

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

929



FROM: Community Health Agency - Department of Public Health

SUBMITTAL DATE:
June 14, 2011

SUBJECT: Approve the Sole Source Purchase of LiveProcess Professional Annual Subscription renewal and LiveProcess Regional Coordination License.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the sole source purchase of LiveProcess Professional Annual Subscription renewal and LiveProcess Regional Coordination License not to exceed \$139,876 for period of July 1, 2011 to June 30, 2012; which allows purchasing sufficient time for rebidding of an RFP process for future needs, in accordance to Ordinance 459.4;
2. Execute the attached agreement with LiveProcess and return three copies to Purchasing.

(Continued on Page 2)

Michael Osur, Deputy Director for Susan Harrington, Director
Department of Public Health

FINANCIAL
DATA

Current F.Y. Total Cost:	\$ 139,876	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
Annual Net County Cost:	\$ 0	For Fiscal Year:	10/11

SOURCE OF FUNDS: 100% funded by the Federal Public Health
Emergency Response Grant

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

Debra Courmoyer

County Executive Office Signature

Consent ☐ Policy ☒
Consent ☐ Policy ☒

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.:

District: All

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.15

SUBJECT: Approve the Sole Source Purchase of LiveProcess Professional Annual Subscription renewal and LiveProcess Regional Coordination License.**PAGE 2****BACKGROUND**

LiveProcess is the hospital emergency management software (Disaster Information Management System) currently employed by all hospitals in the County as well as the Department of Public Health (DOPH) and the 10 Family Care Centers. This system proved critical to mounting an effective and efficient response to the H1N1 outbreak during the spring of 2010. The system has also been used during other emergency activations for floods, fires and earthquakes. In order to enhance user proficiency and to improve overall emergency response capabilities of the medical/health community, DOPH would like to continue the contract with LiveProcess in the amount of \$78,630 for Annual Professional Subscription. In addition, DOPH would like to purchase the Regional Coordinator License for \$26,250. This new feature will allow DOPH to view emergency response data at the county-wide level, thereby allowing for a more coordinated and efficient medical/health response. \$20,000 will be used to conduct facility level training at all user facilities on the LiveProcess platform and the new Regional Coordinator view. Additionally, the department requests telephone support services for \$14,996, for a total annual contract amount of \$139,876.

PRICE REASONABLENESS

Originally LiveProcess was chosen through a competitive bidding process; Request for Proposal (RFP#HSARC-081) released on February 29, 2008. The RFP was posted on the County's website and notifications were mailed to multiple vendors that were registered in the County's PeopleSoft database. The County received seven bid responses that ranged from \$116,250 to \$2,840,800. Through bid evaluation, evaluation of product demonstration, and Best and Final process; the evaluation committee recommended the award go to LiveProcess. The evaluation committee was formed by experts from CHA's Information Technology Department (IT), DOPH, and three hospital representatives (Kaiser, Desert Regional Medical Center and Riverside County Regional Medical Center. It was determined that LiveProcess was the best fit and provided the best value for the medical/health system in Riverside County.

Renewal and New Requirement Cost Breakdown:

1. LiveProcess Professional Subscription: Includes access to the platform, implementation, training, updates, notification, support, and maintenance.
 - 1.1 50 to 350 beds, 12 locations\$40,590.00
 - 1.2 Greater than 350 beds, 4 locations\$18,040.00
 - 1.3 Clinics/Agencies, 10 locations\$20,000.00
2. LiveProcess Coordinator (regional coordinating license): Includes access and use of a regional coordinating version of the LiveProcess platform which includes consolidation of community data, compliance reporting, and unlimited notification usage for the coordinating entity, executive dashboards, implementation, training, updates, support and maintenance.
 - 2.1 11-25 Facilities\$26,250.00
 - 2.2 Additional Onsite Training\$20,000.00
3. Support Services – Includes following:\$14,996.00
 - 3.1 Unlimited phone support during normal business hours (9:00am – 6:00pm EST) Monday through Friday.
 - 3.2 Critical phone support available 24/7 during emergency response activation.

REVIEW/APPROVAL: Purchasing and County Counsel concur with this request.

Date: June 14, 2011

From: Susan D. Harrington, Director Department: Public Health

To: Board of Supervisors

Via: Purchasing Agent

Subject: Sole Source Procurement; Request for LiveProcess Professional Annual Subscription renewal and LiveProcess Regional Coordination License

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

Supply/Service being requested:

LiveProcess Professional Annual Subscription renewal and LiveProcess Regional Coordination License

Supplier being requested:

LiveProcess

Alternative suppliers that can or might be able to provide supply/service:

None available, LiveProcess is the only distributor of their proprietary product.

Extent of market search conducted:

Internet and by contacting the manufacturer.

Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:

Software and subscription renewals are only available through LiveProcess because of their proprietary information.

Reasons why my department requires these unique features and what benefit will accrue to the county:

LiveProcess system and software allow CHA DOC, County EOC, Ambulatory Services, clinics, and hospitals to access real time information of available resources and needed resources at all hospitals, clinics, and nursing care facilities within the County of Riverside. Currently, all hospitals and clinics (18 sites total) have LiveProcess system installed at their facility.

Price Reasonableness:

\$139,876 Annual subscription renewal cost at 59% below the listed price and 25% off the listed price for new requirement needed by the County. The County pays the same pricing as other government agencies in the nation.


1. LiveProcess Professional Subscription: Includes access to the platform, implementation, training, updates, notification, support, and maintenance.
 - 1.1 50 to 350 beds, 12 locations\$40,590.00
 - 1.2 Greater than 350 beds, 4 locations\$18,040.00
 - 1.3 Clinics/Agencies, 10 locations\$20,000.00
2. LiveProcess Coordinator (regional coordinating license): Includes access and use of a regional coordinating version of the LiveProcess platform which includes consolidation of community data, compliance reporting, and unlimited notification usage for the coordinating entity, executive dashboards, implementation, training, updates, support and maintenance.
 - 2.1 11-25 Facilities\$26,250.00
 - 2.2 Additional Onsite Training\$20,000.00
3. Support Services – Includes following:\$14,996.00
 - 3.1 Unlimited phone support during normal business hours (9:00am – 6:00pm EST) Monday through Friday.
 - 3.2 Critical phone support available 24/7 during emergency response activation.

