

**EXHIBIT 1: STRIKETHROUGH VERSION OF ATTACHMENT A**



**AGREEMENT# MA-057-13011481**

**FOR**

**PROVISION OF  
POLYGRAPH EXAMINATION SERVICES  
FOR ADULT SEX OFFENDERS - POST CONVICTION**

**BETWEEN**

**COUNTY OF ORANGE**

**AND**

**CYNTHIA M. TIPTON  
DBA C.M. TIPTON POLYGRAPH AND ASSOCIATES**

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**AGREEMENT BETWEEN THE COUNTY OF ORANGE  
AND  
CYNTHIA M. TIPTON DBA C.M. TIPTON POLYGRAPH AND ASSOCIATES  
FOR THE PROVISION OF  
POLYGRAPH EXAMINATION SERVICES  
FOR ADULT SEX OFFENDERS - POST CONVICTION**

THIS AGREEMENT, (hereinafter referred to as "CONTRACT"), entered into this \_\_\_\_ day of \_\_\_\_\_, ~~2012~~ 2013, the date enumerated for the purpose of reference only, is by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Cynthia M. Tipton DBA C.M. Tipton Polygraph and Associates, hereinafter referred to as "CONTRACTOR," which may be referred to individually as "Party" or collectively as "Parties". The County of Orange Chief Probation Officer, hereinafter referred to as "ADMINISTRATOR," shall administer this CONTRACT.

**RECITALS**

**WHEREAS**, on May 25, 2010, as a result of an Invitation for Bid (IFB) process, the Orange County Board of Supervisors approved an agreement with C.M. Tipton Polygraph and Associates for Polygraph Examination Services for Adult Sex Offenders - Post Conviction, effective June 1, 2010 through May 31, 2011, renewable for four additional one-year periods; and

**WHEREAS**, on March 22, 2011, the Orange County Board of Supervisors approved the first renewal of an agreement with CONTRACTOR, under the same terms, conditions and scope of work, effective June 1, 2011 through May 31, 2012, renewable for three additional one-year periods; and

**WHEREAS**, on March 1, 2012, the Orange County Board of Supervisors approved the second renewal of an agreement with CONTRACTOR, under the same terms, conditions and scope of work, effective June 1, 2012 through May 31, 2013, renewable for two additional one-year periods; and

**WHEREAS**, CONTRACTOR agrees to continue providing Polygraph Examination Services for Adult Sex Offenders - Post Conviction in accordance with the terms and conditions set forth herein, effective June 1, ~~2012~~ 2013 through May 31, ~~2013~~ 2014, renewable for ~~two~~ one additional one-year periods.

**NOW, THEREFORE**, the Parties mutually agree as follows:

**IV. ARTICLES – TERMS AND CONDITIONS**

**GENERAL TERMS AND CONDITIONS**

- A. Governing Law and Venue:** This CONTRACT has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. Entire CONTRACT:** This CONTRACT, when accepted by the CONTRACTOR either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by

COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental CONTRACTS by any COUNTY employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY'S Purchasing Agent or his designee, hereinafter "PURCHASING AGENT."

- C. Amendments:** No alternation or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. Delivery:** Time of delivery is of the essence in this CONTRACT. COUNTY reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind COUNTY to accept future shipments, nor deprive it the right to return goods already accepted, at CONTRACTOR'S expense. Over-shipments and under-shipments of goods shall be only as agreed to in writing by the COUNTY. Delivery shall not be deemed to be complete until goods, or services, have been actually received and accepted in writing by COUNTY.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by the COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. Warranty:** CONTRACTOR expressly warrants that the goods/services covered by this CONTRACT are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon CONTRACTOR'S part to indemnify, defend and hold COUNTY and its indemnitees as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by COUNTY by reason of the failure of the goods/services conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this CONTRACT, CONTRACTOR shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. CONTRACTOR warrants that any software as modified through the services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. CONTRACTOR agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend, and hold COUNTY and COUNTY INDEMNITEES (as defined in paragraph "HH") harmless from any and all such claims and responsible for payment of costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by CONTRACTOR without the express written consent of COUNTY. Any attempt by CONTRACTOR to assign or sub-contract the performance or any portion thereof this CONTRACT without the express

written consent of the COUNTY shall be invalid and shall constitute a breach of this CONTRACT. In the event of such a breach, this CONTRACT may be terminated forthwith.

In the event that ADMINISTRATOR should consent to subcontracting, each and all of the provisions for this CONTRACT and any amendment thereto shall extend to and be binding upon and inure to the benefit of the successors or administrators of the respective Parties. Whenever the CONTRACTOR is authorized to subcontract, the terms of this CONTRACT shall prevail over those of any such subcontract.

In the event the CONTRACTOR is allowed to subcontract, the COUNTY shall look to the CONTRACTOR for the results of its sub-tier. The CONTRACTOR agrees to be responsible for all the subcontractor's acts and omissions to the same extent as if the subcontractors were employees of the CONTRACTOR. No subcontracts shall alter in any way any legal responsibility of the CONTRACTOR to the COUNTY.

In the event that ADMINISTRATOR should consent to subcontracting, the CONTRACTOR shall include in all subcontracts the following provision: "This contract is a subcontract under the terms of a primary CONTRACT with the County of Orange. All representations and warranties shall inure to the benefit of the County of Orange."

- J. Non-Discrimination:** In the performance of this CONTRACT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of CONTRACT, or any misrepresentation or fraud on the part of the CONTRACTOR. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.
- L. Consent to Breach Not Waiver:** No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Remedies Not Exclusive:** The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either Party to any other remedies provided by law.
- N. Independent CONTRACTOR:** CONTRACTOR shall be considered an independent CONTRACTOR and neither CONTRACTOR, its employees nor anyone working under CONTRACTOR shall be considered an agent or an employee of COUNTY. Neither CONTRACTOR, its employees nor anyone working under CONTRACTOR, shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.
- O. Performance:** CONTRACTOR shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to the COUNTY'S satisfaction. CONTRACTOR shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the CONTRACTOR under this CONTRACT. CONTRACTOR shall perform all work diligently, carefully, and in a good and workman-like manner;

shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall obtain and maintain all permits and licenses required by public authorities in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

**P. Insurance Provisions:** Prior to the provision of services under this CONTRACT, the CONTRACTOR agrees to purchase all required insurance at CONTRACTOR'S expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

**Qualified Insurer**

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the CONTRACTOR shall provide the minimum limits and coverage as set forth below:

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

Sexual Misconduct Liability

\$1,000,000 per occurrence

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the CONTRACTOR'S insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this CONTRACT shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If CONTRACTOR'S Professional Liability policy is a "claims made" policy, CONTRACTOR shall agree to maintain professional liability coverage for two years following completion of CONTRACT.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the CONTRACTOR fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify Contractor in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable certificates of insurance and endorsements with



COUNTY incorporating such changes within thirty days of receipt of such notice, this CONTRACT may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR'S liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. Bills and Liens:** CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements paragraph "HH" below, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, penalties and expenses related to arising from or related thereto.
- R. Changes:** CONTRACTOR shall make no changes in the work or perform any additional work without the COUNTY'S specific written approval.
- S. Change of Ownership:** CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR'S business prior to completion of this CONTRACT, the new owners will be required under terms of sale or other transfer to assume CONTRACTOR'S duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.
- T. Force Majeure:** CONTRACTOR shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to COUNTY within 36 hours of the start of the delay and CONTRACTOR avails himself of any available remedies.
- U. Confidentiality:** CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR'S staff, agents and employees.
- V. Compliance with Laws:** CONTRACTOR represents and warrants that the services to be provided under this CONTRACT shall fully comply, at CONTRACTOR'S expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. CONTRACTOR acknowledges that COUNTY is relying on CONTRACTOR to ensure compliance, and pursuant to the requirements of paragraph "HH" below, CONTRACTOR agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. Freight (F.O.B. Destination):** CONTRACTOR assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.
- X. Pricing:** The CONTRACT bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.

- Y. Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this CONTRACT and /or any claim of injury or damage.
- Z. Terms and Conditions:** CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.
- AA. Headings:** The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. Severability:** If any term, covenant, condition or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired and invalidated thereby.
- CC. Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. Attorney Fees:** In an action of proceeding to enforce and interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
- EE. Interpretation:** This CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other Party hereto or by a person representing them, or both. Accordingly, any rule of law (including California Division Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the Party that has drafted it, is not applicable and is waived. The provision of this CONTRACT shall be interpreted in a reasonable manner to effect the purpose of the Parties and this CONTRACT.
- FF. Authority:** The Parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. Employee Eligibility Verification:** The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.

**HH. Indemnification Provisions:** CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this CONTRACT. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

## **ADDITIONAL TERMS AND CONDITIONS**

### **1.0 Term**

Subject to the termination provisions set forth in Section IV, General Terms and Conditions, Paragraphs I, K and P, and Additional Terms and Conditions, Paragraphs 9.0, 10.0, 11.0, 17.0, 19.0, 21.0, 26.0 and 27.0, the term of this CONTRACT shall be for one (1) twelve-month (12-month) period, effective June 1, ~~2012~~ 2013 through May 31, ~~2013~~ 2014.

1.1 This CONTRACT may be renewed for up to ~~two (2)~~ one (1) additional one-year periods, subject to the COUNTY'S assessment of CONTRACTOR'S performance and market conditions warranting such renewal, and approval by the Orange County Board of Supervisors. The COUNTY shall not be required to give a reason if it elects not to renew this CONTRACT. Any renewal of this CONTRACT shall be on the same terms, conditions, and scope of work, upon mutual written agreement of the Parties.

### **2.0 Usage**

No guarantee is given by the COUNTY to the CONTRACTOR regarding usage of this CONTRACT. Usage figures, if provided, are approximate, based upon the last usage. The CONTRACTOR agrees to supply services and/or commodities requested, as needed by the COUNTY, at prices listed in the CONTRACT, regardless of quantity requested.

### **3.0 Project Manager**

The COUNTY shall appoint a Project Manager to act as liaison between the COUNTY and the CONTRACTOR during the term of this CONTRACT. The COUNTY'S Project Manager shall coordinate the activities of the COUNTY staff assigned to work with the CONTRACTOR.

The COUNTY'S Project Manager shall have the right to require the removal and replacement of the CONTRACTOR'S Project Manager and key personnel. The COUNTY'S Project Manager shall notify the CONTRACTOR in writing of such action. The CONTRACTOR shall accomplish the removal within fourteen (14) calendar days after written notice by the COUNTY'S Project Manager. The COUNTY'S Project Manager shall review and approve the appointment of the replacement for the CONTRACTOR'S Project Manager and key personnel. Said approval shall not be unreasonably withheld.

### **4.0 Compensation**

The CONTRACTOR agrees to accept the specified unit compensation as set forth in Section VI of this CONTRACT, entitled "COST/COMPENSATION FOR CONTRACT SERVICES" as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until

acceptance, for risks connected with the services, and for performance by the CONTRACTOR of all its duties and obligations hereunder.

**5.0 Fixed Price Agreement**

No price increases will be permitted under this CONTRACT. All price decreases will be automatically extended to the COUNTY. No retroactive price adjustments will be considered. The net dollar amount of profit will remain firm during the period of the CONTRACT. Adjustments increasing the CONTRACTOR's profit will not be allowed.

**6.0 Ownership of Documents**

The COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by the CONTRACTOR. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become, and remain, the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the CONTRACTOR without the express written consent of the COUNTY.

**7.0 Records**

CONTRACTOR shall keep an accurate record of time expended by CONTRACTOR and/or subcontractors working for CONTRACTOR in the performance of this CONTRACT. Such records shall be available for periodic inspection by the COUNTY at reasonable times.

**8.0 Conflict of Interest**

The CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the CONTRACTOR; the CONTRACTOR'S employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. The CONTRACTOR'S efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The CONTRACTOR shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.

**9.0. Contingency of Funds**

CONTRACTOR acknowledges that funding or portions of funding for this CONTRACT may be contingent upon State budget approval; receipt of funds from, and/or obligation of funds by the State of California to COUNTY; and inclusion of sufficient funding for the services hereunder in the budget approved by COUNTY'S Board of Supervisors for each fiscal year covered by this CONTRACT. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.

**10.0 Child Support Enforcement Requirements**

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of CONTRACT, but prior to official award of CONTRACT, the selected CONTRACTOR hereby agrees to furnish assigned Deputy Purchasing Agent with the required

CONTRACTOR data and certifications. Child Support Enforcement Certification Requirements shall include the following information:

- 10.1 In the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address;
- 10.2 In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
- 10.3 A certification that the CONTRACTOR has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- 10.4 A certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of CONTRACTOR to timely submit the data and/or certifications required above or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this CONTRACT. Failure to cure such breach within sixty (60) calendar days of notice from the COUNTY shall constitute grounds for termination of this CONTRACT.

#### **11.0 CONTRACTOR Bankruptcy/Insolvency**

If the CONTRACTOR should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the CONTRACTOR'S insolvency, the COUNTY may terminate this CONTRACT.

#### **12.0 Publication**

No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this CONTRACT, are to be released by CONTRACTOR and/or anyone acting under the supervision of CONTRACTOR to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY, except as necessary for the performance of the services of this CONTRACT. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the COUNTY unless otherwise agreed to by both Parties.

#### **13.0 Breach of CONTRACT**

The failure of the CONTRACTOR to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:

- 13.1 Afford the CONTRACTOR written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
- 13.2 Discontinue payment to the CONTRACTOR for and during the period in which the CONTRACTOR is in breach; and offset against any monies billed by the CONTRACTOR but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

#### **14.0 Remedies Not Exclusive**

The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either Party to any other remedies provided by law.

## **15.0 Interpretation of CONTRACT**

In the event of a conflict or question involving the provisions of any part of this CONTRACT, interpretation and clarification, as necessary, shall be determined by the COUNTY'S assigned deputy purchasing agent. If discrepancies in CONTRACT exist between the CONTRACTOR and the COUNTY'S assigned deputy purchasing agent in interpreting the provision(s), final interpretation and clarification shall be determined by the COUNTY'S Purchasing Agent or his/her designee.

## **16.0 Disputes**

16.1 The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this CONTRACT is not disposed of in a reasonable period of time by the CONTRACTOR'S Project Manager and the COUNTY'S Project Manager, such matter shall be brought to the attention of the COUNTY'S Purchasing Agent by way of the following process:

16.1.1 The CONTRACTOR shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this CONTRACT, unless the COUNTY, on its own initiative, has already rendered such a final decision.

16.1.2 The CONTRACTOR'S written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the CONTRACT, the CONTRACTOR shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the CONTRACT adjustment for which the CONTRACTOR believes the COUNTY is liable.

16.2 Pending the final resolution of any dispute arising under, related to, or involving this CONTRACT, the CONTRACTOR agrees to diligently proceed with the performance of this CONTRACT, including the delivery of goods and/or provision of services. The CONTRACTOR'S failure to diligently proceed shall be considered a material breach of this CONTRACT.

Any final decision of the COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by the COUNTY'S Purchasing Agent or his/her designee. If the COUNTY fails to render a decision within ninety (90) days after receipt of the CONTRACTOR'S demand, it shall be deemed a final decision adverse to the CONTRACTOR'S contentions. The COUNTY'S final decision shall be conclusive and binding regarding the dispute unless the CONTRACTOR commences action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the COUNTY'S final decision or one year following the accrual of the cause of action, whichever is later.

## **17.0 Termination (Convenience of COUNTY, Default, Orderly)**

In accordance with Paragraph K of Section IV of this CONTRACT, the COUNTY may terminate performance of work under this CONTRACT for its convenience in whole, or, from time to time, in part if the user agency/department determines that termination is in the COUNTY'S interest. The agency/department assigned Deputy Purchasing Agent shall terminate the CONTRACT by delivering to the CONTRACTOR a written notice of termination specifying the extent of the termination and the

effective date thereof. The Parties agree that, as to the terminated portion of the CONTRACT, the CONTRACT shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the CONTRACT shall not be void.

After receipt of a notice of termination and, except as directed by the assigned Deputy Purchasing Agent, the CONTRACTOR shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The CONTRACTOR shall:

- 17.1 Stop work as specified in the notice of termination;
- 17.2 Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the CONTRACT;
- 17.3 Terminate all orders and subcontracts to the extent they relate to the work terminated;
- 17.4 Settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts, the approval or ratification of which will be final for purposes of this clause;
- 17.5 As directed by the assigned Deputy Purchasing Agent, transfer title and deliver to the COUNTY (a) fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the CONTRACT had been completed, would be required to be furnished to the COUNTY;
- 17.6 Complete performance of the work not terminated; and
- 17.7 Take any action that may be necessary or as the COUNTY may direct for the protection and preservation of the property related to this CONTRACT that is in the possession of the CONTRACTOR and in which the COUNTY has or may acquire an interest and to mitigate any potential damages or requests for CONTRACT adjustment or termination settlement to the maximum practical extent.

At the completion of the CONTRACTOR'S termination efforts, the CONTRACTOR may submit to the assigned Deputy Purchasing Agent a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination, the CONTRACTOR shall submit a final termination settlement proposal to the COUNTY in a format acceptable to the COUNTY. The CONTRACTOR shall submit the proposal promptly, but no later than sixty (60) days from the effective date of the termination, unless extended in writing by the COUNTY upon written request of the CONTRACTOR within the ninety (90) day period following delivery of COUNTY'S notice of termination. However, if the agency/department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension.

The CONTRACTOR and the COUNTY may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total CONTRACT price as reduced by (a) the amount of payment previously made and (b) the CONTRACT price of work not terminated. The CONTRACT shall be amended and the CONTRACTOR paid the agreed amount.

If the CONTRACTOR and the COUNTY fail to agree on the whole amount to be paid because of the termination of work, the COUNTY shall pay the CONTRACTOR the amounts determined by the COUNTY as follows, but without duplication of any amounts agreed on as set forth above:

- 1.) The CONTRACT price for completed supplies or services accepted by the COUNTY (or sold or acquired) not previously paid for, adjusted for any savings of freight and other charges; and
- 2.) Except for normal spoiling and except to the extent that the COUNTY expressly assumes the risk of loss, the COUNTY shall exclude from the amounts payable to the CONTRACTOR the fair value, as determined by the agency/department, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the COUNTY.

