



**CONTRACT MA-057-20011586  
BETWEEN  
COUNTY OF ORANGE  
AND  
C.M. TIPTON POLYGRAPH AND ASSOCIATES  
FOR  
POLYGRAPH EXAMINATION SERVICES  
FOR ADULT SEX OFFENDERS - POST CONVICTION**

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

This Agreement, hereinafter referred to as “Contract,” entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County,” acting through the Orange County Probation Department, hereinafter referred to as “Probation,” and C.M. Tipton Polygraph and Associates, hereinafter referred to as “Contractor.” County and Contractor may be referred to individually as “Party” or collectively as “Parties”.

**RECITALS**

**WHEREAS**, Contractor responded to Request for Proposals (RFP) No. 057-C019963-MM for the provision of Polygraph Examination Services of Post-Conviction Adult Sex Offenders;

**WHEREAS**, County has determined that Contractor’s proposed services meet or exceed the requirements and specifications of the RFP; and

**WHEREAS**, Contractor agrees to render such services in accordance with the terms and conditions set forth herein; and

**WHEREAS**, County agrees to pay Contractor based on the schedule of fees set forth in IV. Cost/Compensation for Contract Services; and

**WHEREAS**, the Orange County Board of Supervisors has authorized the Chief Probation Officer or designee to enter into a Contract to provide Polygraph Examination Services, effective July 1, 2020, through June 30, 2023, renewable for two additional one-year periods, subject to applicable policy of the Orange County Board of Supervisors for contract renewals; and

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

**ARTICLES**

**I. 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 adjudication to another county.
- B. Entire Contract:** This Contract 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 designee.

- C. **Amendments:** No alteration 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. **Intentionally left blank.**
- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services not conforming to applicable specifications, or descriptions or services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods and 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 indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," 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 to 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. **Intentionally left blank.**
- I. **Assignment:** 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- 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 penalties pursuant to Section 1741 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 immediately terminate this Contract without penalty for cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, 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 obligation.

- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or 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. **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.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to 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 workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **Insurance Requirements:**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements 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.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents', employees' or subcontractors' performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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	\$1,000,000 per claims-made \$1,000,000 aggregate
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 20 26 04 13 or a form at least as broad naming the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad 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.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this 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 (7) 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 (30) 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.

- P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.



County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **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 thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **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.
- T. **Compliance with Laws:** Contractor represents and warrants that 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 such compliance, and pursuant to the requirements of paragraph "Z" 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.
- U. **Intentionally left blank.**
- V. **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 or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

- X. **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 had 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 any person representing them, or both. Accordingly, any rule or law (including California Civil 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 provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **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.
- Z. **Indemnification:** 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.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to

such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

- BB. **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.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach seventy-five (75) percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued by the County.

## II. ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract, together with its Attachment, attached hereto and incorporated herein by reference, specifies the terms and conditions by which the County will procure and receive services from Contractor. The Scope of Work is fully set forth in Section III of this Contract.
2. **Term of Contract:** The initial term of this Contract shall be for the period commencing on, July 1, ~~2020~~ ~~2023~~ 2024 subject to the termination provisions set forth in the following sections:

### Section I, General Terms and Conditions:

- Paragraph I – Assignment
- Paragraph K – Termination
- Paragraph O – Insurance Requirements
- Paragraph Q - Change of Ownership/Name, Litigation Status,  
Conflicts with County Interests
- Paragraph BB – Contingency of Funds

### Section II, Additional Terms and Conditions:

- Paragraph 10 – Breach of Contract
- Paragraph 24 - Subcontracting

- 2.1 **Renewal:** This Contract may be renewed for ~~two~~ ~~one~~ (2) additional one (1) year periods, subject to: (a) the County's assessment of Contractor's performance and availability of funding or appropriations warranting such renewal; (b) upon mutual written agreement of the Parties; and (c) applicable policy of the Orange County Board of Supervisors for contract renewals. The County shall not be required to give a reason if it elects not to renew the Contract.
3. **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.

4. **Compensation:** The Contractor agrees to accept the specified compensation as set forth in Section IV of this Contract, entitled "Costs/Compensation for Contract Services," as full payment 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. **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, currently designated below or as may later be succeeded, 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.