Period of Performance:

July 1, 2011 to June 30, 2012; which allows purchasing sufficient time for rebidding of an RFP process for future needs.

Does moving forward on this product or service further obligate the county to future similar contractual arrangements?

No.



Department Head Signature

6/1/11

Date

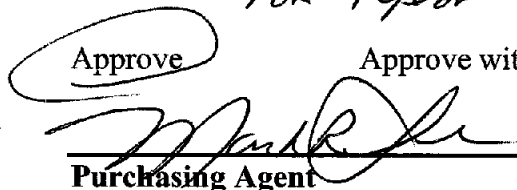
Purchasing Department Comments:

FOR 1 year to ALLOW FOR A Re-bid.

Approve

Approve with Condition/s

Disapprove



Purchasing Agent

6-1-11

Date

SERVICE AGREEMENT

for

WEB-BASED PLATFORM FOR EMERGENCY MANAGEMENT

between

COUNTY OF RIVERSIDE

and

LIVEPROCESS

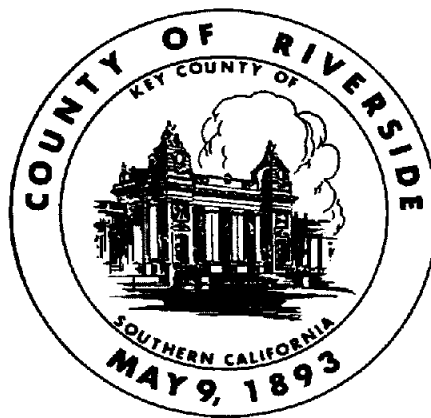


TABLE OF CONTENTS

<u>SECTION HEADING</u>	<u>PAGE NUMBER</u>
1. Description of Services	3
2. Period of Performance.....	3
3. Compensation	3
4. Alteration or Changes to the Agreement	4
5. Termination.....	5
6. Ownership/Use of Contract Materials and Products	6
7. Conduct of Contractor	6
8. Inspection of Service: Quality Control/Assurance	6
9. Independent Contractor	7
10. Subcontract for Work or Services	7
11. Disputes	7
12. Licensing and Permits	8
13. Use by Other Political Entities	8
14. Non-Discrimination	8
15. Records and Documents	9
16. Confidentiality	9
17. Administration/Contract Liaison	10
18. Notices.....	10
19. Force Majeure	10
20. EDD Reporting Requirements.....	10
21. Hold Harmless/Indemnification	11
22. Insurance	12
23. General	14
Exhibit A - Scope of Service.....	16
Exhibit B - Payment Provisions.....	18
Exhibit C – LiveProcess Notification	19
Exhibit D – LiveProcess Subscription Agreement	20
Attachment I-HIPAA Business Associate Attachment to the Agreement	34

This Agreement, made and entered into this 1st day of July, 2011, by and between LiveProcess, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of two pages at the prices stated in Exhibit B, Payment Provisions, consisting of one page, Exhibit C, LiveProcess Notification, consisting of one page, and Attachment I, HIPAA Business Associate Attachment to the Agreement, consisting of six pages.

1.2 CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through June 30, 2012, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed one hundred forty thousand dollars (\$140,000) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be

extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas (Web-based Platform for Emergency Management System) and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

County of Riverside Community Health Agency

Attn: Fiscal Dept.

P.O. Box 7849

Riverside, CA 92513

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (HSARC-20800-001-06/12); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance

under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination; Except for the cause of material breach of contract by CONTRACTOR, no pro-rated refunds will be provided by CONTRACTOR during the course of an annual term; However, COUNTY is not obligated to renew for subsequent terms.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After a termination caused by Contractor's material breach of contract terms, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to

be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing

Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

16.3 The CONTRACTOR is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

County of Riverside Purchasing and Fleet Services
2980 Washington Street
Riverside, CA 92504
Attn: Rick Hai

CONTRACTOR

LiveProcess
271 Grove Ave., Bldg D
Verona, NJ 07044
FAX: 973-556-1984

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein. CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.3 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

21.4 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

21.5 CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured.

22.2 Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

22.3 Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

22.4 Vehicle Liability: If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

22.5 General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of

the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

23.13 Terms from the LiveProcess Subscription Agreement (Exhibit D) are made part of this agreement, by reference, in their entirety, and are hereby included with full force and like effect as if set forth herein. In the event of contradiction, between the County's and the Seller's conditions, the County's conditions shall prevail.

23.14 For the avoidance of doubt, and notwithstanding anything to the contrary, all products and services are licensed, not sold, and LiveProcess shall retain ownership of all such products and services, and all intellectual property rights relating thereto.

COUNTY:

Signature: _____

Print Name: Bob Buster

Title: Chairman, Board of Supervisors

Dated: _____

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE 6/11/11

CONTRACTOR:

Signature: _____

Print Name: Paul Ruderman

Title: Vice President of Operations

Dated: 5/27/11

EXHIBIT A SCOPE OF SERVICE

1. LiveProcess Professional Subscription: Includes access to the platform, implementation, training, updates, notification, support, and maintenance.
 - 1.1 50 to 350 beds, 12 locations.
 - 1.2 Greater than 350 beds, 4 locations.
 - 1.3 Clinics/Agencies, 10 locations.
2. LiveProcess Coordinator (regional coordinating license): Includes access and use of a regional coordinating version of the LiveProcess platform which includes consolidation of community data, compliance reporting, and unlimited notification usage for the coordinating entity, executive dashboards, implementation, training, updates, support and maintenance.
 - 2.1 11-25 Facilities.
 - 2.2 Additional Onsite Training.
3. Support Services:
 - 3.1 Unlimited phone support during normal business hours (9:00am – 6:00pm EST) Monday through Friday.
 - 3.2 Critical phone support available 24/7 during emergency response activation.
4. **Location:**