The CONTRACTOR shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated CONTRACT or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The CONTRACTOR shall have the right to appeal, under the COUNTY'S protest procedure, any determination made by the COUNTY, except that if the CONTRACTOR failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the CONTRACTOR under this clause, there shall be deducted:

- 1.) All payment to the CONTRACTOR under the terminated portion of this CONTRACT;
- 2.) Any claim which the COUNTY has against the CONTRACTOR under this or any other CONTRACT; and
- 3.) The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the CONTRACTOR or sold under the provisions of this clause and not recovered by or credited to the COUNTY.

If the termination is partial, the CONTRACTOR may file a proposal with the agency/department for an equitable adjustment of the price(s) of the continued portion of the CONTRACT. The agency/department shall make any equitable adjustment agreed upon. Any proposal by the CONTRACTOR for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the agency/department.

The COUNTY may:

- 1.) Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the CONTRACTOR for their terminated portion of the CONTRACT, if the COUNTY believes that the total of these payments will not exceed the amount to which the CONTRACTOR will be entitled; and
- 2.) If the total payments exceed the amount finally determined to be due, the CONTRACTOR shall repay the excess to the COUNTY upon demand.

In determining the amount payable to the CONTRACTOR and notwithstanding any other provision, if it appears that the CONTRACTOR would have sustained a loss on the entire CONTRACT had it been completed, the COUNTY shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.



Unless otherwise provided in this CONTRACT or by statute, the CONTRACTOR shall maintain all records and documents relating to the terminated portion of this CONTRACT for three (3) years after final settlement. This includes all books and other evidence bearing on the CONTRACTOR'S costs and expenses under this CONTRACT. The CONTRACTOR shall make these records and documents available to the COUNTY, at the CONTRACTOR'S office, at all reasonable times, without any direct charge. If approved by the COUNTY, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

If CONTRACTOR is in default of any of its obligations under this CONTRACT and has not commenced cure within ten (10) days after receipt of a written notice of default from COUNTY and cured such default within the time specified in the notice, the COUNTY shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this CONTRACT by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this CONTRACT. Upon termination of the CONTRACT with CONTRACTOR, the COUNTY may begin negotiations with a third-party CONTRACTOR to provide goods and/or services as specified in this CONTRACT.

The right of either Party to terminate this CONTRACT hereunder shall not be affected in any way by its waiver of, or failure to, take action with respect to any previous default.

After receipt of a termination notice from the County of Orange, the CONTRACTOR shall submit to the COUNTY a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing is granted by the COUNTY upon written request of the CONTRACTOR. Upon termination, COUNTY agrees to pay the CONTRACTOR for all services performed prior to termination which meet the requirements of the CONTRACT, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the CONTRACT. Upon termination or other expiration of this CONTRACT, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the CONTRACT. In addition, each Party will assist the other Party in orderly termination of this CONTRACT and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

## **18.0 Errors and Omissions**

All reports, files and other documents prepared and submitted by CONTRACTOR shall be complete and shall be carefully checked by the professional(s) identified by CONTRACTOR as Project Manager and key personnel attached hereto, prior to submission to the COUNTY. CONTRACTOR agrees that COUNTY review is discretionary and CONTRACTOR shall not assume that the COUNTY will discover errors and/or omissions. If the COUNTY discovers any errors or omissions prior to approving CONTRACTOR'S reports, files and other written documents, the reports, files or documents will be returned to CONTRACTOR for correction. Should the COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by CONTRACTOR after COUNTY approval thereof, COUNTY approval of CONTRACTOR'S reports, files or documents shall not be used as a defense by CONTRACTOR in any action between the COUNTY and CONTRACTOR, and the reports, files or documents will be returned to CONTRACTOR for correction.

## **19.0 Conflict with Existing Law**

The CONTRACTOR and the COUNTY agree that if any provision of this CONTRACT is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the CONTRACT shall remain in full force and effect. Either Party having knowledge of such term or

provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the CONTRACT, the CONTRACT shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.

## **20.0 CONTRACTOR Work Hours and Safety Standards**

The CONTRACTOR shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and COUNTY safety regulations and laws.

## **21.0 CONTRACTOR Personnel – Drug-Free Workplace**

The CONTRACTOR hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The CONTRACTOR will:

- 21.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- 21.2 Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
  - 21.2.1 The dangers of drug abuse in the workplace;
  - 21.2.2 The organization’s policy of maintaining a drug-free workplace;
  - 21.2.3 Any available counseling, rehabilitation and employee assistance programs; and
  - 21.2.4 Penalties that may be imposed upon employee for drug abuse violations.
- 21.3 Provide as required by Government Code Section 8355(c) that every employee who works under this CONTRACT:
  - 21.3.1 Will receive a copy of the company’s drug-free policy statement; and
  - 21.3.2 Will agree to abide by the terms of the company’s statement as a condition of employment under this CONTRACT.
- 21.4 Failure to comply with these requirements may result in suspension of payments under the CONTRACT or termination of the CONTRACT or both, and the CONTRACTOR may be ineligible for award of any future COUNTY contracts if the COUNTY determines that any of the following has occurred:
  - 21.4.1 The CONTRACTOR has made false certification; or
  - 21.4.2 The CONTRACTOR violates the certification by failing to carry out the requirements as noted above.

## **22.0 Equal Employment Opportunity**

The CONTRACTOR shall comply with U.S. Executive Order 11426 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The CONTRACTOR shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

**23.0 Americans with Disabilities Act (ADA)**

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Section 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

**24.0 Notices**

Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

TO: COUNTY

TO: CONTRACTOR

Orange County Probation Department  
1535 E. Orangewood Ave P.O. Box 10260  
Santa Ana, CA 92805 92711-0260  
Attn: AFD/Contracts

C.M. Tipton Polygraph and Associates  
417 S. Associated Rd., Suite A-266  
Brea, CA 92821  
Attn: Cynthia M. Tipton

**25.0 CONTRACTOR Furnished Items**

CONTRACTOR shall furnish all personnel, desks, furniture, computer equipment, and any other furnishings necessary to perform all services required by this CONTRACT.

**26.0 Covenant Against Contingent Fees**

CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, COUNTY shall have the right to terminate this CONTRACT in accordance with the termination clause and, in its sole discretion, to deduct from the Agreement price or consideration, or other wise

recover the full amount of such commission, percentage, brokerage, or contingent fee from CONTRACTOR.

## **27.0 CONTRACTOR Bankruptcy/Insolvency**

If the CONTRACTOR should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the CONTRACTOR'S insolvency, the COUNTY may terminate this CONTRACT.

## **28.0 EDD Independent Contractor Reporting Requirement**

Effective January 1, 2001, the COUNTY is required to file federal Form 1099-Misc for services received from a "Service provider" to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "Service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the Service recipient for California purposes and who received compensation or executes a Contract for services performed for that Service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent Contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a Contract for services performed for that government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Payroll\\_Taxes/FAQ\\_-\\_California\\_Independent\\_Contractor\\_Reporting.htm](http://www.edd.ca.gov/Payroll_Taxes/FAQ_-_California_Independent_Contractor_Reporting.htm).

To comply with the reporting requirements, COUNTY procedures for contracting with independent contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of Contract
- Amount of Contract

## **V. SCOPE OF WORK**

The adult sex offender polygraph examination services to be provided by the CONTRACTOR shall be legally defensible throughout the examination preparation, analysis, result confirmation, storage, and written result reporting to the Probation Department. The CONTRACTOR shall coordinate its efforts with Probation Department staff, treatment providers, and the Courts. Treatment providers are not a party to this CONTRACT and are selected by the adult sex offenders that are referred to the CONTRACTOR by the Probation Department.

The CONTRACTOR shall be responsible for scheduling appointments for polygraph examinations with adult sex offenders referred by the Probation Department, conducting the appropriate polygraph examinations, and providing written reports to the assigned Deputy Probation Officer (DPO), the treatment provider selected by the

adult sex offenders, and the Probation Department Project Manager. When utilizing polygraph examinations with adult sex offenders, treatment providers and DPOs shall work in conjunction with the CONTRACTOR in developing protocols for pre-examination interviews, question formulation, reporting, and use of results. Trained polygraph examiners shall make specific decisions relative to instrumentation, interpretation of data, and question formulation.

## **1.0 Types of Polygraph Examinations to be Performed by CONTRACTOR**

The Probation Department anticipates having an estimated 750 to 800 polygraph examinations of the following types conducted annually based on current usage:

### **1.1 Sexual History Examination**

The sexual history examination is a thorough examination of an abuser's lifetime sexual history. This examination shall be included as part of a comprehensive psychosexual evaluation and completed within the first ninety (90) days of treatment.

### **1.2 Specific Issue Examination**

The specific issue examination is an examination regarding a specific behavior, allegation or event. This examination shall be implemented at the onset of, or during, the treatment process.

### **1.3 Maintenance/Monitoring Examination**

The maintenance/monitoring examination is a periodic examination of an abuser's compliance with treatment and/or probation restrictions. This examination serves to identify and deter high-risk behaviors. Maintenance/monitoring polygraph examinations shall be performed on those abusers that are determined to present a high risk, at intervals recommended by the "Containment Team" consisting of DPOs, treatment providers, and CONTRACTOR.

The maintenance/monitoring examinations further assist the treatment providers in tailoring more effective intervention strategies.

## **2.0 Administrative Requirements**

CONTRACTOR shall employ polygraph examiners who are certified in PCSOT, and that meet the requirements in Section 10.0 below.

CONTRACTOR shall provide administrative services which shall include, but not be limited to the following:

2.1 CONTRACTOR shall ensure examinee signs a standard waiver or release statement verifying that he/she was advised that the polygraph examination is a condition of his/her treatment. Copies of such waiver shall be distributed to the assigned DPO and treatment provider on a weekly basis.

2.2 CONTRACTOR shall provide and maintain waivers or release statement forms in both English and Spanish.

2.3 CONTRACTOR shall verify the identity of examinees by examining/comparing his/her picture ID with referral documents received from assigned DPOs. Referral documents include a copy of a Probation Department Field Book Sheet, which may contain a photo ID and an "Adult Initial Assessment" form.

2.4 If examiner is unable to verify the identity of examinee, examiner shall immediately contact the

assigned DPO or Probation Department Project Manager, via telephone.

- 2.5 CONTRACTOR shall contact the examinee within forty-eight (48) hours of notice from the DPO to schedule an appointment.
  - 2.5.1 An appointment will be scheduled for the examinee within two (2) weeks of referral.
  - 2.5.2 On occasion, when urgently needed, CONTRACTOR must be available to schedule and conduct a polygraph test within twenty-four (24) hours notice.
- 2.6 Examiner shall immediately notify the DPO, the Probation Department Project Manager and treatment provider of an examinee's failure to keep appointments, lack of cooperation, or obstructive behavior, upon its occurrence but no later than the next working day, and preferably the same working day. Notification to the DPO, the Probation Department Project Manager and treatment provider will be via telephone or e-mail.
- 2.7 Any CONTRACTOR costs associated with examinee's failure to keep appointments shall be resolved between CONTRACTOR and examinee, and shall not be part of COUNTY'S compensation to CONTRACTOR for contract services.
- 2.8 CONTRACTOR shall maintain all test results on file for a period of five (5) years from date of examination. All test results will be maintained in such a manner as to preserve admissibility as evidence in a court of law, and as may be required or requested by the Probation Department, to maintain security and confidentiality, and to provide accessibility to DPOs, the Probation Department Project Manager and treatment providers.

### **3.0 Pre-Test Specifications**

The minimum pre-test interview specifications shall include, but not be limited to the following:

- 3.1 Examinees shall be advised of the purpose of the examination;
- 3.2 Examinees shall be advised that the examination is a condition of their treatment;
- 3.3 Examinees shall be advised that the examination can be terminated upon request; however, such request will constitute failure of the examination and may result in violation of probation; and
- 3.4 Examiner shall elicit relevant biographical and background information from the examinee prior to administering the actual polygraph examination. For example, marital/family status, children, employment, current living situation, etc.

### **4.0 Polygraph Examination Recording Guidelines**

- 4.1 CONTRACTOR shall perform polygraph testing on referred adult sex offenders in the following manner:
  - 4.1.1 All polygraph examinations will be paper chart or digitally recorded for diagnostic and documentation purposes.
  - 4.1.2 CONTRACTOR shall use recording channels/components for polygraph examinations that have been prescribed by the American Polygraph Association (APA), requiring the following:

- 4.1.2.1 For respiration patterns made by pneumograph component(s), at least one respiration component will record the thoracic (upper chest) respiration and/or abdominal (lower stomach) respiration pattern.
- 4.1.2.2 To reflect relative changes in the conductivity/resistance of very small amounts of current by the epidermal tissue, one of the chart tracings will record the Skin Conductance Response (SCR), also commonly referred to as Galvanic Skin Response (GSR).
- 4.1.2.3 To record changes in the pulse rate, pulse amplitude, and changes in the relative blood pressure, a cardiograph tracing will be utilized.
- 4.2 CONTRACTOR shall ensure that easily readable trace recordings are obtained to effectively evaluate the polygraph tracings collected during any polygraph examination. Tracings that are either too large or too small, or that have extraneous responses to outside stimuli, shall not be accepted. Chart tracings consistently less than one-half inch in amplitude in the pneumograph and/or cardiograph tracings, without sufficient documented explanation of physiological cause, shall be considered insufficient for analysis purposes.
- 4.3 CONTRACTOR shall videotape all polygraph examinations. The recording should include the entire examination from the beginning of the pretest interview to the completion of the post-test review. The recording should be maintained for a minimum of three (3) years.

## **5.0 Polygraph Instrument Calibration**

- 5.1 Standardized chart markings recognized and used within the polygraph profession, will be employed to annotate all calibration and examination charts.
- 5.2 CONTRACTOR shall calibrate each polygraph instrument in accordance with the following criteria to ensure the instrument is functioning properly:
  - 5.2.1 If the instrument remains stationary, all analog polygraph instruments will be calibrated at least once each week;
  - 5.2.2 If the instrument was moved subsequent to its last calibration procedure, each analog instrument will be calibrated prior to being used; and
  - 5.2.3 Digital polygraph instruments will be calibrated according to factory specifications and the manufacturer's recommendations.
- 5.3 The CONTRACTOR shall maintain true and accurate records of such calibration. The CONTRACTOR shall maintain the records of these calibrations for no less than five (5) years.

## **6.0 Frequency of Polygraph Examinations**

The following guidelines for polygraph examination frequency are established to maximize validity and reliability of examination rules:

- 6.1 In accordance with Section 5.7 of the PCSOT Model Policy, shown as Attachment C, each examiner shall not conduct more than four (4) separate examinations per year on the same client, nor more than five (5) examinations in a single day, nor more than three (3) sexual history disclosure examinations in a single day.

- 6.2 In accordance with Section 5.7.1 of the PCSOT Model Policy, examiners should not plan to conduct examinations of less than ninety (90) minutes in duration from the start of the pretest interview through the end of the post-test interview. Examiners should not conduct a complete polygraph examination in less than ninety (90) minutes absent exigent circumstances such as when an examinee is not suitable for testing, an examinee refuses to continue with the examination, or when the issue under investigation is resolved prior to collection of data.
- 6.3 For compensation purposes under Section VI of this CONTRACT, a repeat examination to resolve a previously failed examination, or where no clear opinion was formed as to the subject's truthfulness, will not be considered a separate examination.

## **7.0 Polygraph Testing Techniques and Procedures**

- 7.1 Polygraph examination techniques will be limited to those techniques that are recognized by the industry as standardized and validated examination procedures, using American Polygraph Association standards.
- 7.2 To be an approved examination format, the examination procedure will include appropriately designed relevant questions, appropriately designed control questions for diagnostic purposes, and appropriately designed irrelevant questions as applicable to that defined and standardized procedure.
- 7.3 A standardized examination technique or procedure is defined as:
  - 7.3.1 A technique or procedure which has achieved a published scientific database sufficient to support and demonstrate validity and reliability from the application and use of that specific polygraph technique;
  - 7.3.2 A technique or procedure that is evaluated according to the published methods for that specific procedure and provides for numerical scoring and quantification of the chart data;
  - 7.3.3 A technique or procedure that has not been modified without the support of published validity and reliability studies for that particular modification; and
  - 7.3.4 A technique or procedure that has been taught as part of the formal course work at a basic polygraph school accredited by the American Polygraph Association.
- 7.4 Recognized/approved procedures shall include:
  - 7.4.1 Standardized and published Zone Comparison Techniques (ZCT);
  - 7.4.2 Standardized and published Control Question Techniques (CQT); and
  - 7.4.3 Other standardized and published procedures that meet the guidelines and requirements described above as approved by the COUNTY.
- 7.5 CONTRACTOR shall utilize the techniques and procedures outlined herein to ensure maximum validity and reliability of diagnostic opinions and to ensure that opinions rendered are defensible in court.
- 7.6 The Stimulation/Acquaintance Test is used to demonstrate that the psychological set of the client and the client's reaction capabilities are established for diagnostic purposes. This test is a



recognized procedure utilized in conjunction with professional examination formats and shall be a part of the polygraph examination.

- 7.7 Due to the diverse response from various jurisdictions of the criminal justice system, CONTRACTOR shall be aware of the general implications and local judicial policies regarding newly reported crimes and self-incrimination.

## **8.0 Number of Relevant Questions**

- 8.1 All standardized and recognized published examination formats and procedures define the number of relevant questions that may be used. Those applications shall not be modified or altered by CONTRACTOR.
- 8.2 For the purposes of this CONTRACT, no more than four (4) relevant questions shall be asked during any given examination.

