

ORIGINAL

ESR 2019 Services Agreement Ver.2.7_09.2019

Services Agreement

EDC #4665

This Services Agreement ("Agreement"), which is effective upon mutual execution by the Parties, is by and between Integrity Support Services, Inc., DBA Employment Screening Resources ("ESR") a California Corporation and the County of El Dorado, a political subdivision of the State of California, hereinafter ("Client"). ESR and Client may also be referred to individually as a ("Party") or collectively as the ("Parties").

WHEREAS, ESR is a Consumer Reporting Agency ("CRA") that provides national and international background screening, substance abuse testing, occupational health screening, verifications of employment, education and licensure, as well as other screening services ("Services"); and

WHEREAS, Client is a current customer of ESR and wishes to continue to engage ESR to obtain the Services under updated terms and conditions, as provided herein and as may be later modified or amended pursuant to the terms of Paragraph 13 below.

WHEREAS, these changes are being made in response to additions to or changes in current laws, rules, regulations made through legislation, regulatory agency rule-setting or as a result of case law. Any previously negotiated changes or additions to terms and conditions found in the original services agreement ("Previous Agreement") are hereby incorporated by reference into this Agreement.

WHEREAS, ESR is willing to continue to provide Services to Client at their current prices on the terms and subject to the conditions, set forth herein.

THEREFORE, in consideration of the preceding premises and the mutual covenants, promises, and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Client and ESR agree as follows:

1. Description of Services.

- A. Where a permissible purpose exists under applicable law, upon request, ESR will provide Client with Consumer Reports, Investigative Consumer Reports, and/or Consumer Credit Reports (individually "Report", and collectively "Reports"), as those terms are defined in the Fair Credit Reporting Act ("FCRA"), and as may be further defined in applicable state statutes.
- B. For Services that are ordered Fully Utilizing (as that term is defined below) ESR's automated applicant facing screening processes, ESR will provide Client with the service of administrative fulfillment of Client's obligations to provide the subject of a Report (the "Consumer") required notices and disclosures and to obtain the Consumer's prior written authorization. Where instructed to do so by Client, ESR will also process adverse action notices and related documents in administrative fulfillment of Client's obligations to provide such documents to the consumer. The fulfillment of the above will be undertaken so as to meet the certifications Client makes in the following sections of the Agreement:
 1. Client's FCRA procurement and use obligations found in Section 6.B. numbers 3, 4, and 5; and
 2. Client's California Investigative Consumer Report procurement and use obligations found in Section 6.C.1., letters b, c, d and e, and Sections 6.C.2. and 6.C.3.
- C. Where Client places orders not Fully Utilizing ESR's automated applicant facing screening processes, the obligations referred to in Sections 1.8.1 and 1.8.2 are solely borne by Client without any administrative involvement by ESR.
- D. "Fully Utilizing" shall mean Client's use of ESR's applicant invite system that brings applicants online to receive disclosures, provide consent, enter demographic data, and where it is applicable, use of ESR's automated online adverse action system.

2. Performance

ESR will use its best efforts to provide timely reporting of available information in a manner consistent with generally accepted standards of business practices in its industry - typically within one (1) to three (3) business days. However, Client hereby acknowledges that from time to time, Reports may be delayed due to circumstances beyond the control of ESR.

ESR is not responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include, but shall not be limited to, Acts of God, strikes, lock-outs, riots, governmental regulations including those superimposed after the fact, fire, system failures, disruption in communications, earthquakes, and/or other disasters.

3. Term and Termination

The term of this Agreement is for two (2) years upon final execution by both Parties. Either Party may terminate this Agreement upon thirty (30) days written notice.

If Client receives a notice of termination from ESR due to the nonpayment for Services rendered, Client will have fifteen (15) days to cure the nonpayment and return the account to normal status.

If Client fails to uphold its legal obligations under Section 6 of the Agreement, ESR may, at its sole discretion, discontinue providing Services until Client corrects any failure(s) brought to its attention or cancel the Agreement immediately upon written notice to Client.

4. Pricing and Billing

For each response to a request for a chargeable service, Client agrees to pay according to the pricing found in Exhibit 1 – Updated Package, Contract Pricing ("Contract Pricing").

A. Pricing does not include third-party access or processing fees that may be incurred by ESR in connection with the Services rendered. These fees include but are not limited to; state criminal record access fees; motor vehicle record access fees; county criminal record court fees; access fees charged by licensing authorities to verify licenses or credentials; third-party employment history services; third -party education history services; drug screening and occupational health collection and testing fees; and international in-country acquisition fees ("Third-Party Fees"). Such fees are set by third parties and are subject to modification by the source without prior notice to ESR. Third-Party Fees are passed through to Client without markup or handling charges of any kind.

B. ESR reserves the right to bill semi-monthly, or as it deems necessary. Client agrees to pay the undisputed portion of all bills upon receipt and no later than forty-five (45) days from the date of the invoice. Fees are incurred at the inception of the order and are billed for in the current period. Any credits issued after the billing period has closed will be applied to the next billing statement.

C. If Client cancels an order before its completion, Client is responsible for and will be charged for any services performed or fees that have been incurred by ESR to the point of cancelation.

D. The total amount of this Agreement shall not exceed \$50,000.00, inclusive of all costs, taxes, and expenses.

5. Taxes

ESR certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by ESR to Client. ESR agrees that it shall not default on any obligations to Client during the term of this Agreement.