4.1 Corona Regional Medical Center 800 South Main Street Corona, CA 92882 (951) 737-4343	4.6 John F Kennedy Memorial Hospital 47111 Monroe Street Indio, CA 92201 (760) 347-6191
4.2 Desert Regional Medical Center 1150 North Indian Canyon Palm Springs, CA 92262 (760) 323-6511	4.7 Kaiser Foundation Hospital – Riverside 10800 Magnolia Ave. Riverside, CA 92505 (951) 353-2000
4.3 Eisenhower Medical Center 39000 Bob Hope Drive Rancho Mirage, CA 92270 (760) 340-3911	4.8 LLU Medical Center Murrieta 28062 Baxter Rd Murrieta, 92563 (951) 672-1931
4.4 Hemet Valley Medical Center 1117 East Devonshire Hemet, CA 92543 (951) 652-2811	4.9 Meniffee Valley Medical Center 28400 McCall Blvd. Sun City, CA 92585 (951) 679-8888
4.5 Inland Valley Medical Center 36485 Inland Valley Drive Wildomar, CA 92595 (951) 677-1111	4.10 Kaiser Permanente - Moreno Valley 12815 Heacock Street Moreno Valley, CA 92553 (951) 243-0811

- | | |
|---|---|
| <p>4.11 Palo Verde Hospital
250 North First Street
Blythe, CA 92225
(760) 922-4115</p> | <p>4.20 Indio Family Care Center
47-923 Oasis Street
Indio, CA 92201
(951) 358-5222</p> |
| <p>4.12 Parkview Community Hospital
3865 Jackson Street
Riverside, CA 92503
(951) 688-2211</p> | <p>4.21 Jurupa Family Care Center
9415 Mission Blvd, # R
Riverside, CA 92509
(951) 358-5222</p> |
| <p>4.13 Rancho Springs Medical Center
25500 Medical Center Drive
Murrieta, CA 92562
(951) 696-6000</p> | <p>4.22 Lake Elsinore Family Care Center
2499 E. Lakeshore Drive
Lake Elsinore, CA 92530
(951) 358-5222</p> |
| <p>4.14 Riverside Community Hospital
4445 Magnolia Ave.
Riverside, CA 92501
(951) 788-3000</p> | <p>4.23 Palm Springs Family Care Center
1515 N. Sunrise Way
Palm Springs, CA 92262
(951) 358-5222</p> |
| <p>4.15 Riverside County Regional Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555
(951) 486-4000</p> | <p>4.24 Perris Family Care Center
308 East San Jacinto Avenue
Perris, CA 92570
(951) 358-5222</p> |
| <p>4.16 San Geronio Memorial Hospital
600 North Highland Springs Avenue
Banning, CA 92220
(951) 845-1121</p> | <p>4.25 Riverside Neighborhood Health Center
7140 Indiana Ave.
Riverside, CA 92504
(951) 358-5222</p> |
| <p>4.17 Banning Family Care Center
3055 West Ramsey Street
Banning, CA 92220
(951) 358-5222</p> | <p>4.26 Rubidoux Family Care Center
5256 Mission Blvd.
Riverside, CA 92509
(951) 358-5222</p> |
| <p>4.18 Corona Family Care Center
505 S. Buena Vista Ave., # 101
Corona, CA 92882
(951) 358-5222</p> | <p>4.27 Riverside County Public Health
4065 County Circle Drive
Riverside, CA 92503
(951) 358-5222</p> |
| <p>4.19 Hemet Family Care Center
880 N. State St.
Hemet, CA 92543
(951) 358-5222</p> | |

EXHIBIT B
PAYMENT PROVISIONS

1. LiveProcess Professional Subscription: Includes access to the platform, implementation, training, updates, notification, support, and maintenance.
 - 1.1 50 to 350 beds, 12 locations.....\$40,590.00
 - 1.2 Greater than 350 beds, 4 locations.....\$18,040.00
 - 1.3 Clinics/Agencies, 10 locations.....\$20,000.00

2. LiveProcess Coordinator (regional coordinating license): Includes access and use of a regional coordinating version of the LiveProcess platform which includes consolidation of community data, compliance reporting, and unlimited notification usage for the coordinating entity, executive dashboards, implementation, training, updates, support and maintenance.
 - 2.1 11-25 Facilities.....\$26,250.00
 - 2.2 Additional Onsite Training.....\$20,000

3. Support Services – Includes following:\$14,996
 - 3.1 Unlimited phone support during normal business hours (9:00am – 6:00pm EST) Monday through Friday.
 - 3.2 Critical phone support available 24/7 during emergency response activation.

EXHIBIT C
LIVEPROCESS NOTIFICATION

The LiveProcess platform and its Incident Command System functionality include the ability to send notifications.

1. The Fees for each LiveProcess subscription include blocks of prepaid notification "Message Units," (as defined below). The following table sets forth both the number of prepaid Message Units and the cost to purchase additional Message Units:

	Notification Units Included	
	Professional	Enterprise
Under 50 Beds	500	1000
50 to 350 Beds	1250	2500
Over 350 Beds	2500	5000

Notification Units Included
Clinics
500

2. COUNTY may purchase additional Messaging Units in blocks of 2500 for the Fees set forth in the following table:

Subsequent Units can be purchased in blocks of 2500		
# Units	Price/Unit	Total Price
Bill Me Per Unit	\$0.25	A la carte overages (no bundle)
1000 Unit Prepaid Bundle	\$0.20	\$625.00
2500 Unit Prepaid Bundle	\$0.15	\$1,150.00
5000 Unit Prepaid Bundle	\$0.12	\$2,100.00

3. For the purposes hereof, a "Message Unit" is defined as follows:
- 3.1 Each 1-minute voice or fax phone call in the US/Canada
 - 3.2 Each SMS text message of 160 characters or fewer (outbound or response)

International phone/SMS is not part of the standard LiveProcess subscription. Customers who wish to send notifications internationally need an addendum to their agreements with a pricing schedule for the countries desired.

4. The following types of notifications **are free**, and do not count against prepaid/purchased Message Units:
- 4.1 Email Notifications
 - 4.2 Pager notifications

NOTE: Facilities may enter an unlimited number of designated contacts into the LiveProcess platform, at no extra charge.