County Project Manager: ~~David Haner~~ Stacey McCoy  
 Telephone#: ~~(714) 896-7460~~ (949) 206-4182  
 Email: ~~David.Haner@prob.ocgov.com~~ Stacey.McCoy@prob.ocgov.com

6. **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. **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.
8. **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.
9. **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 of paragraph "Z" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
10. **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:

10.1 Terminate the Contract immediately, pursuant to Section K herein;

- 10.2 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;
- 10.3 Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
- 10.4 Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
11. **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.
12. **Disputes:**
- 12.1 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 Project Manager and the Probation Project Manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
- 12.1.1 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.
- 12.1.2 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.
- 12.2 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.
13. **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.

14. **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.
15. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 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.

16. **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, Sections 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.
17. **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  
 Orange County Probation Department  
 Attn: Contract Administration Manager  
 1055 N. Main St, 5<sup>th</sup> floor  
 Santa Ana, CA 92701

TO: CONTRACTOR  
 C.M. Tipton Polygraph and Associates  
 Attn: Thomas Tipton  
 1111 Town and Country Road, Unit #49  
 Orange, CA 92868

18. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent. Such records shall be available for periodic inspection by the County at reasonable times.
19. **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.
20. **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; all as may be 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.

21. **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 otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.
22. **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.
23. **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.
24. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be

invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

25. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code 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/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm).

26. **Probation Specific Terms and Conditions:**

**26.1 Security Requirements:**

26.1.1 Contractor shall, with the respect to all employees of Contractor performing services hereunder:

26.1.1.1 Perform background checks as to past employment history. Contractor may not rely on Probation’s background security clearance (hereinafter “Security Clearance”, “Contractor Background Clearance” or “Probation Background Investigation”) as set forth in Section II (“Additional Terms and Conditions”), Paragraph 26.3 (“Contractor Background Clearance”) and Paragraph 26.4 (“Probation Background Investigation”) below.

26.1.1.2 Inquire as to past criminal felony convictions

26.1.1.3 Ascertain that those employees who are required to drive in the course of performing services hereunder have valid California driver’s licenses and no DUI convictions within two (2) years prior to commencement of services hereunder

- 26.2 The Contractor’s Personnel Requirements:** All employees must pass the Probation’s security clearance and meet all requirements as set forth below:



- 26.2.1 All Contractor's employees assigned to perform the work under this Contract shall be subject to background checks in accordance with Section II ("Additional Terms and Conditions"), Paragraph 26.4 ("Probation Background Investigation") below. Clearance must be updated and renewed for every employee, every five (5) years until Contract expires or employee separates from company
- 26.2.2 No person shall be assigned to perform the work under this Contract that **has not** received prior clearance from the Probation Department.
- 26.2.3 Contractor is responsible for ensuring that anytime an employee is assigned to perform work pursuant to this Contract that a security clearance request is submitted and approved in accordance with Section II ("Additional Terms and Conditions"), Paragraph 26.3 ("Contractor Background Clearance") below, prior to that employee requiring access to such premises for providing services under this Contract.
- 26.2.4 Contractor shall be responsible for submitting updated security clearance requests in order to renew the security clearances. An updated request shall be submitted at least thirty (30) County working days prior to the expiration of an existing clearance; a security clearance is valid for five (5) years from the date of issuance or until the Contract expires or the employee separates from company. If Contractor fails to provide a timely updated security clearance request for an employee, resulting in a lapse of that security clearance, Contractor shall remove and replace such employee at the County property. Repeated failure of Contractor to provide timely updated security clearance requests may result in County exercising its rights pursuant to Section II ("Additional Terms and Conditions"), Paragraph 10 ("Breach of Contract").
- 26.2.5 Contractor security clearance information shall be thoroughly and accurately completed. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.
- 26.2.6 Contractor's employee who will be assigned to perform services under this Contract will be required to complete the following forms, when going through Probation background clearance: FBI Criminal Justice Information Services and Security Addendum (CJIS) (attached hereto as Exhibit 1), Employee/Volunteer Statement Form (attached hereto as Exhibit 2), Confidentiality of CORI Information (attached hereto as Exhibit 3) and Employee Acknowledgement of Employer Form (attached hereto as Exhibit 4)
- 26.2.7 Contractor shall sign the CLETS Private Contractor Management Control Agreement (attached hereto as Attachment C) in order to provide Contractor access to such information as may be needed to perform services under the Contract, provided it is understood Contractor will not have access to the CLETS system itself. Based on the level of CLETS access granted to Contractor, Contractor's employees who will be assigned to perform services under this Contract may be required to complete CLETS/NCIC Training."