## **9.0 Relevant Question Construction**

- 9.1 The importance of psychological set, satiation, adrenaline exhaustion and other principles forming the foundation of the polygraph science must be maintained.
- 9.2 In order to design an effective polygraph examination and to adhere to standardized and recognized procedures, relevant questions shall be constructed under the following guidelines:
- 9.2.1 Mixing issues shall not be allowed as it can significantly reduce the ability to form valid and reliable opinions.
- 9.2.2 Questions shall:
- 9.2.2.1 Be as simple, direct and short as possible;
- 9.2.2.2 Not include legal terminology (i.e. sexual assault, homicide, incest, etc.) as this terminology allows for client rationalization and utilization of other defense mechanisms;
- 9.2.2.3 The meaning of each question shall be clear, not allow for multiple interpretations, and not be accusatory in nature;
- 9.2.2.4 Never presuppose knowledge of the history, disposition or status of the client's offense(s); current probation supervision arrangements or compliance with probation terms and conditions; and any other client characteristics or behaviors that could trigger pre-planned or unnatural responses to examination questions (i.e., free of assumption of guilt or deception);
- 9.2.2.5 Contain reference to only one element of the issue under investigation;
- 9.2.2.6 Use language easily understood by the client;
- 9.2.2.7 Be easily answerable by a "yes" or "no"; and
- 9.2.2.8 Avoid the use of any emotionally laden terminology (i.e. rape, molest, murder, etc.).

## **10.0 Standards for CONTRACTOR's Sex Offender Polygraph Examiners**

CONTRACTOR shall employ polygraph examiners who are certified by APA in PCSOT, and whose work and education are considered consistent with the requirements of the PCSOT Model Policy.

The following are COUNTY's minimum qualifications and requirements for each examiner during the entire term of this CONTRACT:

- 10.1 It is preferred that all examiners have a baccalaureate degree from an accredited four-year college or university, in a field that is, or may be, related to the social sciences or whose educational scope required skills that may be applied to the administration of clinical examinations; however, at a minimum, a high school diploma is required.
- 10.2 In accordance with Section 14.1 of the PCSOT Model Policy, each examiner shall have successfully completed a minimum of forty (40) hours of specialized PCSOT that adheres to the standards established by the APA.
- 10.3 In accordance with Section 3.11.3 of the APA By-Laws, which is attached hereto and incorporated herein by reference as Attachment D, each examiner will have passed a final written examination approved by the APA, or its designated representative, prior to receiving a diploma for PCSOT training. Each examiner shall possess such PCSOT certification at the time of bid submittal.
- 10.4 Each examiner shall have completed at least three-hundred (300) sex offender polygraph examinations which shall include a combination of Sexual History, Specific Issue, and Maintenance/Monitoring polygraphs. Examiners shall complete the form on pages 13 and 14 of this IFB entitled "Bidder's Declaration: Post-Conviction Sex Offender Testing Completed".
- 10.5 Each examiner shall complete thirty (30) hours, fifteen (15) of those hours pertaining to specialized sex offender polygraph training, of continuing education credit every two (2) years in order to maintain proficiency in the field of polygraph testing, and to remain current on any developments in the assessment, treatment, and monitoring of sex offenders. For those examiners who have been PCSOT-certified for more than two (2) years, provide evidence of completion of said continuing education.

**11.0 Standards for CONTRACTOR'S Polygraph Testing Facility**

CONTRACTOR shall provide a polygraph testing facility at its own cost. The Probation Department reserves the right to inspect CONTRACTOR'S testing facility to ensure compliance with the following minimum standards and with the provisions relating to quality assurance, in accordance with Section V.15.0 herein:

- 11.1 Be centrally located in Orange County with easy accessibility to public transportation;
- 11.2 Afford privacy and freedom from interruptions;
- 11.3 Be free from visual distractions and noise problems;
- 11.4 Have comfortable temperature and adequate ventilation;
- 11.5 Have an area sufficient for testing; and
- 11.6 Provide all equipment required to conduct polygraph exam testing, including, but not limited to, audio and video equipment, tape recorder(s), computer equipment, fax, utilities, and tapes, which shall be guaranteed to operate in accordance with acceptable industry standards.

CONTRACTOR shall videotape all polygraph examinations. The recording should include the entire examination from the beginning of the pretest interview to the completion of the post-test review. The recording should be maintained for a minimum of three (3) years.

## **12.0 Test Result Reporting**

- 12.1. The CONTRACTOR shall report all normal test results to the DPOs, Probation Department Project Manager and treatment provider in writing within five (5) to seven (7) calendar days of test administration. Test result reports will be emailed, faxed or delivered by an established courier service appointed and paid for by the CONTRACTOR and approved by the Probation Department Project Manager.
- 12.2. Test results indicating a new law violation, probation violation, or a high degree of deception, shall be reported immediately, within no less than four (4) hours of examination, via telephone or e-mail to the assigned DPO, the Probation Department Project Manager, and treatment provider.

## **13.0 Court Appearance and/or Testimony Service**

CONTRACTOR shall provide technical representatives for testimony at court trial occurrences upon request, and upon short notice, to present information to the court related to such topics as test preparation, testing methodology and chain of custody issues. Court appearances and/or testimony shall be provided by CONTRACTOR to COUNTY free of charge.

## **14.0 Chain of Custody**

The CONTRACTOR shall have a written procedure in place that will ensure a legally defensible written and performed chain of custody procedure effective from the point of polygraph examination through individual exam preparation, analysis, result confirmation, and result storage, to the point of written result reporting to the Probation Department and treatment provider. This procedure shall be submitted for Probation Department review and approval prior to the commencement of services.

## **15.0 Quality Assurance**

- 15.1 The CONTRACTOR shall permit periodic, unannounced visits by COUNTY personnel to the CONTRACTOR'S facility for the purpose of inspecting conditions, calibration records, test result storage and record keeping practices related to polygraph testing.
- 15.2 The CONTRACTOR shall participate in a proficiency-testing program by an accredited agency on a quarterly basis and submit results to the Probation Department. If the Probation Department finds a quality assurance problem, CONTRACTOR shall be required to provide written plans for corrective action.
- 15.3 The CONTRACTOR shall provide signed Individual Daily Case Log sheets for each examiner to Contract Administrator, to be submitted with CONTRACTOR'S monthly invoice. The Daily Case Log shall include, but not limited to, name of examiner, examiner's signature, date of exam, name of examinee, case number, examination type, examination start and end time.

## **16.0 Other CONTRACTOR Responsibilities**

**The CONTRACTOR shall:**

- 16.1 Employ, at a minimum, two examiners during the entire term of this CONTRACT in order to meet the volume of up to 800 exams expected annually, and to comply with Section V.6.0 herein

and any other PCSOT Model Policy regarding restrictions on the frequency of exams that may be conducted by any one examiner.

- 16.2 CONTRACTOR shall notify the Probation Department Project Manager in advance and in writing of any change in CONTRACTOR's staffing. Such change in CONTRACTOR's staffing shall be subject to approval by the OCPD, and determination of PCSOT compliance with the certification and continuing education requirements contained herein.
- 16.3 Employ examiners who shall be subject to compliance with the established ethics, standards, and practices of the APA, the American Association of Policy Polygraphists, the National Polygraph Association, the California Association of Polygraph Examiners, and the Association for the Treatment of Sex Offenders.
- 16.4 To the best of its ability and experience, at all times loyally and conscientiously perform all of the duties and obligations, either express or implied, required by the terms of this CONTRACT.
- 16.5 Provide general administrative support during COUNTY regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, to enable the proper implementation of services under this CONTRACT, including any necessary communication with Probation Department staff.
- 16.6 Provide all office space, furniture, utilities, supervision, labor (office support and examiner staff), materials, and equipment necessary to perform the work described herein.
- 16.7 Maintain all equipment required for performing services under this CONTRACT in good operating order.
- 16.8 Provide interpreter services for referred examinees in their applicable language, as needed.
- 16.9 Provide administrative services including oral and written reports to, and in consultation with, the Probation Department and treatment provider staff.
- 16.10 Ensure that all employees and principal(s) of CONTRACTOR, who may be assigned to provide services under this CONTRACT, undergo and pass a background investigation conducted by the Probation Department prior to such assignment.
- 16.11 Notify the Probation Department Project Manager immediately (within 24 hours) of any and all known changes in professional status, arrests, and criminal justice investigations pertaining to all staff assigned to this CONTRACT.
- 16.12 In the event CONTRACTOR is unable to provide the services as scheduled, CONTRACTOR is required to notify the Probation Department Project Manager immediately (within 24 hours) in writing, of the reason for the cancellation/delay, and to secure a qualified substitute provider, if appropriate, who is acceptable to the Probation Department Project Manager.
- 16.13 Maintain the absolute confidentiality of all information pertaining to Probation examinees, releasing no data to anyone without prior written authority of the Probation Department Project Manager.
- 16.14 Advise each employee, in writing, of the confidentiality requirements of the Probation Department, including the potential for criminal or civil penalties, should confidential information be released to non-authorized persons. For the purposes of this CONTRACT, all data and information about any individual participating in the program shall be considered confidential.

- 16.15 Notify the Probation Department Project Manager, as soon as practical, of any emergency situation related to the provision of services, the steps taken to ensure the health and safety of the examinees or the affected public, and take such additional actions as may be deemed necessary by the Probation Department Project Manager in order to resolve the emergency.
- 16.16 Make available to COUNTY, or its authorized representatives, all books, documents, papers, and records of CONTRACTOR which are deemed pertinent to this CONTRACT for purposes of making an audit, evaluation, excerpts, or transcripts.
- 16.17 Attend "Containment Team" meetings (approximately two (2) hours per session at no charge to the COUNTY) on a monthly basis as requested by the Probation Department Project Manager. Meetings will be attended by the Probation Department Project Manager, DPOs, treatment providers, and the CONTRACTOR.

**17.0 COUNTY'S Responsibilities**

**The COUNTY, acting through the Probation Department, shall:**

- 17.1 Provide a Project Manager as appointed by the Probation Department's Director of Special Supervision, who shall be designated as the "Probation Department Project Manager".
- 17.2 Have final authority and responsibility for decisions affecting participants' selection for services under this program and for retention in the program.
- 17.3 Conduct background investigations on CONTRACTOR and CONTRACTOR'S employees, which may include, but not be limited to, fingerprinting, completion of a personal history statement, prior employment history, education verification, motor vehicle record checks, personal/professional/employment record checks, and local/state/federal criminal record checks.
- 17.4 Assume no financial responsibility for the operations of the CONTRACTOR except as provided in Section VI, "Cost/Compensation for Contract Services" herein.
- 17.5 Assume no responsibility for CONTRACTOR-provided office space, utilities, administrative services, or for the safety or suitability of CONTRACTOR'S facility.

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## VI. COST/COMPENSATION FOR CONTRACT SERVICES

This is a fixed-price agreement between the COUNTY and CONTRACTOR for polygraph examination services for adult sex offenders who are under the supervision of the Probation Department.

In accordance with the provisions of the General Terms and Conditions, Additional Terms and Conditions, and Scope of Work herein, the CONTRACTOR shall only be compensated as set forth below. The COUNTY shall have no obligation to pay any sum in excess of the set, fixed ceiling unit prices.

### 1.0 Payment/Invoicing Instructions:

Invoices are to be sent to:

Orange County Probation Department  
P.O. Box 10260  
Santa Ana, CA 92711-0260,  
Attention: Division Director, Special Supervision

The responsibility for providing an acceptable invoice to the COUNTY for payment rests with the CONTRACTOR. Incomplete or incorrect invoices are not acceptable and will be returned to the CONTRACTOR for correction. The CONTRACTOR will provide a two-part invoice for services rendered. Each invoice will have a number and will include the following information:

1. CONTRACTOR'S name and address
2. CONTRACTOR'S remittance address
3. COUNTY CONTRACT number
4. CONTRACTOR'S Federal I. D. number
5. Name of staff performing services
6. Classification of staff performing services
7. Date, number and type of polygraph examinations conducted
8. Unit cost for each type of polygraph examination conducted
9. Total amount of invoice

### 2.0 Compensation/Cost

The CONTRACTOR shall be compensated based on the unit cost as set forth below, multiplied by the actual number and type of polygraph examinations performed and completed. Such compensation shall be CONTRACTOR'S full remuneration for performing all services and furnishing all staffing and materials required, and as more fully described in Section IV.4 ("Compensation") of this CONTRACT. The maximum amount to be paid under this CONTRACT shall not exceed \$170,000.

2.1	Sexual History Examination:	\$275.00 per test
2.2	Specific Issue Examination:	\$200.00 per test
2.3	Maintenance/Monitoring Examination:	\$200.00 per test
2.4	Interpreter Services Hourly Rate:	\$40.00 per hour
2.5	Monthly Meeting:	No charge
2.6	Court Appearance:	No charge
2.7	Consulting Services:	No charge

**IN WITNESS WHEREOF**, the Parties hereto have caused this CONTRACT to be executed in the County of Orange, State of California.

**\* CYNTHIA M. TIPTON DBA C.M. TIPTON POLYGRAPH AND ASSOCIATES**

By: \_\_\_\_\_  
Name  
Title

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name  
Title

Dated: \_\_\_\_\_

**COUNTY OF ORANGE**

By: \_\_\_\_\_  
Contracts and Purchasing Manager

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA**

By: \_\_\_\_\_  
Senior Deputy County Counsel

Dated: \_\_\_\_\_

\* If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.

## ATTACHMENT A

### County of Orange Child Support Enforcement Certification Requirements

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the successful CONTRACTOR must furnish to the agency/department deputy purchasing agent:

- A. In the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity; A certification that the CONTRACTOR has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- C. A certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

**The certifications will be stated as follows:**

*"I certify that \_\_\_\_\_ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT \_\_\_\_\_ with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.*

**It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.**

**Failure of the CONTRACTOR to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.**



**COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT  
CERTIFICATION REQUIREMENTS**

A. In the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address:

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_  
\_\_\_\_\_

B. In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity:

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_  
\_\_\_\_\_

(Additional sheets may be used if necessary)

C. A certification that the CONTRACTOR has fully complied with all applicable federal and state reporting requirements regarding its employees; and

- D. A certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.  
*"I certify that \_\_\_\_\_ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT \_\_\_\_\_ with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.*

---

Authorized Signature

Name

Title

**ATTACHMENT B**

**EDD Independent Contractor Reporting Requirements**

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a “contractor” to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “contractor” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the Service recipient for California purposes and who received compensation or executes a contract for services performed for that Service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as “an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a contract for services performed for that government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Payroll\\_Taxes/FAQ -  
\\_California\\_Independent\\_Contractor\\_Reporting.htm](http://www.edd.ca.gov/Payroll_Taxes/FAQ_-_California_Independent_Contractor_Reporting.htm).

To comply with the reporting requirements, COUNTY procedures for contracting with independent contractor mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of contract
- Amount of contract

_____		
First Name	Middle Initial	Last Name
SSN _____		
Contract Number _____		Dollar value of Contract _____
Start Date _____	Expiration Date _____	

**ATTACHMENT C**

**American Polygraph Association (May 26, 2009)**

# Model Policy for Post-conviction Sex Offender Testing

May 26, 2009

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1. [Model Policy](#). This Model Policy should be considered a description of recommended best-practices for polygraph professionals who engage in post-conviction sex offender testing (PCSOT) activities. This Model Policy is intended to provide a basis for local programs developing or updating their PCSOT regulations, and does not attempt to address all aspects of PCSOT programming or policy implementation at the local level.
  - 1.1. [Compliance and local authority](#). Examiners should be responsible for knowing and adhering to all legal and regulatory requirements of their local jurisdictions. In case of any conflict between the Model Policy and any local practice requirements, the local regulations should prevail. Examiners who work in jurisdictions and programs without local regulations should refer to this Model Policy as a guide.
    - 1.1.1. [Compliance with this Model Policy](#). Although this Model Policy should be considered non-binding and not enforceable by the APA or any local jurisdiction, examiners whose work varies from the recommendations of this Model Policy should be prepared to provide justification for doing so.
    - 1.1.2. [Compliance with professional standards](#). Unless prohibited by law, regulation or agency policy, all members of the American Polygraph Association (APA) shall comply with the APA Standards of Practice. Additionally, all examiners should be responsible for knowing and adhering to standards of ASTM International.
  - 1.2. [Periodic review and modification](#). This Model Policy should be reviewed and amended periodically in order to remain consistent with emerging information from new empirical studies.
2. [Evidence-based approach](#). To the extent possible, this Model Policy relies on knowledge and principles derived from existing research pertaining to polygraph testing, risk assessment, risk management, and sex offender treatment. Examiners should be cautious of field practices based solely on a system of values or beliefs. Some elements of this Model Policy are intended to increase professionalism and reliability among field examiners through the implementation of standardized field practice recommendations in the absence of data from empirical studies.
  - 2.1. [Face-valid principles](#). When an evidence-based approach is not possible, the Model Policy emphasizes face-valid principles pertaining to polygraph testing, field investigation principles and related fields of science. These include psychology, physiology, mental health treatment, forensic threat assessment, signal detection, decision theory, and inferential statistics.
  - 2.2. [Evolving evidence](#). In the event that evidence from future empirical studies reveals the practice recommendations of this Model Policy are inconsistent with empirically based evidence, the evidence-based information should prevail.
3. [PCSOT program goals](#). The primary goal of all PCSOT activities should be to increase public safety by adding incremental validity to risk-assessment, risk-management, and treatment-planning decisions made by professionals who provide supervision and sex-offense specific treatment to convicted sex offenders in community settings.
  - 3.1. [Containment approach](#). Examiners who engage in PCSOT activities should emphasize a multi-disciplinary or multi-systemic containment approach to the supervision and treatment of sex offenders. This approach involves a collaborative effort among professionals from varying disciplines and systems including treatment providers, supervising officers, polygraph examiners, medical and psychiatric professionals, child-protection/family-services workers, and other professionals.
  - 3.2. [Operational objectives](#). Any or all of the following operational objectives should be considered a reasonable and sufficient basis to engage in PCSOT activities:

- A. [Increased disclosure of problem behavior](#) that will be of interest to professionals who work with convicted sex offenders;
  - B. [Deterrence of problem behavior](#) among convicted sex offenders by increasing the likelihood that engagement in such behaviors will be brought to the attention of supervision and treatment professionals; and
  - C. [Detection of involvement in or abstinence from problem behavior](#) that would alert supervision and treatment professionals to any escalation in the level of threat to the community or potential victims of sexual abuse.
4. [Decision-support](#). Psychophysiological Detection of Deception (PDD) (polygraph) testing of convicted sex offenders should be regarded as a decision-support tool intended to assist professionals in making important decisions regarding risk and safety. Polygraph testing should not replace the need for other forms of behavioral monitoring or traditional forms of supervision and field investigation.
- 4.1. [Professional judgment](#). Polygraph testing and polygraph test results should not supplant or replace the need for professional expertise and judgment. Polygraph test results should not be used as the sole basis for revocation of any individual from court supervision or termination of sex offense specific treatment.
  - 4.2. [Successive hurdles approach](#). Examiners should use a successive hurdles approach to testing to maximize both the informational efficiency and sensitivity of multi-issue (mixed-issue) screening polygraphs and the diagnostic efficiency and specificity of event-specific single-issue exams. The term screening, as it applies to PCSOT, is based on the fact that some exams are conducted for exploratory purposes in the absence of known allegations or known incidents. Follow-up examinations should employ a single-issue technique whenever increased validity is required to resolve an issue. Successive-hurdles may include following an unresolved mixed-issue polygraph test with additional attempts to resolve the issue(s), including posttest discussion, additional field or background investigation, or additional polygraph testing. Follow-up examinations may be completed on the same date as the initial exam, or they may be scheduled for a later date.
    - 4.2.1. [Multi-issue \(mixed-issue\) exams](#). Examiners should use multi-issue polygraph techniques only in the absence of a known incident, known allegation, or a particular reason to suspect wrongful behavior. Exploratory exams may at times be narrowed to a single target issue of concern. However, most exploratory exams involve multiple target issues in which it is conceivable that a person could lie about involvement in one or more issues while being truthful or uninvolved in the other issues of concern.
    - 4.2.2. [Single-issue exams](#). Examiners should use single issue polygraph techniques for follow-up exams conducted in response to a previously unresolved exploratory exam. Event specific diagnostic/investigative exams, conducted in response to known allegations or known incidents for which there is reason to suspect the involvement of the examinee, may be formulated as multi-facet tests with questions pertaining to several behavioral roles or aspects of a single known allegation.
    - 4.2.3. [Multi-facet tests](#). Event specific diagnostic/investigative exams, conducted in response to known allegations or known incidents for which there is reason to suspect the involvement of the examinee, may be formulated as multi-facet tests with questions pertaining to several behavioral roles or aspects of a single known allegation.
  - 4.3. [Confidentiality and mandatory reporting](#). Except as provided by law, information from the polygraph examination and test results (outcomes) should be kept confidential and provided only to those involved in the containment approach to the supervision and treatment of sex offenders.



