

ORIGINAL

**COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES**  
**(NOT TO EXCEED \$100,000)**

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Industrial Employers Distribution Association (I.E.D.A.)

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:

**Provide** Employer-Employee labor relations services for the Monterey County Public Authority for  
In-Home Supportive Services.

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 21,930.00.

3. **TERM OF AGREEMENT.** The term of this Agreement is from July 1, 2010 to June 30, 2011, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A    Scope of Services/Payment Provisions**

Exhibit B    DSES Additional Provisions

Exhibit C    Sample Invoice

Exhibit D    Elder Abuse Reporting Certification

Exhibit E    HIPAA Business Associate Agreement

Exhibit F    Mutual Indemnification

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR

shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## 6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

## 7. TERMINATION.

7.01. During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. ~~INDEMNIFICATION. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.~~

See Exhibit F

## 9. INSURANCE.

### 9.01. Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

9.04. Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the

policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

## 10. RECORDS AND CONFIDENTIALITY.

10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.02. County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.

10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04. Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.05. Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this

Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Ethan Hurley, MA II	Keith Fleming/David McKenzie
Name and Title	Name and Title
713 La Guardia Street, Suite A Salinas, CA 93905	2200 Powell Street, Suite 1000 Emeryville, CA 94608
Address	Address
(831) 755-3425 fax: (831) 783-7021	(510) 653-6765 fax: (510) 658-2609
Phone	Phone

15. **MISCELLANEOUS PROVISIONS.**

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

**COUNTY OF MONTEREY**

**CONTRACTOR**

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Date: \_\_\_\_\_

By: Mary Robinson for Elliott Robinson  
Department Head (if applicable)

Date: 8/6/10

Approved as to Form<sup>1</sup>

By: \_\_\_\_\_  
County Counsel

Date: 6-28-10

Approved as to Fiscal Provisions<sup>2</sup>

By: \_\_\_\_\_  
Auditor/Controller

Date: 6-29-10

Approved as to Liability Provisions<sup>3</sup>

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

Industrial Employers Distribution Association  
Contractor's Business Name\*

By: Keith Fleming  
(Signature of Chair, President, or Vice-President)\*

Keith Fleming Pres  
Name and Title

Date: 6/23/10

By: David McKenzie  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

David McKenzie Assist Secretary  
Name and Title

Date: 7/21/10

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

<sup>1</sup> Approval by County Counsel is required only if changes are made to the standard provisions of the PSA

<sup>2</sup> Approval by Auditor/Controller is required

<sup>3</sup> Approval by Risk Management is required only if changes are made in paragraph 8 or 9



**INDUSTRIAL EMPLOYERS DISTRIBUTION ASSOCIATION  
JULY 1, 2010 to JUNE 30, 2011**

**SCOPE OF SERVICES/PAYMENT PROVISIONS**

**I. CONTACT INFORMATION**

Contractor Name: Industrial Employers Distribution Association

Mailing Address: 2200 Powell Street, Suite 1000  
Emeryville, CA 94608

Contact Person: Keith Fleming/David McKenzie  
(510) 653-6765  
Fax: (510) 658-2609

County Contract Manager: Ethan Hurley, Management Analyst II  
Department of Social and Employment Services  
713 La Guardia, Suite A  
Salinas, CA 93905  
(831) 755-3425  
Fax: (831) 783-7021

**II. SERVICES TO BE PROVIDED BY CONTRACTOR**

CONTRACTOR shall provide employer-employee labor relations services as follows:

- A. Advise and consult with the Board of Supervisors in its capacity as governing body of the Public Authority and the Department of Social and Employment Services Director at such times and places as may be mutually agreed upon by Industrial Employers Distribution Association, the Board/Authority, and Department of Social and Employment Services Director on all matters relating to employment conditions and employer-employee relations.
- B. For and on behalf of the Authority, as designated representative of the Board/Authority and the Department of Social and Employment Services Director, meet and confer in good faith with representatives of the employee organization of the Authority at such times and places as may be mutually agreed upon by Industrial Employers Distribution Association, the Board/Authority, and the Department of Social and Employment Services Director.
- C. Report to the Board/Authority, the County Administrator and the Department of Social and Employment Services Director on the progress of meeting and conferring in good faith with the recognized employee organization.

