acknowledge that under HIPAA, Personnel provided hereunder are considered part of SCHOOL's workforce and to that end, all Protected Health Information ("PHI") is created, viewed, used, maintained and otherwise stored and safeguarded in SCHOOL's work environment. The parties further acknowledge that PHI is not exchanged between the parties in order for MAXIM to provide Personnel as part of SCHOOL's temporary workforce.

Notwithstanding the foregoing, MAXIM and all staff provided to SCHOOL hereunder shall comply with confidentiality, medical records and/or other applicable laws and regulations with regard to any and all information directly or indirectly accessed or used by MAXIM and their personnel, including without limitation HIPAA and HITECH.

SCHOOL and MAXIM have acknowledged their understanding of and agreement to the mutual promises written above by executing and delivering this Agreement as if the date set forth above.

MILPITAS UNIFIED SCHOOL
DISTRICT:

Signature

Cam Matsuda
Cam Matsuda, Superintendent

Printed Name & Title

Date

8/25/15

MAXIM HEALTHCARE SERVICES, INC.:

Signature

Ryan Wesser
Ryan Wesser, Controller

Printed Name & Title

Date

10/8/2015

ATTACHMENT A
MAXIM HEALTHCARE SERVICES, INC.
SCHOOL STAFFING RATES FOR
MILPITAS UNIFIED SCHOOL DISTRICT

Charges will be based on the following hourly rate schedule effective 7/1/15:

Rates.

Charges will be based on a rate of \$50.00 per hour for services provided by a LPN, not to exceed eight (8) hours a day, and \$50.00 per hour for services rendered by a RN, not to exceed eight (8) hours a day. Periods of work completed less than one (1) hour will be computed on a *pro rata* basis to the nearest quarter (1/4) hour. Time worked in excess of the hourly limit mentioned in this section will be reviewed on a per case basis to determine if the hours worked will be authorized and paid by SCHOOL.

MILPITAS UNIFIED SCHOOL DISTRICT:

Cary Matsuoka
Signature

Cary Matsuoka, Superintendent
Printed Name & Title

8/25/15
Date