- 26.3 Contractor Background Clearance:** At least thirty (30) days prior to the start of the Contract, or as soon as possible thereafter, Contractor shall email a list of **current** employees who will be assigned to perform services under this Contract to: [Prob-VendorBackgrounds@prob.ocgov.com](mailto:Prob-VendorBackgrounds@prob.ocgov.com) and carbon copy to [Prob-Purch@prob.ocgov.com](mailto:Prob-Purch@prob.ocgov.com), so that Probation can conduct background investigations of those assigned employees as required by this Contract in accordance with Section II ("Additional Terms and Conditions") Paragraph 26.4 ("Probation Background Investigation")

below. While clearance may be denied for many reasons based on information obtained in a background investigation, an omission or false statement made by the employee, regardless of the nature or magnitude of the omission or false statement, may also be grounds for denying clearance.

Within thirty (30) days of separation of any approved employee who leaves the Contractor's employment, Contractor shall notify Probation of such separation, by email to: [Prob-VendorBackgrounds@prob.ocgov.com](mailto:Prob-VendorBackgrounds@prob.ocgov.com) and carbon copy to [Prob-Purch@prob.ocgov.com](mailto:Prob-Purch@prob.ocgov.com).

- 26.4 Probation Background Investigation:** Probation shall conduct a background investigation on each Contractor's current employees identified as assigned to perform services under this Contract in accordance with Section II ("Additional Terms and Conditions") Paragraph 26.3 ("Contractor Background Clearance") above. The background investigation may include, but shall not be limited to an interview, fingerprinting, completion of a personal history statement and pre-investigative questionnaire, verification of education and prior employment history, and a criminal record check with the Department of Justice. The Department of Justice will notify Probation of any subsequent arrest and/or conviction of any Contractor's employees approved to perform services under this Contract.

All Contractor Employees assigned under this Contract are required to receive prior background clearance from Probation **before** providing any services. A representative from Probation's Background Unit will notify Contractor as to whether or not each employee has passed background. If an employee is denied clearance, neither the County nor Probation will provide a reason for the denial to the Contractor or to the employee.

### III. 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 Probation. The Contractor shall coordinate its efforts with Probation, 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 Probation.

The Contractor shall be responsible for scheduling appointments for polygraph examinations with adult sex offenders referred by Probation, 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 Project Manager. When utilizing polygraph examinations with adult sex offenders, treatment providers and DPOs work in collaboration 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. Types of Polygraph Examinations to be Performed by Contractor

Probation Department anticipates a need for up to 800 polygraph examinations of the following types conducted annually:

##### 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 90 days of treatment, and is inclusive of the "Sexual History Exam I" and "General Sexual History Exam II" as discussed in Section

8.3 of the American Polygraph Association Model Policy for Post-Conviction Sex Offender Testing (APA PCSOT Model Policy), attached hereto as Attachment A and incorporated herein by reference.

1.2 Specific Issue Examination

The specific issue examination is an examination regarding a specific behavior, allegation or event. This examination is inclusive of the "Instant Offense Exams" and "Prior Allegation Exam" as discussed in Sections 8.1 and 8.2, respectively of Attachment A. These examinations shall be implemented at the onset of, or during, the treatment process.

1.3 Maintenance/Monitoring Examination

The Maintenance Examination is a periodic examination of an abuser's compliance with treatment and/or probation restrictions, as discussed in Sections 8.4. ("Maintenance Exam") and 8.5 ("Sex Offense Monitoring Exam") of Attachment A. This examination serves to identify and deter high-risk behaviors. The Sex Offense Monitoring examination explores the possibility that the abuser may have been involved in unlawful sexual behaviors during a specified period of time, discussed in Section 8.5("Sex Offense Monitoring Exam") of Attachment A. Maintenance and/or sex offense monitoring polygraph examinations shall be performed for those abusers that are determined to present a high risk, at intervals recommended by the "Containment Team" consisting of DPOs, treatment providers, and Contractor.

Maintenance and monitoring examinations further assist the treatment providers in tailoring more effective intervention strategies.

**2. General Requirements**

Contractor shall schedule and conduct examination appointments, report and maintain test results as follows:

- 2.1 Contractor shall ensure that 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 identification with referral documents received from assigned DPOs. Referral documents may include a copy of the Probation Department Field Book Sheet, containing a picture identification and an "Adult Initial Assessment" form.
- 2.4 If the examiner is unable to verify the identity of examinee, examiner shall immediately contact the assigned DPO or Probation Project Manager, by telephone and e-mail.
- 2.5 Contractor shall contact the examinee within 48 hours of notice from the DPO to schedule an appointment.