- 4.3.1. [Examiners are not mandated reporters.](#) Examiners should not engage in mandatory child-abuse reporting activities except where required by law (i.e., whenever polygraph examiners are named or listed in statutes describing mandatory reporting requirements).
    - 4.3.2. [Other professionals and mandatory reporting.](#) Examiners should remain aware that other professional members of the multi-systemic containment team will likely be subject to mandatory child-abuse reporting or other mandatory disclosure requirements.
5. [General principles.](#) Examiners who engage in PCSOT activities should adhere to all of the generally accepted principles that pertain to polygraph testing, including, but not limited to the following:
  - 5.1. [Rights and dignity of all persons.](#) Examiners should respect the rights and dignity of all persons to whom they administer polygraph examinations.
  - 5.2. [Polygraph examiner as part of the supervision and treatment team.](#) Examiners should consider themselves to be an integral part of the multi-disciplinary supervision and treatment team. Contact with supervision and treatment team should be frequent, though contact with an examinee will be periodic (i.e., the examiner will not maintain routine contact with the examinee between examinations).
  - 5.3. [Non-interference with ongoing investigations.](#) Examiners who engage in PCSOT activities should not interfere with or circumvent the efforts of any open or ongoing investigation of a new criminal allegation.
  - 5.4. [Known and unknown allegations.](#) Examiners who engage in PCSOT activities should investigate and attempt to resolve, if possible, known allegations and known incidents before attempting to investigate or resolve behavioral concerns that do not involve a known allegation or known incident.
  - 5.5. [Confirmatory testing.](#) PCSOT activities should be limited to the Psychophysiological Detection of Deception (PDD). Confirmatory testing approaches involving attempts to verify truthfulness of partial or complete statements made subsequent to the issue of concern should not be utilized in PCOST programs. Truthfulness should only be inferred when it is determined that the examinee has not attempted to engage in deception regarding the investigation targets.
  - 5.6. [Ethical and professional roles.](#) Examiners who possess multiple types of credentials (i.e., examiners who are also therapists, probation officers, or police officers) should be limited to one professional role with each examinee and should not conduct polygraph examinations on any individual whom they directly or indirectly treat or supervise.
  - 5.7. [Number and length of examinations.](#) Examiners should not conduct more than five examinations in a single day, they and should not conduct more than three sexual history disclosure examinations in a single day.
    - 5.7.1. [Length of examination.](#) Examiners should not plan to conduct examinations of less than 90 minutes in duration from the start of the pretest interview through the end of the post-test interview. Examiners should not conduct a complete polygraph examination in less than 90 minutes absent exigent circumstances such as when an examinee is not suitable for testing, an examinee refuses to continue with the examination, or when the issue under investigation is resolved prior to collection of data.
    - 5.7.2. [Number of exams per examinee.](#) Examiners should not conduct more than four separate examinations per year on the same examinee except where unavoidable or required by law or local regulation. This does not include re-testing due to a lack of resolution during an initial or earlier examination.

- 5.8. [Examination techniques](#). Examiners should use a recognized comparison question technique for which there is evidence of validity and reliability, including estimates of sensitivity and specificity, published in the *Polygraph* journal or a peer-reviewed scientific journal. There should not be more than four (4) relevant questions per test series.
6. [Operational definitions](#). Examiners should ensure that every behavior of concern to the multi-disciplinary supervision and treatment team will be anchored by an operational definition that describes the behaviors of concern. Operational definitions should be common among all referring professionals, and should use language that is free of vague jargon. It should be easily understood by the examinee. Examples of operational definition include the following:
- A. [Physical sexual contact](#): refers to rubbing or touching another person's sexual organs (i.e., breasts, buttocks, genitalia) whether over or under clothing, if for the purpose of sexual arousal, sexual gratification, sexual stimulation or sexual "curiosity." This includes having, allowing, or causing another person to rub or touch one's own sexual organs, whether over or under clothing, for purposes of sexual arousal, sexual gratification, sexual "curiosity," or sexual stimulation. This does not include parental contact with children's private areas in the form of diapering, wiping, bathing, dressing, or changing, unless done for the purpose of sexual arousal or stimulation.
  - B. [Sexual contact](#): includes the above definition, and also includes non-contact sexual behaviors such as exhibitionism, voyeurism, public masturbation, child-pornography, or other non-contact sexual behaviors.
  - C. [Force \(real or implied violence\)](#): includes any form of real or implied violence; physical restraint to prevent a victim from leaving, escaping or moving away from the assault; or threats of harm against a victim's family members or pets.
  - D. [Coercion \(non-violent\)](#): includes any non-violent means of gaining the compliance of a victim who expresses his or her reluctance to comply (e.g., bribery, threats to end a relationship, etc.).
  - E. [Grooming \(child grooming\)](#): includes any means of building trust or exploiting a relationship such that a victim tolerates an offense with a perception of complicity.
  - F. [Manipulation](#): includes any means of trickery to gain the compliance of a victim who is unaware of the sexual motives of the offender (e.g., wrestling, horseplay, tickling or other trickery).
  - G. [Relative \(family member\)](#): includes aunts, uncles, nieces, nephews, children, grandchildren, parents, grandparents, brothers, sisters, cousins, or any person related by blood, marriage, or adoption, or where a relationship has a legal relationship or the appearance of a family relationship (e.g., a dating or live-in relationship with the person(s) natural, step or adoptive parent).
  - H. [Minor, child, youth, underage person](#): refers to anyone who has not yet reached the age of majority or adulthood (usually 18). Adolescence, though it refers to older/teenage children, is included in this broad category.
  - I. [Incidental contact](#): refers to any brief or unanticipated contact, typically concerning minors, including any greeting (e.g., waving, or smiling), interaction (i.e., verbal), or incidental physical contact (e.g., shaking hands, hugging, patting the head, bumping into, exchanging money or merchandise, etc.).
  - J. [Physical contact](#): includes shaking hands, hugging, patting the back or head, bumping into, exchanging money or merchandise along with other forms of physical contact including sitting on one's lap, holding, wrestling or athletic activities, etc.

- K. [Alone or unsupervised with minors](#): refers to any contact or activity with minors in a location where one cannot be seen or heard, and where others are not aware of one's presence or activity with a minor, and in which the activity cannot be monitored or observed.
  - L. [Pornography](#): refers to the explicit depiction of sexual subject matter for the sole purpose of sexually arousing the viewer, sometimes referred to as X-rated or XXX material, though there is no formal rating system that includes these designations. Minors cannot purchase pornographic materials in most, if not all, jurisdictions.
  - M. [Sexually stimulating materials/erotica](#): refers to the use of sexually arousing imagery, especially for masturbation purposes.
  - N. [Sexual fantasy/erotic fantasy](#): refers to a deliberate thought or patterns of thoughts, often in the form of mental imagery, with the goal of creating or enhancing sexual arousal or sexual feelings. Sexual fantasy can be a developed or spontaneous story, or a quick mental flash of sexual imagery, and may be voluntary or intrusive/involuntary.
  - O. [Masturbation](#): refers to sexual stimulation of one's genitals, often, though not always, to the point of orgasm. Stimulation can be over or under clothing, either manually or through other types of bodily contact, through the use of objects or devices, or through a combination of these methods. Although masturbation with a partner is not uncommon, masturbation for the purpose of this Model Policy refers to self-masturbation.
7. [Examination questions](#). Examiners should have the final authority and responsibility for the determination of test questions and question language, which must be reviewed with the examinee. Examiners should advise the supervision and treatment professionals to refrain from informing the examinee of the exact test questions and investigations targets, or coaching the examinee in the mechanics, principles or operations of the polygraph test. Technical questions about polygraph should be directed to the examiner at the time of the examination. Examiners should advise community supervision team members and treatment professionals that it is appropriate to inform the examinee of the purpose or type of each examination.
- 7.1. [Relevant questions](#). Relevant questions should pertain to a single frame of reference, which refers to the type of PCSOT examination. (See section 8.)
- 7.1.1 [Content](#). Relevant questions should address behaviorally descriptive topical areas that have a common time of reference, which refers to the time-period under investigation. Content should bear operational relevance to actuarial or phenomenological risk assessment, risk management and treatment planning methods. Examiners should exercise caution to ensure they do not violate any rights of examinees regarding answering questions about criminal behaviours.
- 7.1.2 [Structure](#). Relevant question construction should be...
- A. [answerable by a "NO"](#) without unnecessary mental exercise or uncertainty; and
  - B. [behaviorally descriptive](#) of the examinee's direct or possible involvement in an issue of concern and, whenever possible, not indirectly addressing that issue by targeting a subsequent denial of it;
  - C. [simple](#), direct and easily understood by the examinee;
  - D. [time-delimited](#) (date of incident or time of reference);
  - E. [free of assumptions of guilt](#) or deception;
  - F. [free of idiosyncratic jargon](#), legal terms; and
  - G. [free of references to mental state](#) or motivational terminology except to the extent that memory or sexual motivation may be the subject of an examination following an admission of behavior.

- 7.2. [Comparison questions.](#) Comparison questions should meet all common requirements for the type comparison question being applied.
- 7.2.1. [Content.](#) Comparison questions should address broad categorical concerns regarding honesty and integrity and should not be likely to elicit a greater physiological response than deception to any relevant question in the same test.
- 7.2.2. [Structure.](#) Comparison questions should be structurally separated from relevant questions by either frame of reference or time of reference. Nothing in this Model Policy should be construed as favoring exclusive or non-exclusive comparison questions.
8. [Types of PCSOT examinations.](#) Examiners should utilize five basic types of PCSOT examinations: instant offense exams, prior-allegation exams, sexual history disclosure exams, maintenance exams, and sex offense monitoring exams. These basic types of examinations provide both a frame of reference and a time of reference for each examination. Examiners should not mix investigation targets from different frames of reference (examination types) or times of reference within the structure of a single examination.
- 8.1. [Instant offense exams.](#) Examiners should use two basic types of examinations to investigate the circumstances and details of the instant offense for which the examinee was convicted: the Instant Offense exam and the Instant Offense Investigative exam. These exams should be conducted prior to victim clarification or reunification in order to reduce offender denial and mitigate the possibility of further traumatizing a victim. These circumstances might result when an offender has attempted to conceal the most invasive or abusive aspects of an admitted offense or whenever the multi-disciplinary community supervision team determines that accountability for the circumstances and details of the instant offense represent a substantial barrier to an examinee's engagement and progress in sex offense specific treatment.
- 8.1.1. [Instant offense exam.](#) Examiners should conduct the Instant offense (IO) exam as an event-specific polygraph for examinees who deny any or all important aspects of the allegations pertaining to their present sex offense crime(s) of conviction.
- 8.1.1.1. [Instant offense – examination targets.](#) Examiners, along with the other members of the community supervision team, should select the relevant investigation targets from the circumstances of the allegation that the examinee denies.
- 8.1.1.2. [Instant offense – testing approach.](#) Examiners should conduct this exam either as a single-issue or multi-facet event-specific exam. However, nothing in this Model Policy should be construed as to prohibit the completion of the Instant Offense exam in a series of single-issue exams when such an approach will lend to more accurate or satisfactory resolution of the investigation targets.
- 8.1.2. [Instant offense investigative exam.](#) Examiners should use the Instant Offense Investigative (IOI) exam to test the limits of an examinee's admitted behavior and to search for other behaviors or offenses not included in the allegations made by the victim of the instant offense. This examination should be completed prior to victim clarification or reunification.
- 8.1.2.1. [Instant offense investigative – examination targets.](#) Examiners, along with the other members of the community supervision team, should select relevant targets from their concerns regarding additional or unreported offense behaviors in the context of the instant offense. At the discretion of the examiner and the other professional members of the community supervision team, examination targets may include the following:

- A. [Number of offense incidents against the victim](#): when the admitted number of offense incidents is very small.
  - B. [Invasive offense behaviors](#): when the examinee denies intrusive or hands-on offense behaviors against the victim of the instant offense.
  - C. [Degree of physical force or violence](#): when the examinee denies use of violence, physical restraint, threats of harm, or physical force against the victim of the instant offense.
  - D. [Other sexual contact behaviors](#): when not included in the allegations made by the victim of the instant offense, at the discretion of the community supervision team.
- 8.1.2.2. [Instant offense investigative – testing approach](#). Examiners should conduct this exam as a multi-facet or multi-issue (mixed-issue) exploratory exam. However, nothing in this Model Policy should be construed as to prohibit the completion of the Instant Offense Investigative exam in a series of single-issue exams (i.e., in the absence of an allegation involving the behavioral examination targets) when that approach will lend to more accurate or satisfactory resolution of the investigation targets.
- 8.2. [Prior allegation exam](#). Examiners should use the Prior Allegation Exam (PAE) to investigate and resolve all prior alleged sex offenses (i.e., allegations made prior to the current conviction) before attempting to investigate and resolve an examinee’s history of unknown sexual offenses. This exam should be considered identical in design and structure to the Instant Offense Exam, except that the details of the allegation stem not from the present crime of conviction but from an allegation prior to the conviction resulting in the current supervision and treatment, regardless of whether or not the examinee was charged with the allegation. Examiners should exercise caution to ensure they do not violate any rights of an examinee regarding answering questions about criminal behaviors.
- 8.3. [Sexual history exams I and II](#). Examiners should use two basic types of Sexual History examinations to investigate the examinee's history of involvement in unknown or unreported offenses and other sexual compulsivity, sexual pre-occupation, or sexual deviancy behaviors. Information and results from these examinations should be provided to the professional members of the supervision and treatment team to add incremental validity to decisions pertaining to risk assessment, risk management and treatment planning.
- 8.3.1. [Sex history document](#). Examiners should work with the community supervision team to require that examinees complete a written sexual history document prior to the conduct of a sexual history polygraph. The sexual history document should provide operational definitions that unambiguously describe each sexual behavior of concern. The purpose of the document is to help examinees review and organize their sexual behavior histories. It aids in familiarizing examinees with the conceptual vocabulary necessary to accurately discuss sexual behaviors; it can assist examinees in recognizing sexual behavior that was abusive, unlawful, unhealthy, and identify behaviors that are considered within normal limits.
- 8.3.1.1. [Prior review of the sex history document](#). Examiners should request that each examinee review the sexual history document with his or her community supervision team and treatment group prior to the examination date. The examiner does not need to review this document prior to the examination date, though the content should be reviewed thoroughly during the structured or semi-structured pretest interview.