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- D. Other related services, including administration of memorandum of understanding; research and analysis ancillary to memorandum of understanding negotiations; research and analysis ancillary to memorandum of understanding administration; preparation of memoranda of understanding and documents necessary for administration; consultation regarding management of overall labor/employee relations; pre-employment policies and procedures, fair employment practices, wage and hour administration, disciplinary procedures, State and Federal regulation, management training; assist in arbitration of disputes; State and Federal government relations, and benefits program design.

### **III. PAYMENT PROVISIONS**

COUNTY shall pay CONTRACTOR in accordance with Article 6 Payment Conditions. Claims for payment may be submitted once every three months. The first payment is due to CONTRACTOR on October 1, 2010 in the amount of Five Thousand Four Hundred Eighty-two dollars and fifty cents (\$5,482.50). The remaining payments are due on January 1, 2011, April 1, 2011, and June 30, 2011 in the amount of Five Thousand Four Hundred Eighty-two dollars and fifty cents (\$5,482.50). The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed **Twenty-one Thousand Nine Hundred and Thirty Dollars (\$21,930)**.

## EXHIBIT B

### MONTEREY COUNTY DEPARTMENT OF SOCIAL & EMPLOYMENT SERVICES

#### ADDITIONAL PROVISIONS

##### I. PAYMENT BY COUNTY:

**1.01 Quarterly claims by CONTRACTOR:** CONTRACTOR shall submit invoices to County on a quarterly basis in the form set forth in **Exhibit C**.

**1.02 Allowable Costs:** Allowable costs shall be the CONTRACTOR's actual costs of developing, supervising and delivering the services under this Agreement, as set forth in the budget, referenced in **Exhibit A**. Only the costs listed in **Exhibit A** as contract expenses may be claimed as allowable costs. Any dispute over whether costs are allowable shall be resolved in accordance with the provisions of 45 Code of Federal Regulations, Part 74, Sub-Part F and 48 Code of Federal Regulations (CFR), Chapter 1, Part 31.

**1.03 Cost Control:** CONTRACTOR shall not exceed by more than twenty (20) percent any contract expense line item amount in the budget without the approval of COUNTY, given by and through the Contract Administrator or Contract Administrator's designee. CONTRACTOR shall submit an amended budget with its request for such approval. Such approval shall not permit CONTRACTOR to receive more than the maximum total amount payable under this contract. Therefore, an increase in one line item will require corresponding decreases in other line items.

**1.04 Payment in Full:**

(a) If COUNTY certifies and pays the amount requested by CONTRACTOR, such payment shall be deemed payment in full for the month in question and may not thereafter be reviewed or modified, except to permit COUNTY's recovery of overpayments.

(b) If COUNTY certifies and pays a lesser amount than the amount requested, COUNTY shall, immediately upon certification of the lesser amount, notify CONTRACTOR in writing of such certification. If CONTRACTOR does not protest the lesser amount by delivering to COUNTY a written notice of protest within twenty (20) days after CONTRACTOR's receipt of the certification, then payment of the lesser amount shall be deemed payment in full for the month in question and may not thereafter be questioned by CONTRACTOR.

**1.05 Disputed payment amount:** If COUNTY pays a lesser amount than the amount requested, and if CONTRACTOR submits a written notice of protest to COUNTY

## EXHIBIT B

within twenty (20) days after CONTRACTOR's receipt of the certification, then the parties shall promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

### II. PERFORMANCE STANDARDS & COMPLIANCE

**2.01 Outcome objectives and performance standards:** CONTRACTOR shall for the entire term of this Agreement provide the service outcomes set forth in **Exhibit A**. CONTRACTOR shall meet the contracted level of service and the specified performance standards described in **Exhibit A**, unless prevented from doing so by circumstances beyond CONTRACTOR's control, including but not limited to, natural disasters, fire, theft, and shortages of necessary supplies or materials due to labor disputes.

**2.02 County monitoring of services:** COUNTY shall monitor services provided under this Agreement in order to evaluate the effectiveness and quality of services provided.