6. Certifications and Acknowledgments

The following certifications and service-related acknowledgments are required before Services can be rendered.

A. ESR hereby certifies that:

1. It is a CRA as defined in the FCRA, 15 U.S.C. §1681 et. seq., as amended, that Reports are prepared in accordance with applicable sections of the FCRA, the Consumer Reporting Employment Clarification Act of 1998 and the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") (Public Law 108- 159), Section 506 of the Gramm-Leach-Bliley Act (Public Law 106-102), Drivers Privacy Protection Act. 18 USC§ 2721 et. seq, ("DPPA"), as well as other applicable laws;
2. It complies with all applicable provisions of the FCRA, and applicable state and municipal laws; and
3. It takes appropriate measures to protect the privacy and confidentiality of all personally identifiable and other confidential Consumer information, including appropriate security measures to protect information in all ESR systems.
4. It retains authorizations, disclosures, Consumer Reports, and re-investigation files on U.S. residents for a period of six (6) years from the time of the report.

B. Each time a Report is requested, Client hereby certifies, acknowledges and agrees as follows:

1. Reports will be ordered and utilized only for the following permissible purpose under the FCRA: "Employment Purposes" as that term is defined in the FCRA. See 15 U.S.C § 1681b (a)(3)(B), including evaluating a Consumer for employment, promotion, reassignment, or retention as an employee; and/or work to be performed under contract; and/ or working in volunteer positions, where in each case the Consumer has given prior written permission . Client will not order a Report for any other purpose unless there is an additional permissible purpose specified in Exhibit 2, "Additional Permissible Purposes."
2. Client will not use information from any Report in violation of any applicable federal or state equal employment opportunity law, or regulation. Client further agrees to comply with applicable state and federal laws and regulations currently in place, as well as any updates, additions to or replacements of those laws and regulations, specifically including the requirements of the FCRA. ESR highly recommends that Client retain employment law counsel to keep them apprised of any such changes or additions applicable in their jurisdiction.
3. Before making any request for a Report from ESR, Client will obtain written permission from the Consumer authorizing procurement of the Report and will maintain such permission on file for a minimum of six (6) years.
4. Where Client orders "Consumer Reports," Client certifies that before making any request for a Consumer Report from ESR, a clear and conspicuous disclosure, in a document consisting solely of the disclosure, has been made in writing to the Consumer explaining that a Consumer Report may be obtained for employment purposes, as outlined in 15 U.S.C. § 1681b.
5. Where Client orders "Investigative Consumer Reports" from ESR, Client certifies that it shall comply with additional requirements pertaining to Investigative Consumer Reports, as outlined in 15 U.S.C.§ 1681d. Among other things, Client shall clearly and accurately disclose to the Consumer that an Investigative Consumer Report, including information as to his/her character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be obtained. The disclosure shall be made in writing and mailed or otherwise delivered to the Consumer not later than three (3) days after the date on which the Investigative Consumer Report was first requested and will include a summary of the Consumer's rights provided for under 15 U.S.C. § 1681g(c). The disclosure shall also include a statement informing the Consumer of his/her right to submit a written request for additional information, under 15 U.S.C. § 1681d(b), within a reasonable period of time after the receipt by him/her of the foregoing disclosure. Upon receipt of such request, Client shall disclose in writing to the Consumer the nature and scope of the investigation, which shall be complete and accurate. The disclosure must be mailed or otherwise delivered to the Consumer not later than five (5) days after the date on which the request for additional disclosure was received from the Consumer or the date the Client first requested the report, whichever is later.

6. Client will comply with its legal responsibilities under the FCRA, requiring an end-user to provide the Consumer with adverse action notices where information in a Consumer Report, in whole or in part, results in a determination by the end-user that they intend to take an adverse action, such as not hiring, retaining, reassigning or promoting the Consumer. The currently required notices that must be provided before adverse action is taken must include: 1) providing preliminary adverse action notice to the Consumer, along with a copy of the Report and A Summary of Your Rights under the Fair Credit Reporting Act prepared by the Consumer Financial Protection Bureau ("CFPB") and made part of every ESR Report, 2) allowing the Consumer a reasonable period of time to consider the information in the Report and to contact Client or ESR if the Consumer wishes to provide any other information the Consumer would like to have considered, 3) providing ESR' s contact details which are contained in the Report, and 4) after waiting the appropriate waiting period, providing a final adverse action notice to the Consumer if a final adverse decision is made pursuant to FCRA section 615, 15 U.S.C. 1681m .
7. Client agrees that if it functions as a recruiter or staffing company placing temporary or permanent workers, or a company that places individuals to work under contract, Client is responsible for complying with FCRA adverse action notices, whether or not the Client's customer provides Client with background check standards, and whether or not Client's customer sees the Report.
8. Client will review and maintain on file copies of two documents prepared by the CFPB and provided by ESR on its website at www.ESRcheck.com. These are: 'Notices to Users of Consumer Reports: Obligations of Users under the FCRA' located at http://www.esrcheck.com/files/ESR_NBW-CFPB_Notice-to-Users-of-Consumer-Reports-Obligations-of-Users-Under-the-FCRA.pdf and 'A Summary of Your Rights Under the FCRA' (intended for the subject of the Report) at <http://www.esrcheck.com/files/cfpb-consumer-rights-summary2018-08.pdf>
9. Client acknowledges any person who knowingly and willfully obtains information on a Consumer from a CRA under false pretenses shall be fined under Title 18 or imprisoned not more than two (2) years, or both.
10. Criminal and Public Records: Client acknowledges that court record searches are undertaken only in jurisdictions where the subject has had a physical presence over the last seven (7) years, or other agreed upon timeframe: (1) as provided by the Client, (2) as provided by the Consumer, (3) and/or as developed in a Social Security number trace ("Identified Jurisdiction(s)"). Apart from the identified jurisdictions, ESR does not independently investigate whether other jurisdictions may be appropriate to search and ESR does not conduct court record searches in any jurisdiction outside of those described above. ESR uses the provided name and demographics to search central courthouse records in each Identified Jurisdiction for felony and available misdemeanor records in accordance with applicable court rules, federal and/or state laws. ESR does not conduct searches at municipal, justice or city courts. Non-criminal court records may also be found in Reports. Reportability, in all cases, is determined by ESR in its sole discretion.
11. Credit Reports
 - a. Prior to Access:
Client acknowledges that it is a credit bureau contractual prerequisite that an on-site inspection is made to confirm that Client is an established business with a legitimate need for access to Employment Purpose Consumer Credit Reports and that an inspection fee may apply.
 - b. State and Local Laws:
Client understands that multiple states and localities restrict the use of credit reports for public and/or private sector employers unless they have a specific permissible purpose allowed for under applicable law. Client understands that such restrictions exist and agrees to comply with and monitor all such credit check laws, as appropriate. Client shall only order credit reports from ESR if it has a permissible purpose under not just federal law but state and local law as well.
12. When placing an order for a Report from Employment Screening Resources through an integration with a third-party online platform, Client leverages ESR's integration technology to submit the certification shown below simultaneously with each individual order and directs ESR not to begin processing until a copy of the certification is attached to the order record:

By placing an order for a Consumer Report and/or an Investigative Consumer Report from Employment Screening Resources, you certify that you have complied with the FCRA and all applicable law, including as follows:

1. You are requesting the report for an employment purpose as defined in the Fair Credit Reporting Act. The Consumer has received a clear and conspicuous disclosure in a document that consists solely of the disclosure stating that a Consumer Report may be obtained for employment purposes. The Consumer has authorized in writing the procurement of the Consumer Report that is being ordered.
2. The consumer has received a written disclosure that an Investigative Consumer Report about him or her may be obtained. The disclosure further stated that an Investigative Consumer Report will have information bearing on the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable. The disclosure also stated that the consumer has a right to request additional disclosures as to the nature and scope of the investigation and that the consumer can exercise this right by making a written request to End-User within a reasonable period of time after the receipt of the disclosure. End-User has provided the consumer an up-to-date copy of the federal notice entitled "A Summary of Your Rights under the Fair Credit Reporting Act." If a consumer requests information as to the nature and scope of Employment Screening Resources' investigation, End-User will comply with the requirements set forth in Section 1681d of the Fair Credit Reporting Act.
3. In using a Consumer Report or an Investigative Consumer Report for employment purposes, End-User certifies that information from the report(s) to be provided by Employment Screening Resources will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation, or any other applicable law.
4. Where the consumer will be employed in a jurisdiction that requires a conditional offer of employment, a conditional offer was made prior to initiating this background check request.
5. Before taking any adverse action based in whole or in part on the Consumer Report, End-User will provide to the consumer to whom the Consumer Report relates or authorize Employment Screening Resources on End-User's behalf to provide to the consumer to whom the Consumer Report relates: (a) a copy of the Consumer Report; (b) a copy of the "Summary of Rights Under the Fair Credit Reporting Act" and any applicable state or local summary of rights; (c) a reasonable opportunity of time to correct any erroneous information contained in the Consumer Report (and provide Employment Screening Resources' name and contact information); and if the consumer is ultimately disqualified, (d) provide an adverse action letter, including the statutorily required notices identified in 15 U.S.C. § 1681m and applicable state and local law.

13. Verifications:

- a. Client acknowledges that domestic verifications including but not limited to education, employment, licensure and certification are undertaken at the primary source or designated third -party record keeper(s) and that unless otherwise provided for, four (4) confirmation attempts will be made during the normal business hours of the verifying party over four (4) business days. Any verification not completed within that timeframe will be closed and reported as not performable.
- b. Client acknowledges that international verifications are subject to time, process, and language differences that may result in widely varying turn-around times. Where a delay is encountered due to additional information being required from the subject, ESR will make those information requests through the ESR Applicant Portal. ESR and Client will agree upon Client specific process and time period for closing international verifications. Any verification not completed within the agreed-upon time frame will be closed and reported as not performable.
- c. TALX Corporation ("TALX") is the provider of Equifax Verification Solutions employment Information ("EVS") for employers who outsource their employment verifications function to TALX. Where TALX EVS is received is used in the preparation of Client's Reports its use by Client is subject to the following conditions:

- i. Client will hold TALX and all its agents harmless on account of any expense or damage arising or resulting from the publishing or other disclosure of EVS information by Client, its employees or agents.
- ii. Client will hold TALX and all its agents harmless on account of any expense or damage arising or resulting from the publishing or other disclosure of EVS information by Client, its employees or agents outside of Employment Purposes as defined in 5.B.1 of this Agreement.
- iii. Client recognizes that TALX does not guarantee the accuracy or completeness of EVS information and Client releases TALX and TALX's agents, employees, affiliated credit reporting agencies and independent contractors from any liability, including negligence, in connection with the provision of EVS information and from any loss or expense suffered by Client resulting directly or indirectly from use of EVS information. Client covenants not to sue or maintain any claim, cause of action, demand, cross- action, counterclaim, third-party action or other form of pleading against TALX, TALX's agents, employees, affiliated credit reporting agencies, or independent contractors arising out of or relating in any way to the accuracy, validity, or completeness of any EVS information.
- iv. TALX may periodically conduct audits of Client regarding its compliance with the FCRA and other certifications in this Agreement. Audits will be conducted by email whenever possible and will require Client to provide documentation as to permissible use of particular EVS information.
- v. Vermont Certification. Client certifies that it will comply with applicable provisions under Vermont law. In particular, Client certifies that it will order EVS information relating to Vermont residents that are Consumer Reports as defined by the Vermont Fair Credit Reporting Act ("VFCRA"), only after Client has received prior Consumer consent in accordance with VFCRA Section 2480e and applicable Vermont Rules. Client further certifies that it has received a copy of Section 2480e of the Vermont Fair Credit Reporting Statute, Rule CF 112 of the Vermont Fair Credit Reporting Act, CVR 06-031-012, CF 112.03, Consumer Consent, and that Client has completed and returned a copy of Exhibit-3 to this Agreement, the Vermont Fair Credit Reporting Contract Certification.

14. Client Accounts

The ESR system supports both Primary Accounts and subsidiary accounts ("Sub-Account(s)") (collectively "Account(s)"). By entering into this Agreement, Client will be issued a single Primary Account for its use to obtain Services, and where Client has entered into the appropriate addendum to the Agreement, one or more Sub-Accounts as follows:

- i. Sub-Accounts can be created under the following circumstances.
 1. **Organizational Requirements:** Certain Clients have organizational requirements that are best accommodated by ESR creating one or more Sub- Accounts under Client's Primary Account.
 2. **Internal Use:** Where Client wants to separate orders and results by region, division, district, location, billing code, and/or other similar groupings, ESR will, upon request, provide Client with Sub-Account(s) that support those requirements.
 1. Those having access to either the Client's Primary or internal Sub-Accounts must be employees of the Client and/or individuals or entities under written contract with Client to provide outsourced human resources management service(s) ("Authorized Agent(s)"). Authorized Agents must be disclosed to ESR by Client and must be vetted by ESR before they are provided access to Client's Accounts.
 3. **Related Entities:** Certain Clients have one or more related entities that (a) may be wholly owned by Client, (b) where Client holds majority control or (c) where Client has executive authority over the related entity ("Controlled Entity"). Upon Client's request, a Controlled Entity may be provided with Services through a dedicated Sub-Account

created for this purpose.

1. Each Controlled Entity must be disclosed to ESR by Client documenting the means of control and must be vetted by ESR before a Sub-Account is created for their use.
 2. Client is responsible for providing written notice to the Controlled Entity Sub-Account users of the end-user legal obligations found in Section 6.8 of the Agreement, along with copies of the documents referenced therein.
4. **Unrelated Entities:** Where Client has a written contract with one or more entities that Client does not own or control ("Unrelated Entity") Sub- Accounts can be created as follows:
1. Where Client is engaged in recruiting, staffing or contracted services ("Staffing Firm") and either (a) places Consumers to perform contracted services, or (b) where Client is pursuing the Consumer's permanent or temporary placement with an Unrelated Entity ("Provided Worker(s)") a Sub-Account may be created for that purpose. The Unrelated Entity will not have access to the Sub -Account but may receive a copy of a Provided Worker's Report as is provided for in the Authorization and Consent to Background Investigation signed by the Consumer.
 2. Where Client provides business management services under contract with an Unrelated Entity, a Sub-Account may be created for that purpose where both Client and the Unrelated Entity may procure and view completed Reports. Prior to access being granted, each Client-managed Unrelated Entity must enter into an End-User Services Agreement with ESR.

ii. Compliance

Where a Staffing Firm procures Consumer Reports from ESR and places Provided Workers, the Staffing Firm will be responsible for the End-User obligations found in Section 6.B.5 of this Agreement. In all other cases, the employer of record that procures Reports will be responsible for those obligations.

iii. Billing

Where Client wants ESR to directly bill a Controlled or Unrelated Entity with direct Account access for Services rendered under those Accounts, Client will become responsible for and will make payment to ESR for all amounts due, once such account becomes sixty (60) days in arrears.

15. SSN Trace

Client acknowledges that SSN Trace results are not part of the Consumer Reports procured under this agreement and certifies it will not use trace results as the basis for any employment decisions or for taking any adverse action. The SSN Trace service associates a given name and SSN number against databases assembled from private-sector sources and serves primarily as a locator tool to establish likely jurisdictions to search for public records. The inclusion of information from the SSN Trace is only provided to confirm that the service was performed.

C. Special Requirements for Employers Who Perform Background Checks in California :

If Client is located in the State of California and/or Client's request for and/or use of Reports pertains to a California resident or worker, Client certifies as follows:

1. Before procuring or causing an Investigative Consumer Report to be made, that all of the following apply:
 - a. That Client's permissible purpose for obtaining such an Investigative Consumer Report is an Employment Purpose as defined in Section 6.B.1 of this Agreement, and where applicable, those additional lawful purposes found in Exhibit 2. If there is a change in purpose, Client must notify ESR prior to obtaining any Investigative Consumer Report based on those changed permissible purposes.