- 8.3.1.2. [Examiner authority](#). It should be the examiner's discretion to administer an alternative form of PCSOT examination if an examinee has not completed and reviewed the sexual history document prior to the examination date.
- 8.3.2. [Sexual history exam I – unreported victims](#). Examiners should conduct the Sex History Exam I (SHE-I) to thoroughly investigate the examinee's lifetime history of sexually victimizing others, including behaviors related to victim selection, victim access, victim impact, and sexual offenses against unreported persons. These target issues provide a summary of the most tangible signal issues that provide interpretable information about victim-age, victim-profile, victim-selection, victim-control/access, and victim-silencing behaviors. SHE-I also provides information about the offender's capacity for grooming, sneakiness, violence, relationship-building and relationship-exploiting in addition to the capacity to offend in the absence of a relationship. Gathering information in these areas is additive to forensic risk assessment and risk management efforts. Ruling out matters in these SHE-I areas is also helpful as it allows the justification of a lower assumption of risk. What a person does or does not do (is capable of doing or not doing) to others is illustrated by past behavior. The best predictor of future behavior is past behavior.
- 8.3.2.1. [Sexual history exam I – examination targets](#). Examiners, along with the other members of the community supervision team, should select investigation targets that provide operational relevance to actuarial and phenomenological risk/threat assessment protocols pertaining to recidivism, victim selection, and risk management decisions. Examples include the following:
- A. [Sexual contact with underage persons](#), (refer to local statutes) including sexual contact with persons younger than age 15 while the examinee was legally adult, or sexual contact with persons 4 or more years younger than the examinee if the examinee is a juvenile.
  - B. [Sexual contact with relatives](#), whether by blood, marriage, or adoption, or where a relationship has a legal relationship or the appearance of a family relationship (e.g., a dating or live-in relationship with the person(s) natural, step or adoptive parent).
  - C. [Use of violence to engage in sexual contact](#), including physical force/physical-restraint and threats of harm or violence toward a victim or victim's family members or pets through the use of a weapon or any verbal/non-verbal means.
  - D. [Sexual offenses against persons who appeared to be unconscious, asleep, or incapacitated](#), including touching or peeping against persons who were asleep, severely intoxicated, impaired due to drugs, or who were mentally/physically helpless for other reasons.
- 8.3.2.2. [Sexual history exam I – time of reference](#). The time of reference for the Sex History Exam I may be restricted to the period of time prior to the current court supervision that mandated the present treatment when there are concerns about 1) potential differences in consequences for pre-treatment or pre-conviction acts and those acts occurring post-conviction or after treatment onset, or 2) examinee rights pertaining to the behavioral targets after conviction while under the supervision of a court or in a treatment program.
- 8.3.2.3. [Sexual history exam I - testing approach](#). Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Sex History I



Exam in a series of more narrowly focused exams when that approach will lead to more accurate or satisfactory resolution of the investigation targets.

8.3.3. [General sexual history exam II – sexual deviancy, compulsivity, and preoccupation.](#) Examiners should conduct this General Sex History (GSH) examination to thoroughly investigate the examinee's lifetime history of sexual deviancy, preoccupation, and compulsivity behaviors not including those behaviors described in the Sex History Exam I. This examination may be most important with examinees who substantially deny involvement in sexual deviancy, compulsivity and preoccupation behaviors. SHE-II issues are additive to risk-assessment/risk-management/treatment-planning, but in a different way than SHE-I issues. Actuarial risk researchers tell us that sexual deviancy/compulsivity/pre-occupation is also correlated with increased rates of recidivism and increased rates of failure under supervision and failure in sex-offense-specific treatment. SHE-II adds incremental validity to risk-assessment/risk-management/treatment-planning to the extent that it gathers information about involvement in sexual behaviors that are more often compulsive (large-numbers) such as peeping/voyeurism, exhibitionism, theft of undergarments, public masturbation, and child-pornography. The forensic challenge will be to differentiate no-involvement from minimal-involvement from high-involvement. Polygraph examiners should be cautious about attempting to test the limits of admitted sexual compulsivity or sexual preoccupation behaviors with the hope of somehow knowing *everything* or *every incident* when an examinee admits to substantial involvement in the behavioral targets of concern. When an offender admits to being highly involved in these activities, there may be little to be gained from testing the limits of involvement: there is likely more, but it might not be remembered. It is not additive because the answer is already known: he or she is highly involved. Testing these behaviors is additive when an offender denies involvement or admits to only minimal involvement because confirming that will help justify an assumption of absence of compulsivity/deviancy/pre-occupation, which is correlated with an assumed lower level of risk.

8.3.3.1. [General sexual history exam II - examination targets.](#) Investigation targets for the General Sexual History exam II should bear operational relevance to actuarial and phenomenological risk/threat assessment protocols pertaining to sexual deviancy, sexual compulsivity, and sexual preoccupation behaviors. Investigation targets may include any of the following:

- A. [Voyeurism/sexual peeping activities](#), including all attempts to look into someone's home, bedroom or bathroom without the person's knowledge or permission, in an attempt to view someone naked, undressing/dressing, or engaging in sexual acts. Voyeurism activities include attempts involving the use or creation of a hole or opening to view others for sexual arousal, including all attempts to use any optical devices (e.g., cameras, mirrors, binoculars, or telescope) to view others for sexual purposes.
- B. [Exhibitionism/indecent exposure](#), including all attempts to intentionally or to have appear to have “accidentally” exposed one's bare private parts to unsuspecting persons in public places. Exhibitionism includes wearing loose or baggy clothing that allows one's sexual organs to become exposed to others, and may also include mooning, streaking or flashing behaviors, and public urination while in view of others.

- C. [Theft or use of underwear/undergarments for sexual arousal or masturbation](#), including taking or keeping undergarments (including other personal property or “trophy”) from relatives, friends, sexual partners, or strangers for masturbation or sexual arousal. It also includes all incidents of wearing or trying on another person's underwear or undergarments without that person’s knowledge or permission, in addition to all incidents in which underwear, undergarments, or personal property was returned after use for masturbation or sexual arousal.
- D. [Frottage/sexual rubbing](#), including all attempts to sexually rub or touch others without their knowledge or permission, by standing or walking too close in public locations (e.g., work, stores, school, or other crowded places), or during any form of play, horseplay, wrestling/athletic activities, or other similar activities.

8.3.3.2. [General sexual history exam II – additional investigation targets](#). Other possible investigation targets for the Sex History Exam include but are not limited to the following:

- A. [Child pornography](#), including any history of ever viewing, possessing, producing, using, or distributing pornographic images of minors (i.e., infants, children or teenagers under age 18) who were engaging sexual acts.
- B. [Sexual contact with animals](#), refers to all sexual behaviors (including attempts) involving pets, (those belonging to the examinee or others) domesticated (farm/ranch) animals, or wild animals, whether living or deceased, and whether whole or dismembered. This target may include animal cruelty behaviors.
- C. [Prostitution activities](#), including ever paying anyone or being paid for sexual contact (including erotic massage activities) with either money, property, or any special favors. It also includes ever employing or managing others who were paid to engage in sexual activities.
- D. [Coerced sexual contacts](#), including bribing, tricking, manipulating, lying, misuse of authority, badgering/pestering, wearing-down boundaries, or not accepting “no” for an answer.
- E. [Stalking/following behaviors](#), including all incidents of following someone to his or her home, workplace or vehicle, or following others around a store, aisle, parking lot, workplace/school, campus, or community for sexual or aggressive/angry reasons. It also includes all other efforts to monitor or observe another person's behavior without that person’s knowledge or permission,
- F. [Use of a computer to solicit minors for sexual activities](#), including ever using a computer, the Internet, or any electronic communication device in attempt to solicit an underage person for sexual contact. It also includes ever engaging in on-line sex-chat or cyber-sex activities via IRC, Instant Messaging, Web Chat, email or any other electronic method.



- G. [Masturbation or sexual acts in public places](#) where one could be seen by others such as a vehicle, hiding place, standing outside someone's home or window, or anywhere one could watch others without their knowledge or permission. It also includes masturbation or sexual acts in workplace/school locations, public restrooms, or adult entertainment businesses.
- 8.3.3.3. [General sexual history exam II – time of reference.](#) The time of reference for the Sex History Exam I may be restricted to the period of time prior to the current court supervision that mandated the present treatment when there are concerns about 1) potential differences in consequences for pre-treatment or pre-conviction acts and those acts occurring post conviction or after treatment onset, or 2) examinee rights pertaining to the behavioral targets after conviction while under the supervision of a court or in a treatment program. The time of reference should be included in the test questions unless clearly established during the pretest interview.
- 8.3.3.4. [General sexual history exam II - testing approach.](#) Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the General Sex History Exam II in a series of more narrowly focused exams when that approach will lend to more accurate or satisfactory resolution of the investigation targets. Nothing in this Model Policy should be construed as to require the investigation of all or any of the suggested investigation targets or preclude the selection of alternative targets pertaining to sexual behavior that would assist the supervision and treatment team in determining and responding to the examinee's supervision and treatment needs.
- 8.3.3.5. [Testing the limits of admitted sexual compulsivity or sexual preoccupation.](#) Examiners should attempt to prioritize the investigation of behaviors in which the examinee denies any involvement. It may not be realistic to hope to know *everything* when an examinee admits to substantial involvement in sexual behaviors that may include elements of sexual compulsivity or sexual preoccupation. In these cases community supervision team members should be informed of the examinee's admission of substantial involvement.
- 8.4. [Maintenance exam.](#) Examiners should conduct the Maintenance Examination (ME) to thoroughly investigate, either periodically or randomly, the examinee's compliance with any of the designated terms and conditions of probation, parole, and treatment rules.
- 8.4.1 [Maintenance exam - scheduling.](#) It is recommended that Maintenance Exams be completed every four to six months, or every 12 months at a minimum. Community supervision team members should consider the possible deterrent benefits of randomly scheduled maintenance exams for some examinees.
- 8.4.2. [Maintenance exam - examination targets.](#) Investigation targets for the Maintenance Exam should bear operational relevance to an examinee's stability of functioning and any changes in dynamic risk level as indicated by compliance or non-compliance with the terms and conditions of the supervision and treatment contracts. Any of the terms and conditions of the probation or treatment may be selected as examination targets. Investigation targets for Maintenance Exams should emphasize the development or verification of information that would add incremental validity to the early detection of an escalating level of threat or to the community or to potential victims.

- 8.4.2.1. [Unknown allegations](#). Maintenance Exams should not address known allegations or known incidents, which are properly investigated in the context of an event-specific polygraph exam.
- 8.4.2.2. [Compliance focus](#). Maintenance Exams should be limited to questions about compliance or non-compliance with supervision and treatment rules. Questions about unlawful sex acts or re-offense behaviors may be included in the examination as long as circumstances related to rights against self incrimination as listed in the section dealing with Sex Offense Monitoring examinations do not exist. An elevated level of concern regarding reoffense would warrant a Sex Offense Monitoring Exam (SOME) – not a Maintenance Exam. Examiners should exercise caution to ensure they do not violate any rights of an examinee regarding the answering of questions about new criminal behaviors.
- 8.4.2.3. [Examination targets](#). Examination targets should include, but are not limited to the following:
- A. [Sexual contact with unreported persons of any age](#), including any form of rubbing or touching of the sexual organs (i.e., breasts, buttocks, or genitalia) of any person not already known or reported to the supervision and treatment team, either over or under clothing, for the purpose of sexual arousal/stimulation, sexual gratification, or sexual “curiosity.” It also includes causing or allowing others to touch or rub one's own private parts either over or under clothing, for the purpose of sexual arousal/stimulation, sexual gratification, or sexual “curiosity”; and sexual hugging and kissing activities.
  - B. [Use of pornography](#), refers to viewing or using X-rated (or “XXX”), nude, or pornographic images or materials (e.g., pornographic magazines, pornographic movies on cable television, including scrambled television programming, pornographic movie theaters, pornographic video arcades, videotape, CD/DVD, or other recorded media including pornographic images or materials via computer or the Internet, iPod, cell phone, video games, or any electronic messaging system). It may also include using non-pornographic erotica (nude or non-nude) images or materials for sexual stimulation or masturbation purposes (e.g., sexually objectifying entertainment magazines, bikini or car magazines, nudity or erotic scenes in non-pornographic movies, sexually oriented stories in magazines, novels, or Internet/computer resources, and/or anything at all on television). This target may be restricted to using pornographic or sexually stimulating materials for masturbation purposes when the examinee admits to incidental contact with pornographic images.
  - C. [Masturbation activities and masturbatory fantasies](#), which may refer to any involvement in masturbation activities when the examinee is prohibited from those activities, or it may refer to problematic forms of masturbation such as masturbating in a public location or where one could view or be viewed by others. It may also include voluntary or involuntary/intrusive thoughts or fantasies of a minor or past victim while masturbating or masturbation due to stress, boredom, anger, or other negative mood.
  - D. [Unauthorized contact with underage persons](#), which refers to prohibited physical or other contact with underage persons, or to being completely alone or unsupervised with underage persons if the examinee has reported or admitted to incidental contact.

- E. [Sexual offenses while under supervision](#), including forced, coerced or violent sexual offenses, sexual offenses against underage persons, incest offenses, or sexual contact with unconscious persons. It may also include sexual deviancy/compulsivity/preoccupation behaviors such as voyeurism, exhibitionism, theft of undergarments, public masturbation or other behaviors.
  - F. [Use of alcohol, illegal drugs or controlled substances](#), including tasting or consuming any beverage containing alcohol (if prohibited), or consuming any product containing alcohol for the purpose of becoming intoxicated, inebriated, drunk, “buzzed,” or “relaxed.” It also includes any use of marijuana (whether inhaled or not) or any other illegal drugs. This target also includes any misuse of controlled prescription medications, whether borrowing, sharing, trading, loaning, giving away, or selling one's own or another person's prescription medications or using any medication in a manner that is inconsistent with the directions of the prescribing physician.
- 8.4.3. [Maintenance exam - time of reference](#). Maintenance Exams should address a time of reference subsequent to the date of conviction or the previous Maintenance Exam, generally not exceeding one year and only exceeding two years in rare circumstances. The time of reference may be described generally as the six-month period preceding the examination; although, there may be reasons for lengthening or shortening the time of reference for some exams. All investigation targets in a test series should have a common time of reference.
- 8.4.4. [Maintenance exam - testing approach](#). Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Maintenance Exam in a series of more narrowly focused exams when that approach will lead to more accurate or satisfactory resolution of the investigation targets.
- 8.5. [Sex offense monitoring exam](#). Examiners should conduct the Sex Offense Monitoring Exam to explore the possibility the examinee may have been involved in unlawful sexual behaviors including a sexual re-offense during a specified period of time. Other relevant questions dealing with behaviors related to probation and treatment compliance should not be included.
- 8.5.1. [Sex offense monitoring exam - scheduling](#). Sex Offense Monitoring Exams should be completed whenever there is a specific request from a supervision or treatment professional to investigate the possibility of a new offense while under supervision. Alternatively, this exam may be used when 1) the likelihood of sexual offense or other sexual crime is elevated because of information received by any member of the team to include the examiner, or 2) following a previously unresolved maintenance examination that included a relevant question about sexual offense behavior. Whenever the results of a maintenance exam indicated the need for further testing to obtain a more diagnostic conclusion, a single-issue test format will be utilized. A single-issue Sex Offense Monitoring Exam can be expected to have improved diagnostic accuracy over a multi-issue (mixed issue) exam. However, this approach is still an exploratory exam, which should not be regarded as a sole basis for action (such as probable cause for arrest, revocation or removal from a treatment program).
- 8.5.2. [Sex offense monitoring exam - examination targets](#). Examiners should select investigation targets for the Sex Offense Monitoring Examination that pertain to new sex crimes while under supervision based on concerns expressed by the supervision and treatment team.

- 8.5.3. [Sex offense monitoring exam - time of reference.](#) Sex Offense Monitoring Exams should refer to a time of reference generally following the date of conviction or a previous Monitoring Examination. The time of reference should be clearly stated in the test questions and may include all or any part of the time that the examinee is under supervision or in treatment, including a specific date or restricted period of time. The time of reference should emphasize the investigation of possible unlawful sexual acts or sexual re-offense during the most recent period of months prior to the Sex Offense Monitoring Exam.
- 8.5.4. [Sex offense monitoring exam - testing approach.](#) Examiners should conduct the Sex Offense Monitoring Exam as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Sex Offense Monitoring Exam as a narrowly focused exam when that approach will lend to more accurate or satisfactory resolution of the investigation targets. Examiners should use a single-issue technique when the Sex Offense Monitoring Exam is used to follow-up on a previously unresolved Maintenance Exam.
9. [Suitability for testing.](#) Suitable examinees should, at a minimum, be expected to have a capacity for...
- A. [Abstract thinking;](#)
  - B. [Insight into their own and others' motivation;](#)
  - C. [Understand right from wrong;](#)
  - D. [Tell the basic difference between truth and lies;](#)
  - E. [Anticipate rewards and consequences for behavior;](#) and
  - F. [Maintain consistent orientation to date, time, and location.](#)
- 9.1. [Medications.](#) Examiners should obtain and note in the examination report a list of the examinee's prescription medication(s), any medical or psychiatric conditions, and any diagnosed acute or chronic medical health conditions.
- 9.2. [Unsuitable examinees.](#) Examiners should not test examinees who present as clearly unsuitable for polygraph testing at the time of the examination.
- 9.2.1. [Psychosis.](#) Persons who are acutely psychotic, suicidal, or have un-stabilized or severe mental health conditions, including dementia, should not be tested.
  - 9.2.2. [Age.](#) Persons whose chronological age is 12 years or greater should be considered suitable for polygraph testing unless they are substantially impaired. Polygraph testing should not be attempted with persons whose Mean Age Equivalency (MAE) or Standard Age Score (SAS) is below 12 years as determined by standardized psychometric testing (e.g., IQ testing, and adaptive functioning).
  - 9.2.3. [Level of functioning.](#) Persons whose level of functioning is deemed profoundly impaired and warranting continuous supervision or assistance may not be suitable for polygraph testing.
  - 9.2.4. [Acute injury or illness.](#) Persons suffering from an acute serious injury or illness involving acute pain or distress should not be tested.
  - 9.2.5. [Controlled substances.](#) Persons whose functioning is observably impaired due to the influence of non-prescribed or controlled substances should not be tested.