EXHIBIT D
LIVEPROCESS SUBSCRIPTION AGREEMENT
(Terms & Conditions)

THIS SUBSCRIPTION AGREEMENT (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2010 (the "**Effective Date**") between LiveProcess Corporation, a New Jersey C Corporation with offices at 271 Grove Ave, Bldg D, Verona, NJ, 07044, ("**LiveProcess**") and _____, a _____ (nonprofit or for-profit) corporation/organization with offices at _____ ("**Customer**").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Customer (on behalf of itself and each of the Facility Operators, as defined below) and LiveProcess (collectively, the "**Parties**" and each, a "**Party**") hereby agree as follows:

1. Scope. This Agreement sets forth the terms and conditions pursuant to which LiveProcess will provide access to its proprietary web-based application for the management of hospital emergency preparedness and response (the "**LiveProcess Platform**") to users at only those hospital facilities (the "**Facilities**") that are identified on Schedule A. The Parties acknowledge that some or all of the Facilities may be owned, operated or managed by legal entities other than the Customer (the "**Facility Operators**"). Customer is entering into this Agreement on its own behalf and as agent for each of the Facility Operators, if any. To the extent there are any Facility Operators, Customer: (i) hereby represents and warrants to LiveProcess that it has been authorized to act as the agent for each of the Facility Operators in connection with the negotiation, execution and delivery of this Agreement, which Agreement shall bind each Facility Operator and (ii) agrees that it shall be responsible to LiveProcess for any breach of this Agreement by any of the Facility Operators. In addition, as part of the LiveProcess Platform online registration process, each Facility Operator will be required to acknowledge and confirm their agreement to the terms and conditions of this Agreement. For the purposes of this Agreement, "**User**" means Customer and each of the Facility Operators, collectively.

2. LiveProcess Platform.

2.1 License to User. Subject to the terms and conditions of this Agreement, LiveProcess grants the User during the Term a non-transferable, non-exclusive license, without the right to sublicense, to access and use the LiveProcess Platform for the sole purpose of managing emergency preparedness and response of the Facilities. The designated license(s) are listed on Schedule D. Each Facility will receive a subscription license to the LiveProcess platform, and if not wholly owned by Customer, will be required to accept the Facility Acknowledgement Letter, which if needed is attached hereto as Schedule E, agreeing that it will abide by the terms and conditions of this Agreement. User may permit access to and use of the LiveProcess Platform by third parties under contract to provide services with respect to the Facilities (the "**Contractors**"), provided that the Contractors' use is limited solely to providing such services; provided, however, that User shall remain responsible for compliance with the restrictions on use and other terms and conditions of this Agreement by such Contractors. User may make copies of, use, and permit its Contractors to use, the then-current user documentation provided by LiveProcess to Customer with respect to the LiveProcess Platform (the "**Documentation**") solely in connection with use of the LiveProcess Platform authorized hereunder. User will not remove any copyright, trademark, and other notices of LiveProcess from any copies of the Documentation.

2.2 Restrictions on Use. User shall not (and User shall not permit any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the LiveProcess Platform or of any files contained in or generated by the LiveProcess Platform; (ii) copy, modify, adapt or translate the LiveProcess Platform, or otherwise make any use, resell, distribute or sublicense the LiveProcess Platform other than to the extent permitted in this Agreement; (iii) make the LiveProcess Platform available on a "service bureau" basis or allow any third parties, other than Contractors to the extent permitted under Section 2.2 above, to use the LiveProcess Platform; (iv) disclose the LiveProcess Platform or any of its components to third parties, other than Contractors to the extent permitted under Section 2.2 above; (v) remove or modify any proprietary marking or restrictive legends placed on the LiveProcess Platform; or (vi) use the LiveProcess Platform in violation of any applicable law or regulation. For the avoidance of doubt, if data from a healthcare facility is used in the platform, including, but not limited to contacts, inventory, beds, code groups, plans and policies, then that healthcare facility will be required to procure its own license to the LiveProcess Platform, regardless of where the Platform is accessed.

2.3 Aggregate Data. User acknowledges that LiveProcess may collect data regarding usage of the LiveProcess Platform by User, as well as LiveProcess's other customers, for the purpose of creating aggregate usage statistics which do not identify that User is the source of any specific piece of data (the "Aggregate Data"). LiveProcess shall be the sole owner of the Aggregate Data and, notwithstanding anything to the contrary, shall be free to use and disclose the Aggregate Data at its discretion.

2.4 Title. As between LiveProcess and User, LiveProcess retains title to and ownership of the LiveProcess Platform, the Documentation and any derivative works of the foregoing, including all copyrights and other intellectual property rights relating thereto. User shall have no rights with respect to the LiveProcess Platform or the Documentation or any such derivative works other than those expressly granted under this Agreement.

3. Support & Training Services. During the Term, LiveProcess shall provide User with the support and training services described Schedule B.

4. Platform Performance.

4.1 Hosting of the LiveProcess Platform. The LiveProcess Platform will be hosted by LiveProcess's third party service provider in accordance with the agreement between LiveProcess and such service provider. LiveProcess may, at its sole discretion, change third party service providers at any time. Notwithstanding anything to the contrary, with respect to any Service Outages (as defined below), LiveProcess's sole liability, and User's sole and exclusive remedy, shall be as follows:

- for any Service Outage that is resolved within twenty-four (24) hours, LiveProcess shall have no liability;
- for any Service Outage that is not resolved within twenty-four (24) hours, but that is resolved within thirty (30) days, LiveProcess shall issue a credit to User equal to the pro rata portion of the Fees for the then-current Initial Term or Renewal Term (as applicable), such pro rata portion calculated based on the duration of the Service Outage; and
- for any Service Outage that is not resolved within thirty (30) days, User shall have the right to terminate this Agreement upon written notice to LiveProcess, and be due a refund of any paid but unused fees, such pro rata portion calculated based on the amount of days remaining in the term.

For the purposes of this Agreement, a "Service Outage" means any service outage of LiveProcess's hosting service provider that causes the LiveProcess Platform to become unavailable to User, other than outages due to scheduled maintenance. For the purposes of clarity, "Service Outages" do not include any outages due to problems with the systems or networks of User or its internet service provider, or any outages that affect the internet generally.