- b. That Client has provided the Consumer with a clear and conspicuous disclosure in writing at any time before the report is procured or caused to be procured in a document that consists solely of the disclosure that:
 - i. An Investigative Consumer Report may be obtained,
 - ii. The permissible purpose is identified,
 - iii. The Investigative Consumer Report may include information on the Consumer's character, general reputation, personal characteristics and mode of living,
 - iv. Identifies the name, address and telephone number and website of the agency conducting the investigation, and
 - v. Notifies the Consumer of the nature and scope of the investigation requested, including a summary of the provisions of California Civil Code Section 1786.22 relating to a Consumer's rights to review their files.
 - c. That the Consumer has authorized the procurement of the report in writing.
 - d. Client has provided a check-off box on appropriate paperwork so that the Consumer may request a copy of any report that is ordered.
 - e. Upon request of the Consumer, Client will provide them with a copy of their Investigative Consumer Report either directly or through a contract with another party. If such a request has been made by a Consumer, Client will send a copy of the Investigative Consumer Report to the Consumer within three (3) business days of the date that the Investigative Consumer Report is provided to Client.
- 2. Client will provide a check-off box on the disclosure or a separate consent form so that the Consumer may request a copy of the Investigative Consumer Report, and will provide a copy of such report if so requested (directly or through a contract with another party). Client will send a copy of the Investigative Consumer Report to the Consumer within three (3) business days of the date that the Investigative Consumer Report is provided to Client.
 - 3. In the event Client takes an adverse action under circumstances in which a Report regarding the Consumer was obtained, Client shall so advise the Consumer, supply the name and address of the CRA, and provide the Consumer a written notice of rights under California law.

D. Special Circumstances and Limitations for Employers Who Perform International Background Checks

Where Report subjects reside outside of the United States, ESR warrants that information obtained and used in the preparation of Reports is obtained legally from authorized sources in accordance with prevailing data protection and data transfer laws, and that ESR will provide the subject and/or any authorized information source with all notice, disclosure, or consent documents that are legally required in the subject's country of residence in connection with obtaining the information, not employment law in general.

Where Client orders Reports on subjects that are not United States residents that will be employed in a facility outside of the United States, ESR is not responsible for any international Client obligations related to obtaining and using Reports for employment purposes including but not limited to where Client sought or obtained a Report related to a person who was not a legally permissible subject of the Report; or where a decision by Client not to hire, or other employment decision based on a Report, was unlawful or failed to follow legally required processes including any required notice, disclosure, or consent related to the employment decision.

E. Additional Requirements for Motor Vehicle Records (MVRs) and Driving Records

Client hereby certifies that Motor Vehicle Records and/or Driving Records (MVRs) shall only be ordered in compliance with the Driver Privacy Protection Act ("DPPA" at 18 U.S.C. § 2721 et seq.) and any applicable laws. Client further

certifies that no MVRs shall be ordered without first obtaining the written consent of the Consumer to obtain "driving records," evidence of which shall be transmitted to ESR in the form of the Consumer's signed release authorization form. Client also certifies that it will use this information only in the normal course of business to obtain lawful information relating to the holder of a commercial driver's license or to verify information provided by an applicant or employee. Client shall not transmit any data contained in the resulting MVR via the public internet, electronic mail, or any other unsecured means.

F. Client acknowledges and agrees to the following provisions regarding the preparation and use of Reports:

1. ESR does not render any opinions as to whether a person should be employed. Client is the sole decision-maker concerning fitness and eligibility for employment.
2. ESR retrieves records based on identifying information provided by the Client and/or the Consumer and does not independently verify the identifying information submitted to ESR is actually true and correct. In other words, ESR is not in the business of "verifying the Consumer's true identity."
3. Although ESR takes steps to ensure all of its procedures are in compliance with federal state laws, rules and regulations, and although ESR will from time to time consult with Client on industry best practices, ESR does not offer or provide legal advice to its Clients and does not function as legal counsel. Client understands that it is fully responsible for all aspects of its own legal compliance and that it has not ultimately relied on ESR for any legal or compliance advice.
4. Client acknowledges that information divulged by the Consumer to ESR may not result in specific inquiries being undertaken absent Client's preexisting instructions on how to proceed in these cases. In addition, even where ESR acts upon such instructions and specific inquiries are made, the results may not be reportable due to legal restrictions on reporting adverse information.
5. Reports provided by ESR to Client are considered confidential by law. Upon receipt, Client shall treat all Reports, and any other documentation received from ESR, in strict confidence and shall not reveal or make such information accessible in any manner, whatsoever, to any third-party except as otherwise permitted by law or with the Consumer's written consent. Such information shall be maintained in a confidential manner to which access is restricted. Only those employees of Client with a legitimate need to view and evaluate the Report shall have access to it. Client shall supply to ESR the name and phone number of a contact person or persons with whom ESR may discuss the contents of Reports furnished to Client. Client shall dispose of Reports and any other documents containing personally identifiable information received from ESR in accordance with the FTC Rule on disposal. <https://www.ftc.gov/p-r-advocs/business-center/guidance/using-consumer-report-information-rules-tells-how>
6. Client acknowledges that ESR is legally required to identify and vet its End-Users before Reports are procured and that any of the status changes found in this paragraph will require ESR to re-identify and re-vet the changed entity. Therefore, Client shall immediately notify ESR in any of the following events: change in ownership of Client of over 50%, a merger, or a change in name or change in the nature of Client's business that in any way affects Client's rights to request Reports.