- 9.3. [Team approach.](#) Examiners should consult with other professional members of the multi-systemic containment team, prior to the examination, when there is doubt about an examinee's suitability for polygraph testing.
  - 9.4. [Incremental validity.](#) When there are concerns about an examinee's marginal suitability for testing, examiners should proceed with testing only when multi-disciplinary team determines that such testing would add incremental validity to risk assessment, risk management, and treatment planning decisions through the disclosure, detection, or deterrence of problem behaviors.
10. [Testing procedures.](#) Examiners who engage in PCSOT activities should adhere to all generally accepted polygraph testing protocols and validated principles.
- 10.1. [Case background information.](#) The examiner should request and review all pertinent and available case facts within a time frame sufficient to prepare for the examination.
  - 10.2. [Audio-visual or audio recording.](#) Examiners should record all PCSOT polygraph examinations. The recording should include the entire examination from the beginning of the pretest interview to the completion of the posttest review. The recording should be maintained for a minimum of three years. The recording documents the quality of the conduct of the testing protocol; documents the content and authenticity of the content of the information provided by the examinee, thus precluding possible future denials; and facilitates a comprehensive quality assurance review when necessary.
  - 10.3. [Pre-test phase.](#) Examiners should conduct a thorough pre-test interview before proceeding to the test phase of any examination. A thorough pretest interview will consist of the following:
    - 10.3.1. [Greeting and introduction.](#) Examiners should introduce themselves by their names and orient examinee to the examination room.
    - 10.3.2. [Brief explanation of procedure.](#) Examiners should ensure examinees have some information about the ensuing procedure and scope of testing prior to obtaining the authorization and release to complete the exam.
    - 10.3.3. [Authorization and release.](#) Examiners should obtain an examinee's agreement, in writing and/or on the audio/video recording, to a waiver/release statement. The language of the statement should minimally include 1) the examinee's voluntary consent to take the test, 2) that the examination may be terminated at any time, 3) a statement regarding the examinee's assessment of his or her mental and physical health at the time of the examination, 4) that all information and results will be released to professional members of the community supervision team, 5) an advisement that admission of involvement in unlawful activities will not be concealed from the referring professionals and 6) a statement regarding the requirement for audio/video recording of each examination.
    - 10.3.4. [Biographical data/determination of suitability for testing.](#) Examiners should obtain information about the examinee's background including marital/family status, children, employment, and current living situation in addition to a brief review of the reason for conviction and length/type of sentence. Examiners should obtain, prior to and at the time of the examination, information pertaining to the examinee's suitability for polygraph testing.
    - 10.3.5. [Explanation of polygraph instrumentation and testing procedures.](#) The testing process should be explained to the examinee, including an explanation of the instrumentation used and the physiological and psychological basis of response. Nothing in this Model Policy should be construed as favoring a particular explanation of polygraph science. In general, an integrated explanation involving emotional attributions, cognitive theory and behavioral learning theory may be the best approach.

- 10.3.6. [Structured interview](#). The examiner should conduct a thorough structured or semi-structured pre-test interview, including a detailed review of the examinee's background and personal information, any applicable case facts and background, a detailed review of each issue of concern, and an opportunity for the examinee to provide his or her version of all issues under investigation. For event-specific diagnostic/investigative polygraphs of known allegations or known incidents, a free-narrative interview is used instead of a structured or semi-structured interview.
- 10.3.7. [Review of test questions](#). Before proceeding to the test phase of an examination, the examiner should review and explain all test questions to the examinee. The examiner should not proceed until satisfied with the examinee's understanding of and response to each issue of concern.
- 10.4 [In-test operations](#). Examiners should adhere to all generally accepted standards and protocols for test operations.
- 10.4.1 [Environment](#). All examinations should be administered in an environment that is free from distractions that would interfere with the examinee's ability to adequately focus on the issues being addressed.
- 10.4.2 [Instrumentation](#). Examiners should use an instrument that is properly functioning in accordance with the manufacturer's specifications.
- 10.4.2.1. [Component sensors](#). The instrument should continuously record the following during the test: thoracic and abdominal movement associated with respiratory activity by using two pneumograph components; electrodermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue; and cardiovascular activity to record relative changes in pulse rate and blood pressure. A channel that detects vasomotor responses or other validated data channels may also be recorded.
- 10.4.2.2. [Activity sensors](#). A motion sensor is recommended and will be required for use by APA members effective January 1, 2012.
- 10.4.3 [Data acquisition](#). The conduct of testing should conform to all professional standards concerning the data quality and quantity.
- 10.4.3.1. [Number of presentations](#). Examiners employing a comparison question technique should conduct a minimum of three presentations of each relevant question. It is acceptable to conduct a fourth or fifth presentation in order to obtain a sufficient volume of interpretable test data.
- 10.4.3.2. [Question intervals](#). Question intervals should allow a reasonable time for recovery. For comparison question techniques, question intervals from stimulus onset to stimulus onset should not be less than 20 seconds. It is suggested that a time period between 25 and 30 seconds would be superior to the minimum time of 20 seconds.
- 10.4.3.3. [Acquaintance test](#). An acquaintance test should be administered during the first examination of each examinee by each examiner. Examiners are encouraged to use an acquaintance test during the conduct of other tests as appropriate.
- 10.5. [Test data analysis](#). The examiner should render an empirically-based interpretation of the examinee's responses to the relevant questions based on all information gathered during the examination process.



- 10.5.1. [Scoring methods.](#) Examiners should employ quantitative or numerical scoring for each examination using a scoring method for which there is known validity and reliability, which has been published and replicated.
- 10.5.2. [Results – diagnostic exams.](#) Test results for event-specific diagnostic/investigative tests should be reported as Deception Indicated (DI), No Deception Indicated (NDI) or Inconclusive (INC) / No Opinion (NO).
- 10.5.3. [Results – exploratory exams.](#) Test results of exploratory tests should be reported as Significant Response (SR), No Significant Response (NSR) or No Opinion (NO).
- 10.5.4. [No opinion/inconclusive.](#) Examiners should render No Opinion (NO) whenever test results produce inconclusive numerical scores or whenever the overall set of test data do not allow the examiner to render an empirically-based opinion regarding the relevant test questions. (I.e., when test results are “inconclusive,” an examiner should render “no opinion” concerning the truthfulness of the examinee.) “No opinion” concerning the truthfulness of the examinee should be reported when an examination was stopped prior to collection of sufficient data to arrive at an empirically-based opinion.
- 10.5.5. [Professional opinions and test results.](#) Examiners should render an opinion that the examinee was deceptive when the test results are SR or DI for any of the investigation targets. Examiners should render an opinion that the examinee was truthful when the test results are NSR or NDI for all of the investigation targets. Examiners should not render an opinion that the examinee was truthful when the test results are SR or DI for any of the investigation targets. Examiners should not conclude an examinee is deceptive in responses to one or more investigation targets and non-deceptive in responses to other investigation targets within the same examination.
- 10.5.6. [Non-cooperation.](#) Examiners should note in the examination report whenever there is evidence that an examinee has attempted to falsify or manipulate the test results and whether the examinee was forthcoming in explaining his or her behavior during the test. An opinion that the examinee was Purposefully Non-Cooperative (PNC) is appropriate when there is evidence that an examinee was attempting to alter his or her physiological response data. Examiners reporting an examinee was PNC are not precluded from rendering an opinion that the examinee was deceptive (SR/DI) when the numerical scores support a conclusion that there were significant reactions to one or more relevant questions. Examiners should not render an opinion of truthfulness (NSR/NDI) when there is evidence that an examinee has attempted to falsify or manipulate the test results.
- 10.5.7. [Data quality.](#) Examiners should not render a conclusive opinion when there is insufficient data of adequate quality and clarity to allow a minimum of three interpretable presentations of each of the investigation targets.
- 10.5.8. [Computer algorithms.](#) Computer scoring algorithms should not be used to score examination data that is of insufficient quality for manual scoring, and computer algorithms should never be the sole determining factor in any examination decision.
- 10.6. [Posttest review.](#) The examiner should review the test results with the examinee, advise the examinee of any significant responses to any of the test questions, and provide the examinee an opportunity to explain or resolve any reactions or inconsistencies.
11. [Examination report.](#) Examiners should issue a written report containing factual and objective accounts of all pertinent information developed during the examination, including case background information, test questions, answers, results, and statements made by the examinee during the pre-test and post-test interviews.

- 11.1. Dissemination of test results and information. The polygraph examination report should be provided to the professional members of the community supervision team who are involved in risk assessment, risk management, and treatment/intervention planning activities.
  - 11.1.1. Dissemination to other authorities. Reports and related work products should be released to the court, parole board or other releasing agency, or other professionals at the discretion of the community supervision team or as required by law.
  - 11.1.2. Communication after the exam. Following the completion of the posttest review, examiners should not communicate with the examinee or examinee's family members regarding the examination results except in the context of a formal case staffing.
- 11.2. Scope of expertise. Examiners should not attempt to render any opinion concerning the truthfulness of the examinee prior to the completing the test phase and test-data-analysis. Examiners should not attempt to render any opinion regarding the medical or psychological condition of the examinee beyond the requirement to determine suitability for testing at the time of the examination. Post-test recommendations should be limited to needs for further polygraph testing and the resolution of the behavioral targets of the examination.
12. Records retention. Examiners should retain all documentation, data, and the recording of each examination for a period of at least three years or as required by law.
13. Quality control. To ensure examiner compliance with these recommendations and other field practice requirements and to sustain the quality of the testing process, an independent quality control peer-review of a portion of each examiner's work product should take place annually.
14. Examiner qualifications. Examiners whose work is to be considered consistent with the requirements of this Model Policy shall have completed a basic course of polygraph training at a polygraph school accredited by the APA or meet other training, experience and competency requirements for professional membership in the APA.
  - 14.1. Specialized training. Examiners shall have successfully completed a minimum of forty (40) hours of specialized post-conviction sex offender training that adheres to the standards established by the APA.
  - 14.2. Continuing education. Examiners shall successfully complete a minimum of thirty (30) continuing education hours every two (2) years. Fifteen of those hours shall pertain to specialized sex offender polygraph training.
  - 14.3. Professional experience. Examiners shall complete a minimum number of examinations in accordance with APA standards prior to undertaking PCSOT examinations unsupervised. Examiners who have conducted fewer than 10 PCSOT exams shall conduct PCSOT exams under the supervision of an APA recognized PCSOT examiner until 10 exams have been completed in accordance with APA standards. Supervision shall include a thorough review of the examination including target selection, question construction, data quality, test data evaluation, record keeping and reporting procedures.

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**ATTACHMENT D**

**By-Laws**

**American Polygraph Association**

(Approved as of 12/13/11 – Effective January 1, 2012)

**BY-LAWS**  
**AMERICAN POLYGRAPH ASSOCIATION**  
(Approved as of 12/13/11 - Effective January 1, 2012)

**1. Division I: Name.**

1.1 This document shall be known as the By-Laws of the American Polygraph Association.

**2. Division II: General provisions.**

2.1 No action or proceeding commenced before these By-Laws take effect, and no right accrued, is affected by the provisions of these By-Laws, but all provisions thereafter taken herein shall conform to the provisions of these By-Laws.

**3. Division III: APA Standards of Practice**

3.1 **Statement of Purpose:** A polygraph examination, properly administered by a well trained and competent polygraph examiner using a valid testing and analysis protocol is the most accurate means known to science for determining whether a person has been truthful. To promote the highest degree of accuracy, the APA establishes for its membership the following Standards of Practice. Moreover, all examinations are required to be conducted in compliance with governing local, state, and federal regulations and laws.

3.2 **Definitions**

3.2.1 **Standards:** The generally accepted principles for the preparation, conduct, analysis, documentation, and reporting of polygraph examinations. Standards are mandatory, enforceable and can include sanctions for violations by APA members. Standards in the APA Standards of Practice include the word "shall."

3.2.2 **Guidelines:** Recommended practices for the preparation, conduct, analysis, documentation and reporting of polygraph examinations. Guidelines convey perceived best practices, are recommendations and are non-enforceable by the APA. Guidelines in the APA Standards of Practice include the word "should."

3.2.3 **Polygraph examination:** A psychophysiological detection of deception interview and testing process encompassing all activities occurring between a polygraph examiner and an examinee during a series of interactions that include a pretest interview as applicable, recording of physiological data, the test data analysis, and rendering a professional opinion. Nothing in these standards is intended to prevent admission as evidence of a confession or other information obtained during a polygraph examination.

3.2.4 **Evidentiary Examination:** A polygraph examination in which the written and stated purpose agreed to by the parties involved is to provide a diagnostic opinion as evidence in a pending judicial proceeding.

3.2.5 **Paired Testing Examination:** Polygraph examinations conducted in tandem on two or more individuals regarding a single central contested fact to which all examinees must know the truth thereof. Paired-testing is used by voluntary stipulation between the testifying parties to resolve disputed facts.

3.2.6 **Investigative Examination:** A polygraph examination which is intended to supplement and/or assist an investigation and for which the examiner has not been informed and does not reasonably

believe that the results of the examination will be tendered for admission as evidence in a court proceeding.

- 3.2.7 Diagnostic examination: An event-specific evidentiary or investigative polygraph examination conducted to assist in determining the veracity of an examinee regarding their knowledge of or involvement in a reported issue or allegation. Diagnostic examinations may address a single aspect or multiple-facets of an event for which the examination questions are intended to describe different roles or levels of involvement.
- 3.2.8 Screening examination: A polygraph examination conducted in the absence of a reported issue or allegation to investigate whether an examinee has withheld information regarding engagement in behaviors encompassed by the relevant questions that cover specified periods of time. Screening examinations may be designed to investigate both single and multiple types of behavior.
- 3.2.9 Test Data Analysis: Test data analysis in polygraph refers to any structured method, whether manual or automated, for the evaluation and interpretation of the recorded physiological data into categorical test decisions concerning the examinee's truthfulness or concealed knowledge. Decisions for diagnostic and screening examinations include:
  - 3.2.9.1 Diagnostic Opinion: A professional opinion based on the results of a polygraph technique that meets the criterion validity requirements for evidentiary testing or paired testing. The results of deception tests are normally reported using the terms Deception Indicated, No Deception Indicated, Inconclusive, and No Opinion (DI or NDI, INC, or NO). Test results of recognition tests are normally reported using the terms Recognition Indicated, No Recognition Indicated, or No Opinion (RI, NRI, NO).
  - 3.2.9.2 Screening Opinion: A professional opinion based on the results of a polygraph technique that meets the requirements for screening purposes ; normally reported using the terms Significant Response, No Significant Response, Inconclusive or No Opinion (SR, NSR, INC, or NO).
  - 3.2.10 Polygraph Technique: A polygraph technique consists of a combination of: 1) a polygraph testing format for which there is a published description of test administration procedures that conforms to evidence-based principles for target selection, test question construction, and test administration; and, 2) a published descriptions of the test data analysis model, including physiological features, transformations, decision rules and normative data.

### 3.3 Polygraph Examiner

- 3.3.1 A polygraph examiner shall meet the training and educational requirements of his or her category of membership as set forth in the Division V of the By-Laws.
- 3.3.2 Polygraph examinations of sex offenders as a condition of treatment, probation or parole shall be conducted by members who have completed specialized training consistent with standards found in section 3.11.
- 3.3.3 A polygraph examiner shall, where applicable, comply with all state continuing education requirements. Practicing examiners shall complete a minimum of 30 continuing education hours every two years in coursework related to the field of polygraphy. A practicing examiner shall be defined as any member who has conducted polygraph training, quality assurance, or examinations in the previous two years. Examiners are responsible for maintaining records to document that they have met the continuing education requirement.

- 3.3.4 Examiners shall accurately represent their category of APA membership, their academic credentials, their licensure, and their certification status.
- 3.3.5 Polygraph examiners conducting PCSOT tests shall have at least half of their required 30 continuing education hours specific to issues dealing with the testing, treatment or supervision of sex offenders.

### 3.4 Polygraph Examinee

- 3.4.1 The examiner shall make reasonable efforts to determine that the examinee is a fit subject for testing. Basic inquires into the medical and psychological condition of the examinee as well as any recent drug use shall be made where allowed by law. Mental, physical or medical conditions of the examinee that should be observable to, or that should be reasonably known by the examiner, are required to be considered in conducting and evaluating the examination.
- 3.4.2 During the pretest interview, where allowed by law, the examiner shall specifically inquire of the person to be examined whether or not he or she is currently receiving or has in the past received medical, psychological or psychiatric treatment or consultation.
- 3.4.3 If an examiner has a reasonable doubt concerning the ability of an examinee to safely undergo an examination, a release from the examinee and his or her physician is required.

### 3.5 Instrumentation and Recording

- 3.5.1 Polygraph examinations shall be conducted with instrumentation that records with, at a minimum, the following physiological data:
  - 3.5.1.1 Respiration patterns recorded by pneumograph components. Thoracic and abdominal patterns should be recorded separately, using two pneumograph components.
  - 3.5.1.2 Electrodermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue.
  - 3.5.1.3 Cardiovascular activity including changes in relative blood pressure, pulse rate and pulse amplitude.
  - 3.5.1.4 A motion sensor is required for all examinations.
  - 3.5.1.5 Other physiological data may also be recorded during testing, but may not be used to formulate decisions of truthfulness or deception unless validated in replicated and published research.
- 3.5.2 Physiological recordings during each test shall be continuous, and of sufficient amplitude to be easily readable by the examiner and any reviewing examiner. Pneumograph and cardiograph tracings between one-half inch and one inch in amplitude, at the time of data collection, will be considered of sufficient size to be easily readable.
- 3.5.3 The polygraph instrument shall be given a functionality or calibration test consistent with manufacturer recommendations and in compliance with state and federal law. In the absence of manufacturer's recommendations, examiners should semi-annually record a chart demonstrating correct functioning of the instrument. A functionality or calibration test shall be administered prior to and on the day of all evidentiary examinations and paired testing examinations.