4.2 Disaster Avoidance and Recovery. LiveProcess or its third party hosting service will provide a secure access facility with controlled access. The hosting service will maintain its systems on dual, redundant server racks, hosted at separate and independent, fully secure, power-stable Network Service Facilities. Each rack will include fully redundant hardware and software systems at the firewall, application and database levels with managed failover at all system levels. In addition to redundancy at all levels, including power, Licensor will employ independent monitoring systems both inside the server cage and at its corporate offices to ensure maximum uptime. If a particular server machine experiences a problem, incoming traffic will be automatically routed to an alternate machine that contains the same or substantially similar information and can perform the same or substantially similar functions across the entire system. Licensor will use mirrored, redundant servers, or an equally effective architecture to ensure maximum system uptime. All hosting services shall be protected by current virus and malware detection and eradication solutions.

5. Financial Terms.

5.1 Fees. During the Initial Term (as defined below), Customer will pay LiveProcess the fees set forth on Schedule D. During each Renewal Term (as defined below), Customer will pay LiveProcess its then-current fees. In addition, with respect to the notification feature included in the LiveProcess Platform, unless Customer has purchased Unlimited Notification, Customer will pay to LiveProcess, any charges for additional blocks of Message Units (as defined in Schedule C) that are purchased by Customer.

5.2 Invoices and Payment Terms. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars. All invoiced amounts are due and payable within thirty (30) days of receipt of invoice. Overdue payments will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum allowable interest under applicable law, from due date until paid. Customer will pay any sales, use or other tax related to the services provided hereunder, exclusive of income taxes and payroll taxes relating to LiveProcess's employees.

6. Term and Termination.

6.1 Term. The initial term of this Agreement is identified on Schedule D (the "Initial Term"). Upon expiration of the Initial Term or any Renewal Term, Customer shall have the option of renewing for successive one (1) year periods in the event Customer provides LiveProcess with written notice of renewal prior to the expiration of the then-current Term (each, a "Renewal Term"), unless either: (i) LiveProcess provides written notice of non-renewal to Customer at least thirty (30) days prior to the expiration of the then-current Term, or (ii) Customer fails to pay the Fees applicable to the upcoming Renewal Term prior to the expiration of the then-current Term.

6.2 Termination. In the event of a material breach of this Agreement by a Party, the other Party may terminate this Agreement by giving thirty (30) days prior, written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach before the expiration of such thirty (30) day period.

6.3 Effect of Termination. In the event of any termination or expiration of this Agreement,

- (a) Customer shall pay LiveProcess for all amounts payable hereunder as of the effective date of termination or expiration;
- (b) no amounts paid hereunder shall be refunded, except under the limited circumstances described in Sections 4.1 and 9.4;
- (c) all rights and licenses granted hereunder to User shall immediately cease, including but not limited to all use of the LiveProcess Platform and the Documentation; and
- (d) each Party, will either return to the other Party or provide the other Party with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of such other Party that are in the first Party's possession or control.
- (e) LiveProcess will provide to Customer an archived copy of its data for all participating facilities in a readable format.

6.4 Survival. The following provisions shall survive any termination or expiration of this Agreement: Section 2.5 ("Aggregate Data"), Section 2.6 ("Title"), Section 6.3 ("Effect of Termination"), Section 7 ("Confidentiality"), Section 8 ("Representations and Warranties; Disclaimer"), Section 9 ("Indemnification; Infringement Claims"), Section 10 ("Liability"), Section 11 ("Miscellaneous Provisions") and this Section 6.4 ("Survival").

7. Confidentiality.

7.1 Definition of Confidential Information. For the purposes of this Agreement, "Confidential Information" means: (i) with respect to LiveProcess, the LiveProcess Platform, the software component of the LiveProcess Platform that is proprietary to LiveProcess (the "LiveProcess Software") and all related source code, the Documentation, and all non-public information or material regarding LiveProcess's legal or business affairs, financing, customers, properties or data, and (ii) with respect to User, any non-public information or material regarding User's legal or business affairs, financing, customers, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the Party to which the Confidential Information is disclosed (the "Receiving Party"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other Party (the "Disclosing Party"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party

without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.

- 7.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and who are bound by confidentiality obligations at least as protective as those contained herein; and (iii) not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so. The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care). If a Party is requested to disclose any of the other Party's Confidential Information pursuant to any judicial or governmental order, that Party will not disclose the Confidential Information without first giving the other Party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given.

8. Representations and Warranties; Disclaimer.

- 8.1 Power and Authority.** Each Party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder.
- 8.2 No Other Warranties.** User acknowledges that the operation of the LiveProcess Platform may not be uninterrupted or error-free. The LiveProcess Platform is provided "AS IS" and except as expressly set forth in Section 8.1, neither Party makes any warranty in connection with the LiveProcess Platform, the documentation, any approved customizations, any services or otherwise with respect to this Agreement and hereby disclaims any and all implied or statutory warranties, including all implied warranties of title, merchantability, noninfringement, fitness for a particular purpose, error-free or uninterrupted operation and any warranties arising from a course of dealing or usage of trade. To the extent that a Party may not as a matter of applicable law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

