

COPY

AGREEMENT FOR SERVICES #167-S9710

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and VitalChek Network, Inc, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 4512 Central Pike, Hermitage, Tennessee 37076 (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, Contractor is engaged in the business of providing a on-line computer and credit card service which expedites the remote application, processing and delivery of requests for vital records (hereinafter referred to as the "Service"); and

WHEREAS, County Recorder-Clerk's Office is desirous of installing the Service and providing the public with access to the Service; and

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

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

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

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor shall furnish materials, equipment and Consultant services necessary for the implementation of an on-line computer service which expedites the remote application, processing and delivery of requests for vital records as requested by the Public. This service allows for the public to request vital statistic records, and the expedient delivery of same as desired, not available in El Dorado County. This service allows for the public to pay for such requests via credit card in order to process vital statistic requests in an expedited manner.

Contractor agrees to provide the following:

1. Contractor shall, at its sole expense, install at those locations mutually agreed to by the parties all hardware and software necessary for the operation and use of the Service.
2. Contractor will train and authorize appropriate County personnel to operate the hardware and software associated with the Service.
3. Contractor will honor all properly authorized requests for the Service from individuals or entities seeking the expedited processing and delivery of vital record requests from County.
4. Contractor will guarantee the transfer of application information as well as the return delivery of documents where applicable to the consumer ordering such documents through the use of the Service.
5. Contractor will guarantee the expedient refund of any mishandled order(s).
6. Contractor will provide a 24-hour toll-free information number for County and/or Public use in requesting vital statistic records (1-800-255-2414).

ARTICLE II

Term: This agreement shall become effective when fully executed by the parties hereto and shall expire one year from the date of execution thereof. Thereafter, this agreement shall automatically renew for successive one year periods, unless either party provides the other party with notice of termination as provided for in Article VIII hereinbelow.

ARTICLE III

Compensation for Services: For services provided herein, Contractor shall make payment to County in an amount equal to the County's charges for the retrieval of vital records for all properly authorized requests which utilize the Service. Such payments shall be made to County in a manner mutually agreeable to County and Contractor. Contractor shall assume liability for all Contractor checks accepted by County as a result of the use of the Service. Contractor agrees to submit payment to the El Dorado County Recorder-Clerk 360 Fair Lane, Placerville, California 95667.

Contractor shall charge the consumer a fee for the use of its service, which shall include the amount due El Dorado County as described above, plus a shipping and handling fee, which shall be \$5.00 for all orders, plus an additional \$15.50 for orders shipped by Federal Express. The parties hereto understand and acknowledge that the additional amount charged for orders shipped by Federal Express may alter during the term of this agreement, subject to any such change being agreed upon in writing by both parties.

ARTICLE IV

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

ARTICLE V

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

ARTICLE VI

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this agreement. Contractor exclusively assumes responsibility for acts of its subcontractors, associates, and employees as they relate to services to be provided under this agreement during the course and scope of their employment.

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

ARTICLE VII

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

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

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

ARTICLE VIII

Default, Termination, and Cancellation:

- A. Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time of to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause:** County may terminate this agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE IX

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered. Notices to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO
RECORDER-CLERK
360 FAIR LANE
PLACERVILLE CA 95667
ATTN WILLIAM "BILL" SCHULTZ

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

VITALCHECK NETWORK INC
4512 CENTRAL PIKE
HERMITAGE TN 37076
ATTN H. MICHAEL BARRETT

or to such other location as the Contractor directs.

ARTICLE X

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

ARTICLE XI

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

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$500,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the agreement.

- D. In the event Contractor is a licensed professional, and is performing professional services under this agreement, professional liability (for example, malpractice insurance) is required with a limit of liability not less than \$1,000,000.00 per occurrence. For the purpose of this agreement there are no requirements for professional liability coverage.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the agreement term, or for a period of not less than one (1) year. New certificates of insurance are subject to approval of the Risk Management Division and Contractor agrees that no services shall be performed prior to the giving of such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Contractor's insurance shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officer, officials, employees or volunteers.

- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing requirements and shall survive expiration of this agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this agreement for not less than three (3) years following completion of performance of this agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by contracting County Department either independently or in consultation with the Risk Management Division, as essential for the protection of the County.

ARTICLE XII

Withholding (Form 730): In accordance with changes in Internal Revenue Law, OASDI (Old Age, Survivors, & Disability Insurance) and income taxes may be withheld from any payments made under terms of this agreement if Contractor falls under "Contract-Employee" category as determined by County prior to execution of agreement.

ARTICLE XIII

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XIV

California Forum and Law: Any dispute resolution action arising out of this agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XV

Year 2000 Compliance: Contractor agrees that all software developed, distributed, installed, programmed or employed by Contractor pursuant to this agreement will comply with ISO 9000 date format so as to correctly manipulate and present date-sensitive data both before and after January 1, 2000.

Contractor further agrees that all hardware developed, delivered, installed or employed by Contractor pursuant to this agreement will comply with the ISO 9000 date format so as to correctly manipulate and present date-sensitive data both before and after January 1, 2000.

Upon being notified in writing by the County of the failure of any software or hardware to comply with the ISO 9000 date format, Contractor will, within a period of time, but prior to December 1998, as mutually agreed between the parties hereto and at no cost to County, replace or correct the non-complying hardware or software with hardware or software that does comply with the ISO 9000 date format.

Upon delivery of the Product and thereafter, the date and date logic component of the software shall effectively and efficiently operate to carry the software, without delay or other manner of hinderance, from the current year into the year 2000 and beyond. Upon being notified in writing by County of the failure of any software to comply with the provision in the preceding sentence, shall within a period of time, but prior to December 1998, as mutually agreed between the parties hereto and at no additional cost to County, replace or correct the non-complying software with software that complies with the provision set forth herein.

ARTICLE XVI

Adminalstrator: The County Officer or employee with responsibility for administering this agreement is William "Bill" Schultz, Recorder-Clerk, or successor.

ARTICLE XVII

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

ARTICLE XVIII

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

ARTICLE XIX

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

REQUESTING DEPARTMENT CONCURRENCE:

By:  Dated: April 3, 1997
William "Bill" Schultz
Recorder-Clerk

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: May 13, 1997

By: [Signature]
Walter L. Shultz, Chairman
Board of Supervisors
"County"

ATTEST: Dixie L. Foote, Clerk
of the Board of Supervisors

By: Margaret E. Moody Dated: May 13, 1997
Deputy Clerk

-- CONTRACTOR --

Dated: 9/11/07

VITALCHEK INC

By: [Signature]
H. Michael Barrett, President
"Contractor"