G. ESR Access Security Requirements.

ESR recognizes its obligation to support and implement policies that protect the confidential nature of the information in our database and assure respect for Consumers' rights to privacy. Only companies who are approved members of our service and have a permissible purpose for obtaining Reports are permitted access to the ESR system and its underlying information.

It is a requirement that all ESR clients take precautions to secure any system or device used to access ESR's Reports from unauthorized access. To that end, the following requirements have been established for the protection of everyone, including Client and Consumers:

1. ESR usernames and passwords must be protected in such a way that this sensitive information is known only to key personnel. Under no circumstances should unauthorized persons have knowledge of ESR usernames and passwords. The information should not be posted in any manner within Client's facility.
2. It is Client's responsibility to protect usernames and passwords to the ESR website or online system, and Client shall take reasonable measures to prevent the unauthorized use or breach of data, sharing or display of any ESR

passwords, and will notify ESR immediately if unauthorized use is discovered, or if an employee is no longer authorized to utilize an ESR supplied password.

3. ESR usernames and passwords are not to be released by telephone to an unknown caller, even if the caller claims to be an ESR employee. ESR will never call any client and ask for its password.
4. If applicable, any system access software Client may use, whether developed by Client or purchased from a third-party vendor, must have ESR usernames and passwords hidden or embedded so that the password is known only to the person to whom it was issued and authorized supervisory personnel. Each user of Client's system access software must then be assigned unique login passwords.
5. Client will maintain a commercially adequate firewall and anti-virus protection at all times.
6. Any terminal devices or computers used to obtain Reports from ESR should be placed in a secure location within your facility where they cannot be viewed by unauthorized persons. Access to the devices should be restricted from unauthorized persons using customary information security standards.
7. Each person requesting Reports must log in only under their own username and password, so ESR knows who requested each report.
8. Any devices/systems used to obtain Reports should be turned off and locked after regular business hours, when unattended by your key personnel.
9. Hardcopy Reports are to be secured within Client's facility and protected against release or disclosure to unauthorized persons.
10. Client will dispose of Reports in hardcopy or electronic form in a manner rendering information inaccessible, unreadable, and unrecoverable per current regulations of the FTC. The following methods of destruction are permitted: 1) burning, pulverizing, or shredding, 2) destroying or erasing or overwriting electronic files so they cannot be read or restored, and/or 3) after conducting due diligence, hiring a document destruction company. Further information about the requirements for proper disposal of Reports and related information is available online at www.ftc.gov
11. Client certifies that it shall implement and maintain a comprehensive information security program written in one or more readily accessible parts and that contains administrative, technical, and physical safeguards that are appropriate to Client's size and complexity, the nature and scope of its activities, and the sensitivity of the information provided to the Client by ESR, and that such safeguards shall be reasonably designed to (i) ensure the security and confidentiality of the information and Services provided by ESR, (ii) protect against any anticipated threats or hazards to the security or integrity of such information, and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any consumer.

H. Client certifies that each time it orders a Report, it is reaffirming the above Certifications and Acknowledgements.

7. **Disclaimer of Warranty and Limited Liability.**

- A. ESR has in place reasonable procedures to ensure the maximum possible accuracy of the information reported and also procedures designed to respond promptly to claims of incorrect or inaccurate information under applicable law. Nonetheless, Client acknowledges that information is obtained from and managed by fallible sources, and where ESR is neither the maker nor the keeper of the information provided or reported it cannot ensure the accuracy or the completeness of the content. As such, ESR cannot be a guarantor that the information provided from these sources is accurate or current.
- B. Client understands that ESR obtains the information in its Reports from various third-party sources "AS IS" and, therefore, is providing the information to Client "AS IS." **ESR MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM THE COURSE OF DEALING OR A COURSE OF PERFORMANCE WITH RESPECT TO ANY INFORMATION AND/OR REPORTS OR THAT THE REPORTS WILL MEET CLIENT'S NEEDS OR WILL BE PROVIDED ON AN UNINTERRUPTED BASIS; ESR EXPRESSLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES.**

- C. Except in cases of willful or wanton misconduct, intentional acts, or reckless conduct by ESR, Client releases ESR and its affiliates, officers, agents, employees, contractors, information providers and credit agencies from any liability and claims including negligence, losses, injury or any damage whatsoever arising out of any Report or service, or related in any way to any Consumer or hiring decision stemming from Client's use of Reports. **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, SERVICES RENDERED HEREUNDER OR ITS TERMINATION, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH HARM, INJURY, LOSS OR DAMAGE.**
- D. ESR does not guarantee Client's compliance with all applicable laws in its use of reported information and does not provide legal or other compliance-related services upon which Client may rely in connection with its furnishing of reports. Client understands that any documents, forms, information, conversations, or communication with ESR's representatives regarding searches, verifications, or other services offered by ESR are not to be considered a legal opinion regarding such use. Client agrees that:

- (1) it will consult with its own legal or other counsel regarding the use of Reports and information contained therein, including, but not limited to, the legality of using or relying on reported information and to review any forms as well as the content of prescribed notices, adverse or pre-adverse action letters and any attachments to this Agreement for compliance with all applicable laws and regulations and (2) the provision of such notices, pre-adverse or adverse action letters and the contents thereof is the sole responsibility of Client, not ESR. Client acknowledges and agrees that it has no obligation to use, and is solely responsible for independently vetting the contents of, any sample forms that ESR has provided to Client in connection with this Agreement.