9. Indemnification; Infringement Claims.

- 9.1 Indemnification by User.** User shall defend, indemnify and hold harmless LiveProcess and its affiliates, and each of their respective officers, directors, shareholders, employees, agents, and independent contractors (collectively, the "LiveProcess Indemnitees") from and against any and all liabilities, losses, damages, claims, causes of action, and expenses (including reasonable attorneys fees and disbursements) (collectively, "Losses") in connection with any third party claim resulting from or based upon: (i) use of the LiveProcess Platform by any User, or any of their respective employees, Contractors or other personnel or (ii) any act or failure to act of any User (including whether or not resulting or arguably resulting from the acts or failures to act of any other healthcare-related organizations or government agencies), its officers, directors, shareholders, employees, agents, and independent contractors.
- 9.2 Indemnification by LiveProcess.** LiveProcess will defend, indemnify and hold harmless User and its affiliates, and each of their respective officers, directors, shareholders, employees, agents and independent contractors (collectively, the "User Indemnitees") from and against any Losses in connection with any third party claim that the LiveProcess Software infringes or misappropriates any third party copyrights or trade secrets; provided, however, that this indemnity shall not apply to (i) modifications to the LiveProcess Software made by any party other than LiveProcess or LiveProcess's authorized representatives or (ii) use of a prior version of the LiveProcess Software to the extent such infringement would have been avoided by the use of the current version of the LiveProcess Software, provided that LiveProcess has offered or provided such current version to User at no additional cost.
- 9.3 Indemnity Procedures.** If any claim or action is asserted that would entitle a User Indemnitee or LiveProcess Indemnitee to indemnification pursuant to Section 9.1 or Section 9.2 (a "Proceeding"), the Party who seeks indemnification will give written notice thereof to the other Party (the "Indemnitor") promptly (and in any event within fifteen (15) calendar days after the service of the citation or summons); provided, however, that the failure of the Party seeking indemnification to give timely notice hereunder will not affect rights to indemnification hereunder, except to the extent that Indemnitor demonstrates actual damage caused by such failure. Indemnitor may elect to direct the defense or

settlement of any such Proceeding by giving written notice to the Party seeking indemnification, which election will be effective immediately upon receipt by the Party seeking indemnification of such written notice of election. The Indemnitor will have the right to employ counsel reasonably acceptable to the Party seeking indemnification to defend any such Proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor; provided that the Indemnitor will not settle, or consent to any entry of judgment in, any Proceeding without obtaining either: (i) an unconditional release of all the Party seeking indemnification (and its affiliates and each of their respective officers, directors, employees and agents) from all liability with respect to all claims underlying such Proceeding; or (ii) the prior written consent of the Party seeking indemnification. A Party seeking indemnification will not settle, or consent to any entry of judgment, in any Proceeding without obtaining the prior written consent of the Indemnitor. The Parties will fully cooperate with each other in any such Proceeding and will make available to each other any books or records useful for the defense of any such Proceeding.

- 9.4 Infringement Claims.** In the event that (i) the LiveProcess Platform is held to infringe the rights of a third party and/or the use of the LiveProcess Platform is enjoined or (ii) LiveProcess concludes that the LiveProcess Platform infringes the rights of a third party, LiveProcess will, if possible on commercially reasonable terms, at its own expense and option: (a) procure for User the right to continue to use the LiveProcess Platform, (b) replace the infringing components of the LiveProcess Platform with other components with the same or similar functionality that are reasonably acceptable to User, or (c) suitably modify the LiveProcess Platform so that it is non-infringing and reasonably acceptable to User. If none of the foregoing options are available to LiveProcess on commercially reasonable terms, LiveProcess (A) may terminate this Agreement without further liability to User, and (B) shall refund the Fees received by it from User for the infringing version(s) for the then-current term, less a pro rata portion of such Fees calculated based on the number of days following the date of termination that would have remained in the then-current term had this Agreement not been terminated.

10. Liability.

- 10.1 Liability Exclusion.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, LOSS OF USE, LOSS OF COST OR OTHER SAVINGS OR LOSS OF GOODWILL OR REPUTATION) WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT, BREACH OF WARRANTY, INDEMNITY, OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING FROM OR RELATING TO THE LIVEPROCESS PLATFORM, THE DOCUMENTATION OR ANY SERVICES PROVIDED HEREUNDER, OR OTHERWISE ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. To the extent the foregoing exclusion of liability is not permitted under applicable law, LiveProcess's liability in such case will be limited to the greatest extent permitted by law.

- 10.2 Limitation of Damages.** LIVEPROCESS's MAXIMUM AGGREGATE LIABILITY TO CUSTOMER AND ANY OTHER USER (AND ANY PERSON CLAIMING RIGHTS DERIVED FROM ANY USER'S RIGHTS) ARISING FROM OR RELATING TO THE LIVEPROCESS PLATFORM, THE DOCUMENTATION OR ANY SERVICES PROVIDED HEREUNDER, OR OTHERWISE ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, INDEMNITY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO LIVEPROCESS BY CUSTOMER DURING THE ONE (1) YEAR PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES.

- 11. Miscellaneous Provisions.** Unless otherwise specified herein, all notices and other communications between the Parties required or permitted by this Agreement or by applicable law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, (iii) nationally recognized private courier service or (iv) facsimile, at the respective addresses set forth above, or such other addresses as the respective Parties may designate by like notice from time to time. Notices so given will be effective upon (a) receipt by the Party to which notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first. Each Party is an independent contractor of the other Party. Nothing herein will constitute a partnership between or joint venture by the Parties, or constitute either Party the agent of the other. No User may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of LiveProcess. A change of control of a User (whether by merger, consolidation, sale of stock or other equity interests, sale of all or substantially all

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

LiveProcess Corporation

[]
(on behalf of itself and each of the Facility Operators)

By: _____
 Print Name: Paul Rudeman
 Title: Vice President Operations
 Date:

By: _____
Print Name: _____
Title: _____
Date: _____

SCHEDULE A

FACILITIES

See Exhibit A of Master Riverside County /LiveProcess Agreement

SCHEDULE B**SUPPORT & TRAINING SERVICES**

LiveProcess provides its clients with access to the hosted LiveProcess Platform, the online "platform" for all LiveProcess functions.

Unless otherwise agreed to by the Parties in writing, User shall be responsible for obtaining and installing at its own expense all computer equipment, network access, third party software, SSL certificates and other items required in connection with User's access and use of the LiveProcess Platform.

The LiveProcess Platform is designed for continuous operation and is monitored 24 hours a day/ seven days a week for availability. The LiveProcess Platform includes nightly server backups and the latest SSL encryption for client data security over a high-speed connection to the internet.

1. SUPPORT SERVICES (Covered by the 10% of Annual Maintenance fee)

When introducing the LiveProcess Platform to a new Facility, certified LiveProcess trainers introduce the platform and functionality via a "hands on" training approach, utilizing both onsite and online training. LiveProcess Standard Training Services are included as part of subscription agreement. Additional training can be provided for a fee.