**2.03 Notice of defective performance:** COUNTY shall notify CONTRACTOR in writing within thirty (30) days after discovering any defects in CONTRACTOR's performance. CONTRACTOR shall promptly take action to correct the problem and to prevent its recurrence. Such corrective action shall be completed and a written report made to the COUNTY concerning such action not later than thirty (30) days after the date of the COUNTY's written notice to CONTRACTOR.

**2.04 Termination for cause:** Notwithstanding Section 7.02 of the Agreement, if the corrective actions required above are not completed and the report to the COUNTY not made within thirty (30) days, the COUNTY may terminate this Agreement by giving five (5) days' written notice to CONTRACTOR.

#### **2.05 Remedies for Inadequate Service Levels:**

- a) For each month that service falls below 80% of the contracted level, CONTRACTOR shall submit to the COUNTY an analysis of the causes of the problem and any necessary actions to be taken to correct the problem. If the problem continues for another month, the COUNTY shall meet with CONTRACTOR to explore the problem and develop an appropriate written corrective action plan with appropriate time frames.
- b) If CONTRACTOR does not carry out the required corrective action within the time frame specified, sanctions shall be applied in accordance with funding source regulations.
- c) Notwithstanding Section 7.02 of the Agreement, if, after the COUNTY notifies CONTRACTOR of any sanctions to be imposed, CONTRACTOR

## EXHIBIT B

continues in its failure to take corrective action, then COUNTY may terminate this contract by giving CONTRACTOR five (5) days' written notice.

- d) If all appropriate corrective actions are taken but service still falls 80% or more below contracted level, COUNTY and CONTRACTOR may renegotiate the contracted level of service.

**2.06 Training for Staff:** CONTRACTOR shall insure that sufficient training is provided to its volunteer and paid staff to enable them to perform effectively on the project, and to increase their existing level of skills. Additionally, CONTRACTOR shall ensure that all staff completes Division 21 Civil Rights training.

**2.07 Bi-lingual Services:** CONTRACTOR shall ensure that qualified staff is available to accommodate non-English speaking, and limited English proficient, individuals.

**2.08 Assurance of drug free-workplace:** CONTRACTOR shall submit to the COUNTY evidence of compliance with the California Drug-Free Workplace Act of 1990, Government Code sections 8350 et seq., by doing the following:

- Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
  - Establishing a drug-free awareness program to inform employees about all of the following:
    - 1) the dangers of drug abuse in the workplace;
    - 2) the organization's policy of maintaining a drug-free workplace;
    - 3) any available drug counseling, rehabilitation, and employee assistance programs;
    - 4) the penalties that may be imposed upon employees for drug abuse violations;
    - 5) requiring that each employee engaged in the performance of the contract or grant be given a copy of the company's drug-free policy statement and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

### III. AUDIT & RECOVERY OF OVERPAYMENTS

#### 3.01 CPA Audit on Termination:

##### 3.01.01 Audit Requirement

At the request of COUNTY, CONTRACTOR shall give to COUNTY an audit or audit reports covering the contract period, prepared by an independent Certified Public Accountant. The audit requirement is for the purpose of determining whether the reported costs are fair and reasonable and have been computed in accordance with

## EXHIBIT B

generally accepted accounting principles, with the provisions of this Agreement, and with all applicable COUNTY requirements. Such audit shall be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" as published by the Comptroller General of the United States, and in accordance with generally accepted auditing standards.

### 3.01.02 Audit Submission /Fiscal Year-end

CONTRACTOR shall provide COUNTY with the audit, or audit report, required herein no later than 120 days after the close of CONTRACTOR's Fiscal Year. If CONTRACTOR's fiscal records adhere to a Fiscal Year different from COUNTY's, then CONTRACTOR's audit will include a schedule(s) coinciding with COUNTY's Fiscal Year (July-June), or CONTRACTOR may submit a program specific audit coinciding with COUNTY's Fiscal Year (July-June).

In the case where providing the required audit within the specified time period represents an unreasonable hardship, CONTRACTOR shall alert COUNTY and request an extension. Additional documentation may be requested by COUNTY in order to grant the extension. The submittal of the audit will continue to be required and due **no later than six (6) months** after the close of CONTRACTOR's fiscal year-end.

### 3.01.03 Audit Format

CONTRACTOR may submit to COUNTY one of the following in satisfaction of this Audit requirement:

1) An annual independent audit and Management Letter conducted in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (yellow book audit) issued by the Comptroller General of the United States. The audit should include as a footnote or supplemental schedule expenses of the grant program.