### 3.6 Test Location and Conditions

- 3.6.1 Conditions under which testing occurs should be free from distractions.
- 3.6.2 Examiners conducting polygraph examinations during public viewing are prohibited from rendering opinions regarding the truthfulness of the examinees on the basis of that examination. Examiners should ensure that reenactments of polygraph examinations are clearly conveyed as such to viewers. Should the examiner determine that the reenactment will not or has not been clearly conveyed as a reenactment, the examiner shall immediately notify the APA National Office.
- 3.7 Preparation
  - 3.7.1 Prior to an examination, the examiner shall dedicate sufficient time to identify the issues and any potential problem(s) in any area of testing.
- 3.8 Pretest Practices
  - 3.8.1 The examiner shall obtain information sufficient to identify the examinee.
  - 3.8.2 The examiner shall obtain the consent of the examinee prior to testing. It is recommended the consent of the examinee be obtained after there is a reasonable understanding of the polygraph process, including the duration, the issues to be covered, and the instrumentation to be used.
  - 3.8.3 Sufficient time shall be spent during the pretest interview to ensure that the examinee has a reasonable understanding of the polygraph process and the requirements for cooperation.
  - 3.8.4 Sufficient time shall be spent to discuss the issues to be tested and to allow the examinee to fully explain his or her answers.
  - 3.8.5 Sufficient time shall be spent to ensure the examinee recognizes and understands each question. Attempts by the examinee to rationalize should be neutralized by a pretest discussion in which the examinee demonstrates he or she understands the test questions to have the same meaning as does the examiner. Questions shall be asked in a form that would prevent a reasonable person, facing a significant issue, from successfully engaging in a rationalization process.
  - 3.8.6 The examiner shall not display or express bias in any manner regarding the truthfulness of the examinee prior to the completion of testing.
- 3.9 Testing
  - 3.9.1 A member polygraph examiner shall use a validated testing technique. For purposes of these standards a testing technique shall be considered valid if supported by research conducted in accordance with the APA's research standards. Upon request for a minimum of five years from publication, researchers of polygraph techniques shall provide reasonable access to validation data for critical review. Where examinations deviate from the protocols of a validated testing technique the deviations should be noted and justified in writing.
    - 3.9.1.1 Polygraph techniques for evidentiary examinations shall be those for which there exists at least two published empirical studies, original and replicated, demonstrating an unweighted average accuracy rate of 90% or greater, excluding inconclusives, which shall not exceed 20%.
    - 3.9.1.2 Polygraph techniques for paired testing shall be those for which there exists at least two published empirical studies, original and replicated, demonstrating an unweighted

average accuracy rate of 86% or greater, excluding inconclusives, which shall not exceed 20%.

3.9.1.3 Polygraph techniques for investigative testing shall be those for which there exists at least two published empirical studies, original and replicated, demonstrating an unweighted average accuracy rate of 80% or greater, excluding inconclusives, which shall not exceed 20%.

3.9.1.4 Polygraph techniques used for screening purposes shall be those for which there exists research demonstrating an unweighted accuracy rate significantly greater than chance and should be used in a “successive hurdles” approach which entails additional testing with validated methods when the screening test is not favorably resolved.

3.9.1.4.1 (Effective January 1, 2015, 3.9.1.4 shall be replaced with the following). Polygraph techniques used for screening purposes shall be those for which there exists at least two published empirical studies, original and replicated, demonstrating an unweighted accuracy rate that is significantly greater than chance, and should be used in a “successive hurdles” approach which entails additional testing with validated methods when the screening test is not favorably resolved.

3.9.1.5 Nothing in these standards of practice shall be construed as preventing examiners and researchers from investigating and developing improved methods. Polygraph techniques that do not meet these standards for validation shall be considered experimental methods.

3.9.1.6 Field examiners who employ experimental techniques shall be in compliance with applicable law related to human subject research and should inform the examinee and the party requesting the examination of the use of an experimental techniques. Results from experimental techniques used in field settings shall not be used in isolation to render diagnostic or screening decisions.

3.9.1.7 Nothing in these standards of practice shall be construed as prohibiting the use of other supportive methodologies that do not meet the requirements of these standards (EG: Yes Test, Searching Peak of Tension, etc. However, non-validated techniques shall not be used in isolation to render screening or diagnostic decisions.

3.9.2 Each member shall conduct an acquaintance test for all evidentiary, paired-testing, initial community safety and initial investigative examinations.

3.9.3 Questions shall be asked with clarity and distinctiveness.

3.9.4 Questions used in the assessment of truth and deception shall be followed by time intervals of not less than 20 seconds from question onset to question onset. When validated and replicated research supports the use of another time interval, that time interval will be acceptable.

3.9.5 Standardized chart markings, recognized and utilized within the polygraph profession shall be employed.

3.9.6 An audio and video recording of the pretest and in-test phases shall be made and maintained as part of the examination file, consistent with regulation and law, and for a minimum of one year, for all evidentiary and paired-testing examinations. Audio and video recording should be used for community safety examinations.

3.9.7 A member polygraph examiner shall not conduct more than four diagnostic or three evidentiary

examinations in one day, and no more than five examinations of any type in one day. On rare occasion, exigent circumstances may warrant a waiver of this requirement.

### 3.10 Scoring

- 3.10.1 Examiner conclusions and opinions shall be based on validated scoring methods and decision rules.
- 3.10.2 Examiner notes of the test evaluation shall have sufficient clarity and precision so that another examiner could read them.
- 3.10.3 Examiners shall not disclose the results of the examination until the analysis has been completed.
- 3.10.4 Examiners shall maintain the confidentiality of their work conducted under privilege until a release by the client is obtained.
- 3.10.5 An examiner subject to a quality control evaluation of a case shall fully disclose all pertinent information regarding the case under review.
- 3.10.6 Examiners conducting polygraph examinations should submit to a quality control review of their work product at least annually. The submitted examination should be recorded in its entirety unless precluded by law or government policy, or it should be witnessed in its entirety by the reviewing examiner.

### 3.11 Standards for Post-Conviction Sex Offender Testing (PCSOT)

- 3.11.1 PCSOT examiners shall satisfy the provisions set forth in the Standards of Practice as well as the following mandatory standards:
- 3.11.2 **Minimum Training:** A minimum of 40 hours of specialized instruction, beyond the basic polygraph training course requirements, through PCSOT training approved by the APA. In the event an examiner attends and successfully completes the advanced training prior to completing 200 polygraph examinations, the examiner shall participate in an internship program consisting of at least 10 PCSOT examinations, under the supervision of a recognized PCSOT examiner, and upon successful completion of that testing, will receive an APA certificate reflecting satisfactory completion of training requirements.
- 3.11.3 **Written Examination:** Passing a final written examination, approved by the APA or its designated representative shall occur prior to receiving APA certification for the training. The written examinations shall be properly controlled and protected to prevent exposure of the test questions or answers to any unauthorized persons.
- 3.11.4 **Recording Requirements:** All PCSOT polygraph examinations submitted for quality control shall be audio/visually recorded in their entirety. When required for quality control purposes, these recordings shall be made available. All recorded physiological data shall be retained as part of the examination file as long as required by regulation or law, but for a minimum of one year when not in conflict with regulation or law.
- 3.11.5 **Conflict of Interest:** PCSOT examiners who are therapists/treatment providers shall not conduct polygraph examinations on an individual that they directly or indirectly treat or supervise.
- 3.11.6 PCSOT examiners who are probation or parole officers shall not conduct a polygraph examination on any individual that they directly or indirectly supervise.

#### **4. Division IV: Code of Ethics**

##### **4.1 Rights of Examinees.**

4.1.1 A member shall respect the rights and dignity of all persons to whom they administer polygraph examinations.

##### **4.2 Standards for Rendering Polygraph Decisions.**

4.2.1 A member shall not render a conclusive diagnosis when the physiological records lack sufficient quality and clarity. This may include, but is not limited to, excessively distorted recordings possibly due to manipulations by the examinee, recordings with insufficient responsiveness, or recordings with tracing amplitudes less than that generally accepted by the profession.

##### **4.3 Post-Examination Notification of Results.**

4.3.1 A member shall afford each examinee a reasonable opportunity to explain physiological reactions to relevant questions in the recordings. There are three exceptions:

4.3.1.1 When the examinee is represented by an attorney who requests that no post-examination interview be conducted, and that the results of the examination be released only to the attorney.

4.3.1.2 When the examination is being conducted by court order which stipulates that no post-examination interview is to be conducted.

4.3.1.3 Instances of operational necessity.

##### **4.4 Restrictions on Rendering Opinions.**

4.4.1 A member shall not provide any report or opinion regarding the medical or psychological condition of the examinee for which the member is not professionally qualified to make. This shall not preclude the examiner from describing the appearance or behavior of the examinee.

4.4.2 Polygraph outcome decisions shall be restricted to only those based on polygraph data.

##### **4.5 Restrictions on Examinations.**

4.5.1 A member shall not conduct a polygraph examination when there is reason to believe the examination is intended to circumvent or defy the law.

##### **4.6 Fees.**

4.6.1 A member shall not solicit or accept fees, gratuities, or gifts that are intended to influence his or her opinion, decision, or report. No member shall set any fee for polygraph services which is contingent upon the findings or results of such services, nor shall any member change his or her fee as a direct result of his or her opinion or decision subsequent to a polygraph examination.

##### **4.7 Standards of Reporting.**

4.7.1 A member shall not knowingly submit, or permit employees to submit, a misleading or false polygraph examination report. Each polygraph report shall be a factual, impartial, and objective account of information developed during the examination, and the examiner's professional conclusion based on analysis of the polygraph data.



- 4.7.2 A member shall maintain for a period of at least one year, all polygraph data and documentation related to the conduct of a polygraph examination.
- 4.7.3: Reports of evidentiary and paired-testing examinations should contain validation information reflected in paragraph 3.9.1.
- 4.8 Advertisements.
  - 4.8.1 A member shall not knowingly make, publish, or cause to be published any false or misleading statements or advertisements relating to the Association or the polygraph profession. No member shall make any false representation as to category of membership in the Association. All advertisements making reference to membership in the Association shall also list the category of membership.
- 4.9 Release of Non-relevant Information.
  - 4.9.1 A member shall not disclose to any person any irrelevant personal information gained during the course of a polygraph examination which has no connection to the relevant issue, and which may embarrass or tend to embarrass the examinee, except where such disclosure is required by law.
- 4.10 Restrictions on Examination Issues.
  - 4.10.1 A member shall not include in any polygraph examination, questions intended to inquire into or develop information on activities, affiliation, or beliefs on religion, politics, or race except where there is relevancy to a specific investigation.
- 4.11 APA Oversight Authority.
  - 4.11.1 A member who administers or attempts to administer any polygraph examination in violation of the Code of Ethics or the Standards of Practice may be subject to investigation, censure, suspension, expulsion or other discipline as deemed appropriate, as provided by Article IV of the APA Constitution.
  - 4.11.2 (Truthfulness) Applicants for membership and existing members are required to be truthful in any written communications with the APA.

## **5. Division V: Membership**

- 5.1 Full Member.
  - 5.1.1 Full members of this Association are those persons who have:
    - 5.1.1.1 Graduated from an APA Accredited School.
    - 5.1.1.2 Completed not less than two hundred (200) actual polygraph examinations using a validated polygraph technique as taught at an APA Accredited School and, where required by law, to hold a current and valid license to practice polygraphy issued by a state or federal agency requiring such license.
    - 5.1.1.3 Received a Baccalaureate Degree from a college or university accredited by an accreditation board recognized by the United States Department of Education or the Council on Higher Education Accreditation; or an equivalent degree from a college or university outside of the United States recognized by the international educational

community as meeting similar standards.

5.1.1.4 Full Members shall:

5.1.1.4.1 Have the right to vote in all matters before the General Membership.

5.1.1.4.2 Be eligible to hold any elective office in the Association.

5.1.1.4.3 Be eligible to hold any appointed position in the Association or serve as the Chair of any Standing or Ad Hoc Committee.

5.1.1.4.4 Shall be permitted to cast votes in any election conducted by the Association.

5.1.1.4.5 Shall meet all financial obligations to the Association.

5.2 Associate Member.

5.2.1 Associate Members of this Association are persons who:

5.2.1.1 Are practicing polygraph examiners and who are graduates of an APA Accredited Polygraph school, but do not meet the requirements as Full Member; or,

5.2.1.2 Are graduates of any basic polygraph school of at least six weeks in continuous, full time duration which was in existence on or before 1 August 2001, and are practicing polygraph examiners; and,

5.2.1.2.1 Have attended an APA sponsored seminar; and,

5.2.1.2.2 Have successfully passed an APA administered written examination; and,

5.2.1.2.3 Have presented the work product (pretest worksheet, question list, charts and report) from a minimum of ten (10) completed polygraph examinations to the Membership Committee to confirm whether an acceptable level of technical competence has been achieved. If the Membership Committee deems it necessary, any person applying for membership agrees to allow a representative of the Membership Committee to observe a live test administered by the applicant. Any such observation shall be conducted in accordance with existing laws and regulations applicable to that examiner.

5.2.2 Associate members shall be eligible to be upgraded to Full Member status, provided that the following conditions have been satisfied:

5.2.2.1 They have satisfactorily completed a qualifying examination attesting to their knowledge of and competence in the administration of polygraph procedures. This examination shall consist of an oral and written assessment of both academic and practical knowledge of polygraph detection of deception procedures and shall be administered by the APA Membership Committee.

5.2.2.2 They have been Associate members for not less than 36 months.

5.2.2.3 Within the 36 months preceding upgrading, they have successfully completed either:

5.2.2.3.1 A minimum of 108 hours of continuing education in topics directly related to polygraph testing, including at least one APA annual seminar, during their

Associate membership; or,

5.2.2.3.2 They have completed an APA approved refresher course administered by a polygraph training school accredited by the APA.

5.2.2.4 They are in attendance at an APA annual seminar at the time of consideration of their request for upgrading to Full Member.

5.2.2.5 They submit proof of having completed not less than 200 satisfactory polygraph examinations.

5.2.2.6 They hold a current and valid license as a polygraph examiner in the state or other similar governmental jurisdiction of their practice, if at the time of application such license is required by law.

5.2.2.7 They have satisfied all financial obligations to the APA.

5.2.3 Associate Members shall:

5.2.3.1 Have the right to vote in all matters before the General Membership, but not hold any elective office in the Association.

5.2.3.2 Be eligible to hold any appointed position in the Association and Chair any standing or Ad-Hoc Committee.

5.2.3.3 Shall not represent themselves as other than Associate Member of the APA.

5.3 Life Member

5.3.1 A Life Member is any member of the Association:

5.3.1.1 Who has been nominated by another Member for Life Membership, and;

5.3.1.2 Whose nomination has been approved by a two-thirds (2/3) majority vote of the Board, and:

5.3.1.3 Whose nomination has been confirmed by a majority vote of all Voting Members present at a meeting of the General Membership.

5.3.2 Life Members shall:

5.3.2.1 Have the right to vote in all matters before the General Membership.

5.3.2.2 Be eligible to hold any elective office in the Association.

5.3.2.3 Be eligible to hold any appointed position in the Association and Chair any Standing or Ad-Hoc Committee.

5.3.2.4 Be eligible to serve on any Standing or Ad-Hoc Committee.

5.3.2.5 Be exempt from annual membership dues to the Association.

5.4 Science and Technology Membership.

- 5.4.1 Science and Technology members are those persons, organizations or corporations who have a professional or scientific interest in the polygraph profession through polygraph research or instrumentation.
- 5.4.2 Science and Technology members shall:
  - 5.4.2.1 Not have the right to vote in matters before the General Membership.
  - 5.4.2.2 Not be eligible to hold any elective office in the Association.
  - 5.4.2.3 Not be eligible to hold any appointed position in the Association.
  - 5.4.2.4 Be eligible to serve on any Standing or Ad-Hoc Committee.
  - 5.4.2.5 Meet all financial obligations to the Association.
- 5.5 Honorary Member.
  - 5.5.1 Honorary Members are those persons who:
    - 5.5.1.1 Have made an outstanding contribution to the Association and the polygraph profession, and;
    - 5.5.1.2 Have been nominated by any Member for Honorary Membership, and;
    - 5.5.1.3 Whose nomination has been approved by a two-thirds (2/3) majority vote of the Board, and;
    - 5.5.1.4 Whose nomination has been confirmed by a majority vote of all Voting Members present at a meeting of the General Membership.
  - 5.5.2 Honorary Members shall:
    - 5.5.2.1 Not have the right to vote in matters before the General Membership.
    - 5.5.2.2 Have the right to speak on any issue before the General Membership or the Board of Directors.
    - 5.5.2.3 Not be eligible to hold any elective office in the Association.
    - 5.5.2.4 Not be eligible to serve on any Standing or Ad-Hoc Committee.
    - 5.5.2.5 Be exempt from annual membership dues to the Association.
- 5.6 Retired Members.
  - 5.6.1 Retired members are those persons who:
    - 5.6.1.1 Are at least 65 years of age.
    - 5.6.1.2 Are no longer engaged in profit-making polygraph employment.
    - 5.6.1.3 Have at least 20 years of membership in the American Polygraph Association.

- 5.6.1.4 Have attended a minimum of five (5) American Polygraph Association Annual Seminars.
- 5.6.1.5 Whose nomination has been approved by a two-third (2/3) majority vote of the Board, and;
- 5.6.1.6 Whose nomination has been confirmed by a majority vote of all Voting Members present at a meeting of the General Membership.

5.6.2 Retired Members shall:

- 5.6.2.1 Have the right to vote in all matters before the General Membership.
- 5.6.2.2 Be eligible to hold any elective office in the Association.
- 5.6.2.3 Be eligible to hold any appointed position in the Association and Chair any Standing or Ad-Hoc Committee.
- 5.6.2.4 Be eligible to serve on any Standing or Ad-Hoc Committee.
- 5.6.2.5 Be exempt from annual membership dues to the Association.

5.7 Divisional Members.

5.7.1 Divisional Members are those polygraph organizations or associations who desire a professional relationship with the American Polygraph Association and whose members agree to abide by the Code of Ethics and the Standards of Practice of the Association. An applicant for Divisional Membership shall:

- 5.7.1.1 File a copy of its Constitution or By-laws with the Board and, if granted membership, notify the Board of any changes in said documents.
- 5.7.1.2 Be granted Divisional Membership upon a two-thirds (2/3) majority vote of the Board.

5.7.2 Divisional Members shall:

- 5.7.2.1 Be autonomous in all matters, but must be in compliance with the Code of Ethics and Standards of Practice of this Association.
- 5.7.2.2 Not represent themselves as other than a Divisional Member of this Association nor represent that by virtue of their Divisional Membership some or all of the members therein are members of the American Polygraph Association. This shall not preclude members of the American Polygraph Association from belonging to a Divisional Member and representing themselves to be members of the Association.
- 5.7.2.3 Maintain separate financial accounts and records from the American Polygraph Association and not bind the Association to any financial commitment or responsibility.
- 5.7.2.4 The Board of Directors may upon a two-thirds (2/3) majority vote, revoke the Divisional Membership of any such member who:
  - 5.7.2.4.1 Fails to subscribe to or enforce upon its members the American Polygraph Association Code of Ethics and Standards of Practice.
  - 5.7.2.4.2 Fails to hold a meeting of its General Membership within a twelve (12)

month period.