LiveProcess Standard Platform Implementation & Training:**LiveProcess Implementation Planning**

- LiveProcess will meet with the client leadership team to:
 - Establish the areas/processes of the system that they want included in the training sessions
 - Coordinate training session planning and scheduling, including site location

LiveProcess Training Logistics

- Unlimited User IDs (logins) per facility
- A four (4) hour onsite LiveProcess Administrator training will be provided during the initial implementation. This will be held at one centralized location for all facilities (*for enterprise customers only*).

LiveProcess Administrator Training Session

- LiveProcess Administrators have the authority to setup and maintain the LiveProcess system for a facility. While a facility may have an unlimited number of staff designated as LiveProcess Administrators, it is recommended that they have a minimum of 2-3. Most facilities designate 2-5 LiveProcess Administrators.
- Standard Implementation Data Loads: LiveProcess will accept all Contacts and Inventory Items, submitted in electronic format from the legacy systems and load it into the Facility's production database

Remote on-going training, as necessary

- One - one ½ hours of remote (WebEx and phone) Standard/Limited Access User training following the initial implementation
- Module-specific online training via *LiveProcess University* provided monthly (WebEx and phone)

Ongoing LiveProcess Platform Support:

- Three users per Facility authorized to submit support requests
- Unlimited access to LiveProcess Answerbase
- Unlimited access to online User Guide, Streaming Videos and Quick Reference Guides
- Unlimited support requests submitted via e-mail and the online support form
- Unlimited access to LiveSupport, LiveProcess' proprietary instant messaging tool
- ***Unlimited phone support during normal business hours (9:00am – 6:00pm EST) Monday through Friday***
- ***Critical phone support available 24/7 during emergency response activation***
- Unlimited feature requests submitted via e-mail, phone and online support form
- Response to all requests submitted by authorized users within 2 business days
- When there are significant enhancements to platform functionality, documentation and training will be available

New Product Releases – LiveProcess is continually innovating and improving the LiveProcess Platform to meet our clients' changing needs. Any enhancements to the LiveProcess Platform that are intended for general usage will be rolled out to all clients at no additional charge, throughout the term of the Agreement.

Ongoing Training Services**LiveProcess Training for General (Non Administrator) Users:****General User Training (WebEx and Teleconference)**

Upon request, LiveProcess training professionals host these remote training sessions, which are structured to provide new general users, who do not have LiveProcess Administrator responsibilities, with the knowledge they need to use the tools available to them on the LiveProcess platform. The sessions are approximately one – one ½ hours in duration. Topics covered include:

	Course Components	
LP-200	Contact Update Management	60 - 90 minutes
	Notification (as appropriate) <ul style="list-style-type: none"> • General Notification • Group Notification • Codes Console Usage • Mobile Access 	
	Emergency Management Inventory	
	Compliance Maintenance (as appropriate)	
	Event Generation and Participation	
	Quiz Usage	
	Bed Tracking	
	Tasks – Assigning & Fulfilling	

LiveProcess Advanced User Training:**Advanced User Online Training (WebEx and Teleconference)**

- Advanced LiveProcess system training is offered via the *LiveProcess Institute*. These modular sessions which are hosted monthly, are an in-depth look at each of the segments within the LiveProcess system.
- In addition, the client may, on an "as requested" basis, have up to three facility dedicated, remote training sessions chosen from the *LiveProcess Institute* syllabus.

Advanced Training session topics include:

	Course Description	
ADV-ACSM	Advanced Automatic Contact Management <ul style="list-style-type: none"> • Custom Upload Wizard (CUW) • Maintenance via the Automated Contact System Management (ACSM) function 	30 Minutes
ADV-BD/IV	Bed Tracking and Emergency Inventory	45 Minutes
ADV-CP	Advanced Compliance	30 minutes
ADV-DM	Document Management <ul style="list-style-type: none"> • Document Repository • National Reference Library 	30 minutes
ADV-EM	Event Management <ul style="list-style-type: none"> • Event Generation • ICS Activation • Effectively Managing an Event • Multi-Facility Response • After Action Reporting (AAR) 	60-90 minutes
ADV-EX	Advanced Exercise Planning & Use	60 minutes
ADV-HVA	Hazard Vulnerability Analysis <ul style="list-style-type: none"> • Defining and Implementing Hazards via HVA 	30 minutes
ADV-ICS	Incident Command System & Job Action Sheets <ul style="list-style-type: none"> • Customizing Your ICS Implementation • Customizing Job Action Sheets 	60 minutes
ADV-NF	Advanced Notification <ul style="list-style-type: none"> • General Notification • Codes • Notification Reporting • Mobile Access 	60 Minutes
ADV-SH	Sharing <ul style="list-style-type: none"> • Facility level • Global level 	30 Minutes
ADV-SUR	Setting up Surveys	30 Minutes
ADV-TAS	Assigning Tasks	30 Minutes
ADV-U/CM	Advanced User & Contact Management <ul style="list-style-type: none"> • Defining / Implementing Custom Profiles 	60 minutes

Major Release Training (WebEx and Teleconference)

LiveProcess is continually innovating and improving our product to meet our clients' changing needs. New product enhancements are generally rolled out to all clients at no additional charge throughout the term of agreement. In order to ensure that all users can fully employ these enhancements, LiveProcess offers specialized training sessions which coincide with all significant releases. These sessions cover the following general topics:

- a. New Functionality – Detailing all new functionality and providing instruction on successfully employing new features.
- b. Enhancements to Existing Functionality – Providing detailed explanations of changes to existing functionality and instruction on usage.

2. CUSTOM SERVICES**Additional Training Services:**

Onsite Training: \$1500 per person/day, plus travel expenses.