**-OR-**

2) If CONTRACTOR is not required to have an annual independent audit conducted in accordance with **both** Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (yellow book audit) issued by the Comptroller General of the United States, other than to comply with COUNTY's request, **then** an annual independent audit and Management Letter, conducted only in accordance with Generally Accepted Auditing Standards (GAAS) may be submitted *as long as the audit includes this grant/program as part of the testing*. The audit must include a footnote or supplemental schedule expenses of the grant program.

COUNTY reserves the right to require a program specific audit at COUNTY's discretion.

## EXHIBIT B

### **3.01.04 Payment for Audit**

CONTRACTOR shall bear all costs in connection with, or resulting from, any audit and/or inspections including, but not limited to, actual cost incurred and the payment/repayment of any expenditures disallowed by COUNTY, State or Federal government entities, including any assessed interest and penalties.

If CONTRACTOR is exempt from federal audit procedures under OMB Circular 133, then payment for this audit shall be made by CONTRACTOR with resources other than grant funds, or those used for matching purposes. If CONTRACTOR is not exempt from federal audit procedures under OMB Circular 133, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

### **3.02 Contractor Records**

Funds provided by COUNTY shall be accounted for separately in CONTRACTOR's books and records. CONTRACTOR shall keep a systematic accounting record of the receipt and disbursement of COUNTY funds. CONTRACTOR shall permit COUNTY to audit, examine and to copy excerpts and transcripts from such records and to conduct audits or reviews of all records including, but not limited to, invoices, materials, personnel records, bank account records, business records, billing statements, payroll records, business expense records, and any and all other data related to matters covered by this Agreement. CONTRACTOR shall maintain such data and records in an accessible location and condition for a period of at least four (4) years from the close of this Agreement term, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any Federal agency providing funds for this Agreement shall have the same rights conferred upon COUNTY herein. CONTRACTOR shall keep records that are sufficient to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been unlawfully spent. CONTRACTOR's records shall describe and support the use of funds for the agreed upon project or services outlined in this Agreement.

**3.03 Recovery of Overpayments:** If any audit shows that COUNTY has paid to CONTRACTOR any amount in excess of properly allowable costs, then CONTRACTOR shall reimburse COUNTY for that amount, either by a cash payment made within thirty (30) days after COUNTY notifies CONTRACTOR of the overpayment, or by an offset made by COUNTY against any payments owed by COUNTY to CONTRACTOR under this or any other contract.

## **IV. CONFIDENTIALITY**

CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with Welfare and Institutions (W & I) Code Sec. 10850, 45 CFR Sec. 205.50, and all other applicable provisions of law which provide for the confidentiality of records and

## EXHIBIT B

prohibit their being opened for examination for any purpose not directly connected with the administration of public social services. Whether or not covered by W&I Code Sec. 10850 or by 45 CFR Sec. 205.50, confidential medical or personnel records and the identities of clients and complainants shall not be disclosed unless there is proper consent to such disclosure or a court order requiring disclosure. Confidential information gained by CONTRACTOR from access to any such records, and from contact with its clients and complainants, shall be used by CONTRACTOR only in connection with its conduct of the program under this Agreement. The COUNTY, through the Director of the Department of Social and Employment Services, and his/her representatives, shall have access to such confidential information and records to the extent allowed by law, and such information and records in the hands of the COUNTY shall remain confidential and may be disclosed only as permitted by law.

### V. NON-DISCRIMINATION

CONTRACTOR certifies that to the best of its ability and knowledge it will comply with the nondiscrimination program requirements set forth in this Section.

**5.01 Discrimination Defined:** The term “discrimination” as used in this contract, is the same term that is used in Monterey County Code, Chapter 2.80 “Procedures for Investigation and Resolution of Discrimination Complaints”; it means the illegal denial of equal employment opportunity, harassment (including sexual harassment and violent harassment), disparate treatment, favoritism, subjection to unfair or unequal working conditions, and/or other discriminatory practice by any Monterey County official, employee or agent, due to an individual’s race, color, ethnic group, national origin, ancestry, religious creed, sex, sexual orientation, age, veteran’s status, cancer-related medical condition, physical handicap (including AIDS) or disability. The term also includes any act of retaliation.