ESR will -- at Client's request -- populate either or both of the applicant facing online Disclosure and Authorization sections with Client-supplied language. Client acknowledges and agrees that it is solely responsible for independently vetting the contents of, any Client-supplied language provided to ESR.

8. Beneficiaries.

The Parties agree that the terms, obligations, and conditions set forth in this Agreement are for the exclusive benefit of the Parties hereto, and their respective agents, employees, officers, directors and shareholders, and their respective assignees and other successors in interest and no term, obligation or condition shall be construed to confer a benefit on any third-party.

9. Assignment.

Client may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of ESR; provided, however, that Client may assign its rights or delegate its duties without the prior written consent of ESR if such assignment or delegation is to: (i) an affiliate of Client; (ii) a successor of Client by consolidation, merger or operation of law; or (iii) a purchaser of all or substantially all of the assigning or delegating Client's assets. Any purported assignment or delegation in violation of this Section 9 is void.

10. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of California without regard to conflict of law provisions.

11. Disputes.

All disputes in any manner relating to this Agreement ("Claim") shall be addressed first through mediation, and second submitted to final and binding arbitration, to be held in Marin County, California, before a single arbitrator. However, this mediation and arbitration requirement shall not apply if Client or ESR is first sued in court by a third-party and seeks to hold the other party liable in the context of such third-party suit.

12. Severability.

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then that portion shall be considered to be removed from this Agreement, and it shall not affect the enforceability of the remainder of this Agreement.

13. Modification, Amendment or Waiver

A. No provision of this Agreement will be deemed waived, amended or modified by either Party, unless such waiver, amendment or modification is made in writing and signed by authorized representatives of both Parties,

B. PROVIDED, HOWEVER, THAT ESR, IN ITS SOLE DISCRETION, MAY MODIFY OR AMEND ANY TERM IN THIS AGREEMENT IF NECESSARY, TO COMPLY WITH AN ADDITIONS TO, CHANGES IN, OR APPLICATION OF APPLICABLE LAWS, RULES OR REGULATIONS AT THE FEDERAL, STATE, OR LOCAL LEVELS. IN THE EVENT ESR MODIFIES OR AMENDS ANY TERM IN THIS AGREEMENT TO COMPLY WITH SUCH CHANGES IN APPLICABLE LAWS, RULES, AND REGULATIONS, ESR WILL NOTIFY CLIENT OF THE MODIFICATION OR AMENDMENT BY PROVIDING A NOTICE AS PROVIDED FOR UNDER SECTION 15 OF THE AGREEMENT, AND SUCH MODIFICATION SHALL BE IMMEDIATELY EFFECTIVE AT THE TIME THAT SUCH NOTICE IS PROVIDED.

No waiver of a right under this Agreement by either Party shall constitute a subsequent waiver of such right or of any other rights under this Agreement.

14. Execution in Counterparts.

This Agreement may be executed in counterparts which may be exchanged by facsimile or other electronic means, each of which shall be deemed an original, but all of which together shall constitute the same Agreement.

15. Notices.

Except for changes to the terms and conditions of this Agreement provided for in Section 13.B., any notice required or permitted to be given hereunder shall be in writing and shall be (a) by a recognized express courier service with guaranteed third-day delivery, properly addressed to the intended recipient at its address as set forth herein; by email to the notification address provided herein; or (b) by facsimile to be effective as of the date transmitted, provided notice in writing is also given by a recognized express courier with guaranteed third -day delivery; or (c) by certified mail, properly addressed to the intended recipient at its address as set forth herein. Where changes are made to the terms and conditions of this Agreement as provided for in Section 13.B., notice shall be made by (1.) email, facsimile or regular mail, and (2.) a simultaneous posting of notice of the change to Client's ESR system dashboard that includes the modified or amended terms. Upon the posting of such notice to Client's ESR system dashboard, Client agrees and acknowledges that its continued use of its ESR system will be deemed Client's acceptance of, and agreement to adhere to, the applicable change. Either Party may, from time to time, change its notice address by giving the other Party written notice of the change in accordance with this paragraph.

If to ESR:

Employment Screening Resources (ESR) Attention:

Contracts Dept.

7110 Redwood Blvd., Suite C

Novato, California 94949

Email: contracts@esrcheck.com

Telephone: 888-999-4474; Facsimile: 800-399-5423

If to CLIENT: (THE FOLLOWING INFORMATION MUST BE PROVIDED)

Name of entity:	County of El Dorado, California
Attention of:	Tameka Usher, Director of Human Resources
Address:	330 Fair Lane, Placerville, California 95667
Facsimile: (optional)	
Email notification:	
Account ID	

16. Contract Administrator

The County Officer or employee with responsibility for administering this Agreement is Tameka Usher, Human Resources Director, or successor.

17. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter, and it supersedes any prior agreements and/or representations, whether oral or written.

18. Authority to Enter into Agreement

Each Party represents and warrants that: (i) it has the full power and authority to enter into this Agreement and to carry out the transactions contemplated by it, and has taken all action necessary to authorize the execution, delivery, and performance of this Agreement; (ii) it has read and understood this Agreement and agrees to be bound by it; and (iii) it has direct knowledge of all facts certified therein.

19. No Waiver

A delay or omission by either ESR or Client to exercise its rights upon any event of noncompliance or default by the other Party shall not impair any such right or be construed to be a waiver thereof. A waiver by either ESR or Client of any of the duties, conditions, or agreements of the other in one instance shall not be construed to be a waiver of any succeeding breach thereof or of any other duty, condition, or agreement herein. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to any Party at law or in equity.