Customized Online Training: LiveProcess will build a custom training plan to address the Facility's specific needs (Pricing available on request)

Video Conference Training: If the Facility has the capacity for videoconferencing, we can conduct any of the listed training in this format. Our connectivity for these sessions would be on IP only. (Pricing available on request)

Additional Support Services:

- **Custom Data Load:** All data not included in the Standard Implementation Data Load can be loaded into a facility's database on a Custom quote basis. This would include, but not be limited to: Bed Tracking data, Documents, Hazard Vulnerability Analysis, Custom Job Action Sheets, ICS Charts etc. (Pricing available on request.)
- **Field Support:** LiveProcess field representatives can be available for special events, drills, or other hospital-specific needs, including hospital system meetings (Pricing available on request)
- **Professional Services:** Project Management, Customized Reporting, etc. (Pricing available on request)

SCHEDULE C

See Exhibit C of Master Riverside County /LiveProcess Agreement

SCHEDULE D

FEES

See Exhibit B of Master Riverside County /LiveProcess Agreement

SCHEDULE E**FACILITY ACKNOWLEDGMENT LETTER**

(Each participating facility will need to “sign” a clickthrough agreement (the basic text of which is copied below) before being provided with access to the LiveProcess platform)

LiveProcess Corporation (“LiveProcess”) and **Riverside County Community Health Agency**, (“Customer”) have entered into a LiveProcess Subscription Agreement dated as of _____ (the “Agreement”), pursuant to which LiveProcess will provide access to the LiveProcess Platform (as defined in the Agreement) to the hospitals listed below (each a “Participating Facility”).

Participating Facilities:

Corona Regional Medical Center	Kaiser Permanente - Moreno	Corona Family Care Center
Desert Regional Medical Center	Valley	Hemet Family Care Center
Eisenhower Medical Center	Palo Verde Hospital	Indio Family Care Center
Hemet Valley Medical Center	Parkview Community Hospital	Jurupa Family Care Center
Inland Valley Medical Center	Rancho Springs Medical Center	Lake Elsinore Family Care Center
John F Kennedy Memorial Hospital	Riverside Community Hospital	Palm Springs Family Care Center
Kaiser Foundation Hospital –	Riverside County Regional	Perris Family Care Center
Riverside	Medical Center	Riverside Neighborhood Health
LLU Medical Center Murrieta	San Geronio Memorial Hospital	Center
Menifee Valley Medical Center	Banning Family Care Center	Rubidoux Family Care Center

Pursuant to the terms set forth in the Agreement, LiveProcess shall provide an allotted pool of message units, to be used by each of the participating facilities. When a facility has exceeded 80% of its allotment, LiveProcess will notify the facility, and the facility will then have the option to purchase additional message units at the fees listed in the Agreement.

As an authorized representative of your Facility, Facility acknowledges and agrees that it has had the opportunity to review the Agreement, a copy of which is provided by clicking on the link below, and that its use of the LiveProcess Platform is subject to the terms and conditions of the Agreement, including, but not limited to, the restrictions on use, disclaimers, limitations of liability and all other provisions therein.

Attachment I
HIPAA Business Associate Addendum to the Agreement
Between the County of Riverside
and
LiveProcess

This HIPAA Business Associate Agreement Addendum ("Addendum") supplements, and is made part of the Agreement for Services (the "Underlying Agreement") between the COUNTY OF RIVERSIDE ("County") and LiveProcess ("Contractor") as of the date of approval by both parties ("July 1, 2011").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services certain Protected Health Information ("PHI") and/or certain electronic Protected Health Information (ePHI) may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule") and/or Part 162 (the "Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI and /or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor, when a recipient of PHI and/or ePHI from County, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI and/or ePHI be in compliance with the Privacy Rule, Security Rule, or other applicable law;

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

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of County Disclosed PHI and/or ePHI
 - A. Contractor shall be permitted to use PHI and/or ePHI disclosed to it by the County:
 - (1) On behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule and/or Security Rule;
 - (2) As necessary to perform any and all of its obligations under the Underlying Agreement.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, Contractor may:

- (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI and/or ePHI as necessary for Contractor's operations only if:
 - (a) The disclosure is required by law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI and/or ePHI that the person or organization will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as required by law; and,
 - (ii) The third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) Aggregate the PHI and/or ePHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
 - (4) Not disclose PHI and/or ePHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI as authorized in writing by County.
 - (5) De-identify any and all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law, or as otherwise permitted by law.
- D. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are stricter in their requirements than the provisions of HIPAA and prohibit the disclosure of mental health, and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. Obligations of County.

- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.

- B. County agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI and/or ePHI.
- D. County shall not request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule and/or Security Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or the Underlying Agreement.

4. Obligations of Contractor. In connection with its use of PHI and/or ePHI disclosed by County to Contractor, Contractor agrees to:

- A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum or as required by law.
- B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
- C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- D. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum of which Contractor becomes aware.
- E. Require sub-contractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Addendum.
- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI and/or ePHI created or received for or from the County.
- G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.

5. Access to PHI, Amendment and Disclosure Accounting. Contractor agrees to:

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
- B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
- C. To assist the County in meeting its disclosure accounting under HIPAA:

- (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
- F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.
- G. Not make any disclosure of PHI that County would be prohibited from making.

6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor needs to create or have access to County ePHI, Contractor agrees to:

- A. Implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of, the integrity of, the availability of, and authorized persons' accessibility to, County ePHI as applicable under the terms and conditions of the Underlying Agreement. The ePHI shall include that which the Contractor may create, receive, maintain, or transmit on behalf of the County.
- B. Ensure that any agent, including a subcontractor, to whom Contractor provides ePHI agrees to implement reasonable and appropriated safeguards.
- C. Report to County any security incident of which Contractor becomes aware that concerns County ePHI.

7. Term and Termination.

- A. Term – this Addendum shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, except as terminated by County as provided herein.
- B. Termination for Breach – County may terminate this Addendum, effective immediately, without cause, if County, in its sole discretion, determines that Contractor has breached a material provision of this Addendum. Alternatively, County may choose to provide

Contractor with notice of the existence of an alleged material breach and afford Contractor with an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of County in a timely manner, County reserves the right to immediately terminate this Addendum.

- C. Effect of Termination – upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from the County, or created or received by Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI, which is in possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI and/or ePHI.
- D. Destruction not Feasible – in the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions which make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

8. Hold Harmless/Indemnification

- A. Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

9. General Provisions.

- A. Amendment – the parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with the Privacy Rule and HIPAA generally.
- B. Survival – the respective rights and obligations of this Addendum shall survive the termination or expiration of this Addendum.
- C. Regulatory References – a reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.
- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.