**5.02 Application of Monterey COUNTY Code Chapter 2.80:** The provisions of Monterey COUNTY Code Chapter 2.80 apply to activities conducted pursuant to this Agreement. Complaints of discrimination made by CONTRACTOR against the COUNTY, or by recipients of services against CONTRACTOR, may be pursued using the procedures established by Chapter 2.80. CONTRACTOR shall establish and follow its own written procedures for the prompt and fair resolution of discrimination complaints made against CONTRACTOR by its own employees and agents, and shall provide a copy of such procedures to COUNTY on demand by COUNTY.

**5.03 Compliance with laws:** During the performance of this Agreement, CONTRACTOR shall comply with all applicable federal, state and local laws and regulations which prohibit discrimination, including but not limited to the following:

- **California Fair Employment and Housing Act**, California Government Code Sec. 12900 et seq., see especially Section 12940 (c), (h), (1), (i), and (j); and the administrative regulations issued thereunder, 2 Calif. Code of



## EXHIBIT B

Regulations Secs. 7285.0 et seq. (Division 4 - Fair Employment and Housing Commission);

- **California Government Code Secs. 11135 - 11139.5**, as amended (Title 2, Div. 3, Part 1, Chap. 1, Art. 9.5) and any applicable administrative rules and regulations issued under these sections; including **Title 22 California Code of Regulations 98000-98413**.
- **Federal Civil Rights Acts of 1964 and 1991** (see especially Title VI, 42 USC Secs. 2000d et seq.), as amended, and all administrative rules and regulations issued thereunder (see especially 45 CFR Part 80);
- **The Rehabilitation Act of 1973**, Secs. 503 and 504 (29 USC Sec. 793 and 794), as amended; all requirements imposed by the applicable HHS regulations (45 CFR Parts 80, 84 and 91); and all guidelines and interpretations issued pursuant thereto;
- **7 Code of Federal Regulations (CFR)**, Part 15 and **28 CFR** Part 42;
- **Title II of the Americans with Disabilities Act of 1990** (P.L. 101-336), 42 U.S.C. Secs. 12101 et seq. and 47 U.S.C. Secs. 225 and 611, and any federal regulations issued pursuant thereto (see 24 CFR Chapter 1; 28 CFR Parts 35 and 36; 29 CFR Parts 1602, 1627, and 1630; and 36 CFR Part 1191);
- **Unruh Civil Rights Act**, Calif. Civil Code Sec. 51 et seq., as amended;
- **Monterey COUNTY Code**, Chap. 2.80.;
- **Age Discrimination in Employment Act 1975**, as amended (ADEA), 29 U.S.C. Secs 621 et seq.;
- **Equal Pay Act of 1963**, 29 U.S.C. Sec. 206(d);
- **California Equal Pay Act**, Labor Code Sec.1197.5.
- **California Government Code Section 4450**;
- **The Dymally-Alatorre Bilingual Services Act; Calif. Government Code Sec. 7290 et seq.**
- **The Food Stamp Act of 1977, as amended and in particular Section 272.6.**
- **California Code of Regulations, Title 24, Section 3105A(e)**
- **Removal of Barriers to Inter-Ethnic Adoption Act of 1996, Section 1808**

## EXHIBIT B

**5.04 Written assurances:** Upon request by COUNTY, CONTRACTOR will give any written assurances of compliance with the Civil Rights Acts of 1964 and 1991, the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act of 1990, as may be required by the federal government in connection with this Agreement, pursuant to 45 CFR Sec. 80.4 or 45 CFR Sec. 84.5, and 91; 7 CFR Part 15; and 28 CFR Part 35, or other applicable State or federal regulation.

**5.05 Written non-discrimination policy:** Contractor shall maintain a written statement of its non-discrimination policies which shall be consistent with the terms of this Agreement. Such statement shall be available to employees, recipients of services, and members of the public, upon request.

**5.06 Grievance Information:** CONTRACTOR shall advise applicants who are denied CONTRACTOR's services, and recipients who do receive services, of their right to present grievances, and of their right to a State hearing concerning services received under this Agreement.