20. No Construction Against the Drafter

ESR and Client agree that this Agreement is the result of careful negotiations between sophisticated parties and, thus, any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement, shall not apply to the terms and conditions of this Agreement.

21. Attorney's Fees

Except as otherwise set forth herein, ESR and Client shall each be responsible for its own attorney's fees in connection with any dispute arising out of this Agreement.

22. Capacity of the Parties

ESR and Client are independent contractors under this Agreement, and nothing herein shall create any agency, partnership, joint venture, or franchise relationship between ESR and Client.

ACCEPTED BY:

County of El Dorado, California

ACCEPTED BY:

EMPLOYMENT SCREENING RESOURCES


AUTHORIZED SIGNATURE


AUTHORIZED SIGNATURE

Laura Schwartz
PRINTED NAME

Brad Lawdin
PRINTED NAME

Deputy Chief Administrative Officer
TITLE

PRESIDENT
TITLE

4-7-2020
DATED

3/11/2020
DATED

Exhibit 1 – Updated Package

Contract Pricing

The following services will be provided to Client at the prices listed below and will not be increased without thirty (30) days prior written notice.

THIS AGREEMENT HAS NO CONTRACT PRICING. CLIENT PAYS CURRENT PRICES AT THE TIME OF ORDER.

1. Prices are for domestic services only unless otherwise specified.
2. For criminal and/or civil record searches each name queried incurs a separate charge.
3. Contract Pricing does not include Third Party Fees. See Pricing and Billing Section 4.A.
4. In countries with multiple courts, the price quoted is for a search undertaken at the central court.
5. ESR SmartSelect® Pricing Exceptions: Only applies to those clients who have elected to use the ESR SmartSelect technology. Those packages connected to ESR SmartSelect will incur an additional charge for each service added to the package based on Client's custom ruleset . For example, Client has a Basic Package priced at \$50. If according to client rules, ESR SmartSelect® technology replaces a county jurisdiction with a statewide search priced at \$10.00, the total cost would be \$50 + \$10 = \$60. Services added via ESR SmartSelect® are always at an additional cost.

Note:

Prices do not include court and other pass-through fees. See section on Third Party Fees.

Best Practices Package

Services	Package Price
SSN Trace / Address History Locator	\$0.00
County Criminal Records History – 7 Year Scope Price includes <u>unlimited</u> counties in all U.S. locations based on a 7 year address history.	\$20.95
ESR Criminal Insight (national) Includes U.S. criminal and state sex offender records, OFAC, national and international watch lists. Includes validation of any county hits supported by identifiers at the source jurisdiction for the name performed.	\$5.00
Federal District Criminal Records History – 7 Year Scope Price includes <u>unlimited</u> US districts based on a 7 year address history.	\$8.00
Education Verification – Level 1 ESR will make four attempts to obtain verification over the course of four days at varying times. Price is per degree.	\$10.00
Employment Verification – Level 1 ESR will make four attempts to obtain verification over the course of four days at varying times. Price is per employer.	\$10.00
Total Package Price:	\$53.95

Note:

Prices do not include court and other pass-through fees. See Section on Third Party Fees.

Option 2: Basic Package	
Services	Package Price
Automated / Paperless Adverse Action Notices	\$0.00
SSN Trace / Address History Locator	\$0.00
County Criminal Records History – 7 Year Scope Price includes <u>unlimited</u> counties in all U.S. locations based on a 7 year address history	\$20.95
ESR Criminal Insight (national) Includes U.S. Criminal and state sex offender records, OFAC, national and international watch lists. Includes validation of any county hits supported by identifiers at the source jurisdiction for the name performed.	\$5.00
Total Package Price:	\$25.95

By ESR

Name:

Title:

Date:

By El Dorado County

Name:

Title:

Date:

Exhibit 2

Additional Permissible Purposes

In addition to Employment Purpose(s) set forth in Section 6.B.1., the following legally permissible purposes are authorized for procurement of Reports under the agreement.

Permissible Purpose(s)

None

Exhibit 3

Vermont Fair Credit Reporting Contract Certification

The undersigned, El Dorado County ("Subscriber"), acknowledges that it subscribes to receive various information services from TALX Corporation, a provider of Equifax Verification Solutions ("EVS") in accordance with the Vermont Fair Credit Reporting Statute, 9 V.S.A. § 2480e (1999), as amended (the "VFCRA") and the Federal Fair Credit Reporting Act, 15, U.S.C. 1681 et. Seq., as amended (the "FCRA") and its other state law counterparts. In connection with Subscriber's continued use of EVS information services in relation to Vermont consumers, Subscriber hereby certifies as follows:

Vermont Certification. Subscriber certifies that it will comply with applicable provisions under Vermont law. In particular, Subscriber certifies that it will order EVS Employment Information relating to Vermont residents, that are credit reports as defined by the VFCRA, only after Subscriber has received prior consumer consent in accordance with VFCRA § 2480e and applicable Vermont Rules. Subscriber further certifies that the attached copy of § 2480e of the Vermont Fair Credit Reporting Statute was received from EVS.

Subscriber: El Dorado County
Signed By: *ms Laura Schwartz*
Printed Name: Laura Schwartz
Title: Purchasing Agent
Date: 11-17-2020

Please also include the following information:
Compliance Officer or Person Responsible for Credit Reporting Compliance

Printed Name: _____
Title: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
E-Mail Address: _____
Phone: _____ Fax: _____