5.8 General Provisions.

- 5.8.1 Subject to the terms and conditions of this Article, membership in the Association shall be terminated upon the conviction of any member, other than a Divisional Member, of any felony crime or any crime of moral turpitude. Conviction, for the purpose of this section, shall mean the judgment of any court of competent jurisdiction, local, state or federal and shall include a plea of "no contest." Such termination of membership shall be automatic and without action by the Grievance Committee or the Board.
- 5.8.2 Any Member, other than a Divisional Member, who has been formally charged in any court of competent jurisdiction on a charge amounting to a felony crime or any crime of moral turpitude shall, within thirty (30) days of such charge, notify the Chairperson of the Grievance Committee of such charge. Notification shall be in writing and shall include the nature of the charge, the name and address of the court where the member was charged, the date of the charge and the case or docket number assigned by the court.
- 5.8.2.1 The membership of any Member who fails to comply with the provisions of this subsection shall be suspended without action by the Grievance Committee or Board. Said suspension shall be effective on the thirty-first (31st) day after being formally charged and shall continue until the member complies with the requirements of this sub-section.
- 5.8.3 The membership of any Member, other than a Divisional Member, who resigns from this Association shall be reinstated upon approval of the Membership Committee or the Board; provided, the member:
- 5.8.3.1 Qualifies for the class of membership to which he or she qualified at the time of resignation.
- 5.8.3.2 Meets all financial obligations to the Association for the year in which the reinstatement is sought.
- 5.8.3.3 Was not the subject of an unresolved investigation by the Grievance Committee at the time of his or her resignation. Any such unresolved investigation must be resolved prior to reinstatement.
- 5.8.4 Any applicant pending Board approval of membership or Associate Member who is in the process of upgrading to Full Member will not be eligible for upgrade processing until their current grievance investigation is deemed unfounded and closed.

**6. Division VI: Nominations**

- 6.1 Any member qualified under Division V of the By Laws to hold APA elected office may have his or her name appear on the ballot if nominated by at least one voting member of the Association. A voting member may self-nominate. The nomination shall be made in writing and submitted to the Association National Office at least 90 days prior to the commencement of the annual seminar. Any form of written communication (e.g., electronic, facsimile, etc) is acceptable, provided the communication can be authenticated, if necessary, as that of a voting member).
- 6.1.1 With the exception of self-nominees, the immediate Past President shall notify each nominee of his or her nomination no later than 85 days prior to the commencement of the Annual Seminar. Within 2 days of notification, nominees must notify the immediate Past President of his or her acceptance or rejection of the nomination.

6.2 A candidate shall only compete for a single office in any one election year. Each Director position shall be considered a single office. If nominated for more than one office, the nominee must submit in writing to the APA National Office which one of the nominations he or she has chosen to accept. If the statement is not received from the candidate within two days of notification by the Past President of the nominations for multiple offices, the candidate shall not be placed on the ballot for any elected office in that election year.

6.3 The Immediate Past President shall notify all candidates of the results of the election.

## **7. Division VII: Election Procedures**

7.1 With the exception of run-off elections as described in section 7.4, elections shall be conducted electronically and completed no later than 60 days prior to the commencement of the Annual Seminar.

7.2 The electronic ballot shall list the candidates for each office in alphabetical order by last name.

7.3 The election period shall remain open for seven calendar days for all elections held electronically.

7.4 If no candidate wins 50% of the vote for an office, a runoff election shall be completed no later than 30 days prior to the commencement of the Annual Seminar.

7.4.1 The runoff election shall include only the two candidates that received the most votes unless there is a tie among more than two candidates for the two ballot positions.

7.4.1.1 In the case of such a tie for the most votes, only those candidates with the most votes shall appear on the ballot regardless of their number.

7.4.1.2 If the tie is among those with the second-most votes, the ballot would include the candidate with the most votes and all those tied for second-most votes regardless of their number.

7.5 If no candidate in the runoff election wins 50% of the vote for an office, a final vote will be taken during the General Business Meeting at the Annual Seminar that includes all of the candidates from the runoff election.

7.6 Any candidate wishing to contest the election results must submit a formal, written petition to the Board at or before its first session during the annual meeting setting forth all pertinent information. If this matter is not resolved by the Board to the satisfaction of all parties directly concerned, it shall be presented to the membership during the scheduled business session for final disposition.

7.7 If an election is held to be null and void by the Board, the Board may authorize an election from the floor of the annual meeting. Article VII of the Constitution applies.

## **8. Division VIII: Election Certification**

8.1 The official certification of the results will be by the Board at the next annual meeting of the Association.

## **9. Division IX: Amendment of the Election Code.**

9.1 Amendments to the Election Code may be made only by the procedure specified in Article XI of the Constitution. However, nothing in these provisions in the Election Code or Article XI shall be deemed to preclude modification of purely administrative or clerical procedures or details by the Fair Elections Committee or the Board necessitated by effective and efficient carrying out of the intent and purposes of

the Code. In any such case, the decision of the Board shall be final, subject to the provisions of Article XI Interpretation of the Constitution.

9.2 Proposed amendments approved by the Board shall be submitted by the Secretary to the membership using the same procedures provided for in Article XI, insofar as applicable. Amendments may be submitted at any time as determined by the Board.

**10. Division X: Directors**

10.1 Directors of the Association shall perform such duties as assigned by the President or Board of Directors.

**11. Division XI: Officers**

11.1 The President shall:

11.1.1 Preside over all meetings of the General Membership.

11.1.2 In the absence of the Chairperson of the Board, preside over all meetings of the Board of Directors.

11.1.3 Have general supervision over the affairs and administration of the Association and of the duties of those appointed to office.

11.1.4 Perform such duties as the Board may assign and represent this Association at all official functions.

11.1.5 Appoint the general Chairpersons of all Standing or Ad-Hoc Committees.

11.1.6 Perform other duties as assigned by the Board.

11.2 The President-Elect shall:

11.2.1 Assist the President in the performance of his/her duties.

11.2.2 Upon direction by a majority vote of the Board of Directors, the President-Elect shall act to discharge the duties of the presidential office in the event of the President's absence, disability, or refusal to act.

11.2.3 If the office of the President becomes vacant for any reason, the President-Elect shall succeed to the presidency until the expiration of the term remaining for his predecessor and for the term of one year thereafter, or until a successor is duly qualified.

11.3 The Immediate Past President shall:

11.3.1 Be the presiding Chair at meetings of the Board of Directors but shall not be a voting member thereof except in cases of a tie among the Board.

11.3.2 Shall call a meeting of the Board upon request of the President, or as may be required by majority vote of the Board.

11.3.3 Shall undertake such other duties as may be assigned by the President or the Board of Directors.

11.4 The Vice-Presidents shall:



- 11.4.1 Represent the interest of all APA members, especially focusing on the segment of their representation, Government, Private, Law Enforcement.
- 11.4.2 Perform other duties as assigned by the Board.
- 11.5 The Secretary shall:
  - 11.5.1 In conjunction with the National Office Manager, serving as appointed Assistant Secretary, be responsible for recording and retaining the current Association Constitution and Bylaws, the official minutes, resolutions, and proceedings of the Association derived from business meetings of the general membership, the Board of Directors, or other meetings as may be required for the effective and orderly transaction of the Association's business.
  - 11.5.2 Distribute official notices, correspondence and other materials and record policy and procedures established during Board of Directors Meetings.
  - 11.5.3 Perform other duties as assigned by the President or the Board.
- 11.6 The Treasurer shall:
  - 11.6.1 Be the primary custodian of all funds and securities, of whatever nature, which are the property of the Association and shall provide copies thereof to the National Office Manager.
  - 11.6.2 Maintain complete and accurate records of all financial transactions related to the Association.
  - 11.6.3 Be authorized, and by virtue of these By-laws is authorized, to act in all financial matters wherein an authorized signature is required on behalf of this Association. In the absence or disability of the Treasurer, the President may act for him.
  - 11.6.4 Select an independent Certified Public Accountant, approved by the Board of Directors, to perform a certified annual audit of the Association's records and financial transactions and report the results to the membership at the Annual Business meeting.
  - 11.6.5 Publish or cause to be published a Statement of Assets and Liabilities as well as a Statement of Income and Expenses of the Association on a monthly basis and mail to each member of the Board of Directors. Such statements shall be available for review by any Voting Member upon demand. Such information is deemed proprietary to the APA and shall be treated as confidential and any dissemination to anyone other than the requester is prohibited and unlawful.
  - 11.6.6 Collect all dues authorized by the General Membership and all assessments levied by the Board. Dues are due on or before 31 March each year. Any member who fails to meet financial obligations to the Association shall be suspended without action of the Board until the next meeting of the Board of Directors at which time they may continue the suspension or terminate the membership.
  - 11.6.7 Provide a bond in an amount deemed appropriate by the Board of Directors. The bond shall be payable to the American Polygraph Association. The premium shall be paid by the Association.
  - 11.6.8 Assisted by the National Office Manager, be responsible for preparing or supervising such tax and other official documents as may be required by law; proposing or supplying such other budget or financial reports as the Board may direct.
  - 11.6.9 Compile and present a budget to the incoming APA Board of Directors subsequent to the General Membership meeting.

11.6.10 Perform other duties as assigned by the Board.

**12. Division XII: Ex-Officio Members of the Board of Directors**

12.1 The General Counsel shall:

12.1.1 Advise the Board on all legal matters which may come before it and may represent the Association in all litigation.

12.1.2 Provide advice to the Board of Directors on policies and decisions under consideration by the Board of Directors.

12.1.3 Perform other duties as assigned by the President.

12.2 The Editor In Chief shall:

12.2.1 Publish or cause to be published any and all publications, newsletters, journals or other documents authorized and directed by the Board.

12.2.2 Distribute or cause to be distributed any and all publications, newsletters, journals or other documents authorized and directed by the Board.

12.2.3 Recommend to the President for approval and appointment, the names of other editorial and/or staff members. The Editor shall maintain financial and other records as may be required by the Board of Directors.

12.2.4 Perform other duties as assigned by the President.

12.3 The National Office Manager shall:

12.3.1 Manage the National office in support of APA members under the direct supervision of the President and the members of the Board of Directors.

12.3.2 Be the primary custodian of all records, of whatever nature, which are the property of the American Polygraph Association.

12.3.3 Perform other duties as assigned by the President and the Board of Directors.

**13. Division XIII: Standing Committees**

13.1 Standing Committees shall consist of a Chairperson nominated by the General Chair and not less than three eligible members, whose total number shall be determined by the General Chair dependent on the needs of the Committee.

13.1.1 The Ethics and Grievance Committee

13.1.1.1 The Ethics and Grievance Committee receives and expeditiously, fairly, and impartially investigates all allegations of misconduct against members of the Association. An ethics or grievance investigation shall be initiated by filing a complaint. All complaints shall be submitted in writing in English, signed by the complainant, and submitted to the APA National Office. The Committee shall not consider, investigate, nor act upon any allegation that does not meet these criteria.

13.1.1.2 Upon receipt of the complaint, the General Chair of the Committee shall determine

whether the complaint sets out an allegation of an ethical violation. If the General Chair determines that the complaint sets out an allegation of an ethical violation, the General Chair shall forward the complaint to the accused member requesting a written response to the complaint along with a request for any other documentation deemed necessary for investigation of the complaint. The accused member shall have thirty (30) days, or such longer time as granted by the General Chair, from the receipt of the complaint to respond, in writing, to the General Chair. Failure to provide requested information to the Ethics & Grievance Committee shall be grounds for the Ethics and Grievance Committee General Chair to seek suspension of the accused member by the Board of Directors. Continued failure to provide the requested information shall be grounds for additional sanctions, up to and including termination of membership. Upon receipt of the written response, the General Chair shall, along with any investigation deemed necessary, determine if the complaint is without merit and should be dismissed or whether disciplinary proceedings should be initiated. The General Chair shall notify, in writing, the complainant and the accused member of the decision of whether to initiate a disciplinary proceeding.

- 13.1.1.3 The General Chair shall appoint a member of the Committee to proceed with an investigation as he or she deems necessary to make findings and recommendations. The appointed Committee member shall submit his or her findings and recommendations to the General Chair for submission to the full Committee for review and comment. The Committee shall determine, by majority vote of the Committee members voting whether to accept, reject or modify the findings and recommendations. The General Chair or his appointed representative shall notify the accused member, in writing of its findings and recommendations.
- 13.1.1.4 If disciplinary action is recommended, the General Chair or his designated committee representative shall present the evidence, findings, and recommendations to the Board of Directors. The accused member may appear or submit in writing to the Board of Directors, on such conditions as determined by the Board of Directors, only mitigating or extenuating matters that may affect the Board of Directors decision concerning types of disciplinary actions to be imposed. The Board of Directors shall by majority vote determine whether, and the nature of, disciplinary action to be taken against the member. The Board of Directors may publicly or privately censure, suspend, or terminate membership in the Association or take such other actions as deemed appropriate. The General Chair shall notify the accused member, in writing, of the Board's determination. The General Chair shall advise the complainant of whether disciplinary action was taken.
- 13.1.1.5 Except as otherwise contemplated by the Constitution and By-laws, information obtained by the Grievance Committee is considered confidential and should not be released outside the Committee or Board of Directors.
- 13.1.1.6 If an ethics or grievance complaint is filed by or against a member of the Ethics and Grievance Committee or a member of the Board of Directors, that member shall recuse himself or herself from investigation or consideration of the complaint.
- 13.1.1.7 The Ethics and Grievance Committee performs other duties as assigned by the President of the Board of Directors.

#### 13.1.2 The Legislative Committee:

- 13.1.2.1 Represents the interests of the Association in all matters relating to legislation, proposed or enacted, at the federal, state or local level, which affect or may affect the

Association or the members thereof.

13.1.2.2 When appropriate, recommends to the Board any changes in the Standards and Principles of Practice necessitated by changes in law or the effects of law.

13.1.2.3 Performs other duties as assigned by the President and the Board of Directors.

13.1.3 The Membership Committee:

13.1.3.1 Examines the qualifications of applicants for membership, publishes the names of all applicants for membership at least thirty (30) days prior to the submission of their names to the Board and sends to the Board the names of all those whom the Committee finds meet the qualifications for the class of membership requested.

13.1.3.2 Performs other duties as assigned by the President and the Board of Directors.

13.1.4 The Seminar Committee:

13.1.4.1 Is responsible for the training and education components of that meeting of the General Membership designated as the annual seminar.

13.1.4.2 Performs other duties as assigned by the President and the Board of Directors.

13.1.5 Research and Development Committee:

13.1.5.1 Investigates those areas of science and technology which impact the validity, reliability and use of the polygraph technique and reports the findings of said investigations to the Board and the General Membership as appropriate.

13.1.5.2 Performs other duties as assigned by the President and the Board of Directors.

13.1.6 Educational Accreditation Committee:

13.1.6.1 Has the authority and responsibility to establish and promulgate criteria for evaluation and accreditation of programs and institutions engaged in any course of study within any private, public, or federal educational or training institution which purports to offer instruction in, or the teaching of, the theory or practice of detecting deception or verifying truth of statements through the use of any polygraph techniques or instrumentation. The criteria are under continuing review and changes are made as appropriate and as required.

13.1.6.2 Uses the accreditation process to enhance the instruction and learning experience of those seeking to be polygraph professionals.

13.1.6.3 Performs other duties as assigned by the President and the Board of Directors.

13.1.7 Public Relations and Information Committee:

13.1.7.1 Develops written, visual and auditory materials for dissemination of positive and educational information about the polygraph profession.

13.1.7.2 Establishes public relations programs to promote the best interest of the polygraph profession.

- 13.1.7.3 Answers media inquiries regarding polygraph matters.
- 13.1.7.4 Performs other duties as assigned by the President and Board of Directors.

13.1.8 Continuing Education Committee:

- 13.1.8.1 Offers educational seminars for American Polygraph Association members at various regional locations.
- 13.1.8.2 Provides training and information on technological advances in the polygraph profession.
- 13.1.8.3 Performs other duties as assigned by the President and the Board of Directors.

13.1.9 Budget Committee

- 13.1.9.1 Is chaired by the Treasurer
- 13.1.9.2 By May 1 each year, provides an estimated budget of income and expenses for the American Polygraph Association to the Board of Directors.
- 13.1.9.3 Monitors the budget and provides such information to the Board of Directors.
- 13.1.9.4 Performs other duties as assigned by the President and the Board of Directors.

13.1.10 Awards Committee:

- 13.1.10.1 Identifies those persons who through their unselfish and extraordinary efforts promote and advance the best interests of the polygraph profession.
- 13.1.10.2 The following are current Awards offered by the American Polygraph Association:
  - 13.1.10.2.1 William L. and Robbie S. Bennett Memorial Award: For unrelenting efforts and display of ability in the interest of the American Polygraph Association.
  - 13.1.10.2.2 Al & Dorothea Clinchard Award: For extended, distinguished, devoted and unselfish service in behalf of the American Polygraph Association membership.
  - 13.1.10.2.3 Cleve Backster Award: Honoring an individual or group that advances the polygraph profession through tireless dedication to standardization of polygraph principles and practices (January 28, 2006).
  - 13.1.10.2.4 Leonarde Keeler Award: For long and distinguished service to the American Polygraph Association.
  - 13.1.10.2.5 David L. Motsinger Horizon Award: In recognition of a new shining star in the profession or association who early in their career demonstrates loyalty, professionalism and dedication to the polygraph profession (less than 10 years)
  - 13.1.10.2.6 John E. Reid Award: For achievement in research, teaching and writing of the polygraph profession.

13.1.10.2.7 President's Award: Given at the discretion of the President.

13.1.10.2.8 Merit and Service award certificates.

13.1.10.3 Perform other duties as assigned by the President and the Board of Directors.

**14 Division XIV: Ratification**

14.1 These By-Laws shall take effect at the time the Constitution of the American Polygraph Association is ratified and shall supersede all other By-Laws then in effect.