**5.07 Notice to Labor Unions:** CONTRACTOR shall give written notice of its obligations under paragraphs 5.01 - 5.08 to labor organizations with which it has a collective bargaining or other agreement.

**5.08 Access to records by government agencies:** CONTRACTOR shall permit access by COUNTY and by representatives of the State Department of Fair Employment and Housing, and any state agency providing funds for this Agreement, upon reasonable notice at any time during normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, facilities, and other sources of information as the inspecting party may deem appropriate to ascertain compliance with these non-discrimination provisions.

**5.09 Binding on Subcontractors:** The provisions of paragraphs 5.01 - 5.08 shall also apply to all of CONTRACTOR's subcontractors. CONTRACTOR shall include the non-discrimination and compliance provisions of these paragraphs in all subcontracts to perform work or provide services under this Agreement.

## VI. CONTRACT ADMINISTRATORS

**6.01 Contract Administrator – CONTRACTOR:** CONTRACTOR hereby designates **Keith Flemming** as its Contract Administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of CONTRACTOR shall be under the direction of, or shall be submitted to, the CONTRACTOR's Contract Administrator. CONTRACTOR may, in its sole discretion, change its designation of the Contract Administrator, and shall promptly give written notice to COUNTY of any such change.

## EXHIBIT B

**6.02 Contract Administrator – COUNTY:** COUNTY hereby designates the Director of the Monterey County Department of Social and Employment Services as its Contract Administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of COUNTY shall be under the direction of, or shall be submitted to, the Director or such other COUNTY employee in the Department of Social and Employment Services as the Director may appoint. COUNTY may, in its sole discretion, change its designation of the Contract Administrator, and shall promptly give written notice to CONTRACTOR of any such change.

### VII. CONTRACT DEPENDENT ON GOVERNMENT FUNDING

COUNTY's payments to CONTRACTOR under this Agreement are funded by the State and Federal governments. If funds from State and Federal sources are not obtained and continued at a level sufficient to allow for COUNTY's purchase of the indicated quantity of services, then COUNTY may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as COUNTY may specify in its notice, unless in the meanwhile the parties enter into a written Amendment modifying this Agreement.

### VIII. LOBBYING CERTIFICATION

The Contractor, by signing this Agreement, hereby certifies, to the best of his/her knowledge and belief, that, on behalf of him/herself, employees, and/or agents:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including sub-grants, and contracts under grants, loans, and cooperative agreements which exceed \$100,000) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## EXHIBIT B

### IX. APPEAL PROCESS

In the event of a dispute or grievance regarding the terms and conditions of this Agreement, both parties shall abide by the following procedures:

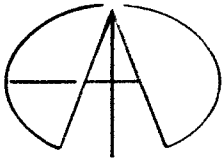
A. CONTRACTOR shall first discuss the problem informally with the designated DSES Contact/Program Analyst. If the problem is not resolved, CONTRACTOR must, within fifteen (15) working days of the failed attempt to resolve the dispute with DSES Contact/Program Analyst, submit a written complaint, together with any evidence, to the DSES Division Deputy Director. The complaint must include a description of the disputed issues, the legal authority/basis for each issue which supports CONTRACTOR's position, and the remedy sought. The Division Deputy Director shall, within fifteen (15) working days after receipt of CONTRACTOR's written complaint, make a determination on the dispute, and issue a written decision and reasons therefore. All written communication shall be pursuant to Section 14. NOTICES of this Agreement. Should CONTRACTOR disagree with the decision of the Division Deputy Director, CONTRACTOR may appeal the decision to the Director of the Department of Social & Employment Services.

B. CONTRACTOR's appeal of the Division Deputy Director's decision must be submitted to the Department Director within ten (10) working days from the date of the decision; be in writing, state the reasons why the decision is unacceptable, and include the original complaint, the decision that is the subject of appeal, and all supporting documents. Within twenty (20) working days from the date of CONTRACTOR'S appeal, the Department Director, or his/her designee, shall meet with CONTRACTOR to review the issues raised on appeal. The Department Director shall issue a final written decision within fifteen (15) working days of such meeting.

C. CONTRACTOR may appeal the final decision of the Department Director in accordance with the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5 commencing with Section 251, or Subchapter 3 commencing with Section 300, whichever is applicable, of the California Code of Regulations).

D. CONTRACTOR shall continue to carry out the obligations under this Agreement during any dispute.

E. Costs incurred by CONTRACTOR for administrative/court review are not reimbursable by COUNTY.



**IEDA**

2200 Powell Street, Suite 1000, Emeryville, California 9460

**EXHIBIT C**

**INVOICE**

MONTEREY COUNTY PUBLIC AUTHORITY IHSS  
DEPARTMENT: SOCIAL SERVICES  
ATTN: B. CRONER, P.O.# SC5010000000022  
1000 S. MAIN STREET, SUITE 306  
SALINAS, CA 93901

ID# 1152

DATE	DESCRIPTION	INVOICE#	AMOUNT
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	Member Dues For Labor Relations Services For The Period From		
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Current Invoice Amount

Outstanding Amount

**TOTAL AMOUNT DUE UPON RECEIPT:**

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

MAKE CHECKS PAYABLE TO IEDA  
SEND PAYMENTS TO THE MAILING ADDRESS ABOVE  
DO NOT COMBINE WITH PAYMENTS TO ANY OTHER IEDA ENTITY

IF YOU HAVE ANY QUESTIONS, CALL MANDY ZARKOVACSKI AT (510) 653-6773.

IF THE BILLING CONTACT SHOWN ABOVE IS INCORRECT OR MISSING,  
PLEASE LET US KNOW.

Taxpayer ID# 94-0294755

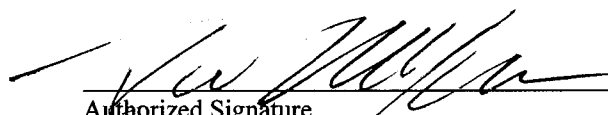
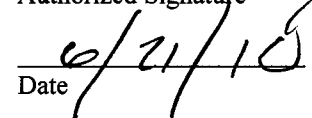
**ELDER & DEPENDENT ADULT  
ABUSE & NEGLECT REPORTING  
CERTIFICATION**

**Industrial Employers Distribution Association**

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HEREBY acknowledges that this contract for services will bring CONTRACTOR in contact with elders or dependent adults, and that CONTRACTOR has received from COUNTY a copy of Welfare & Institutions Code Section 15659 as required by the Elder Abuse and Dependent Adult Civil Protection Act (Welfare & Institutions Code Sections 15600, et seq). CONTRACTOR certifies that it has knowledge of the provisions of the Act, and will comply with its provisions which define a mandated reporter, and requires that reports of abuse or neglect be made by a mandated reporter when, in his or her professional capacity, or within the scope of his or her employment, he/she observes or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect.

CONTRACTOR further gives assurance that all of its employees, consultants, and agents performing services under this Agreement, who are mandated reporters under the Act, sign statements indicating that they know of and will comply with the Act's reporting requirements.

  
\_\_\_\_\_  
Authorized Signature  
  
\_\_\_\_\_  
Date

Attachment: Welfare & Institutions Code Section 15659

Elder/Adult Abuse Reporting  
During Regular Business hours (831) 755-3403  
After hours – Call 911

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the 1<sup>st</sup> day of July, 2010, by and between **MONTEREY COUNTY**, hereinafter referred to as "Covered Entity", and **Industrial Employers Distribution Association**, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled **agreement to provide employer-employee labor relations services, dated July 1, 2010**, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

### I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the

## EXHIBIT E

individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

### II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data



## EXHIBIT E

aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

### IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

### V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the

**EXHIBIT E**

laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:  
MONTEREY COUNTY

By: *Maury Hollingsworth Elliott Robinson*  
*DSES DIRECTOR*  
Title: ~~Contracts/Purchasing Officer~~  
Date: *8/6/10*

BUSINESS ASSOCIATE:  
I.E.D.A.

By: *[Signature]*  
Title: *Assist Secretary*  
Date: *6/21/10*

**MUTUAL INDEMNIFICATION**

The parties agree as follows:

**8. INDEMNIFICATION.** CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the COUNTY. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

COUNTY shall indemnify, defend, and hold harmless the CONTRACTOR, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the COUNTY'S performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the CONTRACTOR. COUNTY'S performance" includes COUNTY'S action or inaction and the action or inaction of COUNTY'S officers, employees, agents and subcontractors.