2.5.1 An appointment will be scheduled for the examinee within two weeks of referral.

- 2.5.2 On occasion, when urgently needed, Contractor must be available to schedule and conduct a polygraph test within a 24-hour notice.
- 2.6 Examiner shall immediately notify the DPO, the Probation 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 Project Manager and treatment provider will be by telephone and 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 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 Probation, to maintain security and confidentiality, and to provide accessibility to DPOs, the Probation Project Manager and treatment providers.

### **3. 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, such as marital status, children, employment, and living situation.

### **4. Polygraph Examination Recording Guidelines**

Contractor shall perform polygraph testing on referred adult sex offenders in the following manner:

- 4.1 All polygraph examinations will be paper chart or digitally recorded for diagnostic and documentation purposes.
- 4.2 Contractor shall use recording channels/components for polygraph examinations that have been prescribed by the APA, as follows:
- 4.2.1 For respiration patterns made by pneumograph components, at least one respiration component will record the thoracic (upper chest) respiration and/or abdominal (lower stomach) respiration pattern.
- 4.2.2 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).

- 4.2.3 To record changes in the pulse rate, pulse amplitude, and changes in the relative blood pressure, a cardiograph tracing will be utilized.
- 4.3 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.
- 4.4 Contractor shall videotape all polygraph examinations. The recording shall include the entire examination from the beginning of the pre-test interview to the completion of the post-test review. The recording should be maintained for a minimum of five years.

## **5. 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 years.

## **6. Length and Frequency of Polygraph Examinations**

Contractor shall follow the established guidelines under section 5.7 of the APA PCSOT Model Policy relating to the number and Length of polygraph examinations in order to maximize validity and reliability of examination results:

- 6.1 No more than five examinations per day
- 6.2 No more than three sexual history disclosure examinations per day
- 6.3 No less than 90 minutes in duration from the start of the pre-test interview through the end of the post-test interview
- 6.4 No more than four separate examinations per year on the same examinee

- 6.5 For compensation purposes under Section V 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. 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 APA 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 APA.
- 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 requirements from various jurisdictions of the criminal justice system, Contractor shall be aware and cognizant of the general implications and local judicial policies regarding newly reported crimes and self-incrimination.

**8. 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 relevant questions shall be asked during any given examination.

**9. 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 such as sexual assault, homicide, incest, as this terminology may allow for client rationalization and utilization of other defense mechanisms;
- 9.2.2.3 Be clear in meaning, not allow for multiple interpretations, and not be accusatory in nature;
- 9.2.2.4 Be free of assumption of guilt or deception.; 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 such as rape, molest, and murder.

**10. Standards for Contractor's Sex Offender Polygraph Examiners**

The following are the County's requirements relating to education and experience for each sex offender polygraph examiner. Contractor shall provide proof or documentation of each requirement:

- 10.1 Graduated from an APA-accredited school; or received a baccalaureate degree from a college or university accredited by an accreditation board recognized by the U. S. Department of Education or the Council on Higher Education Accreditation; or earned an equivalent degree from a college or university outside of the U.S. recognized by the international educational community as meeting similar standards.
- 10.2 Holds a current and valid license to practice polygraphy as issued by a state or federal agency requiring such license
- 10.3 Completed no less than 200 actual polygraph examinations using a validated polygraph technique as taught at an APA-accredited school
- 10.4 Completed a minimum of 40 hours of specialized instruction, beyond basic polygraph training course requirements, through PCSOT training approved by the APA, and passed a final written examination approved by the APA or its designated representative.
- 10.5 Completed 30 hours, with 15 of those hours pertaining to specialized sex offender polygraph training, of continuing education every two 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.

**11. Standards for Contractor's Polygraph Testing Facility**

Contractor shall provide and maintain a polygraph testing facility, at its own cost. Probation 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 III Paragraph 15 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; and
- 11.5 Have an area sufficient for testing.

In addition, Contractor shall provide all equipment required to conduct polygraph examination and audio/video-recording sessions. Such equipment shall be guaranteed to operate in accordance with recognized industry standards.

Contractor shall videotape all polygraph examinations. The recording should include the entire examination from the beginning of the pre-test interview to the completion of the post-test interview. The recording shall be maintained for a minimum of five years.



**12. Test Result Reporting**

- 12.1 The Contractor shall report all normal test results to the DPOs, Probation 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.
- 12.2 Test results indicating a new law violation, including new or continued victimization or any indication that a participant poses an immediate threat to the public, shall be reported immediately upon completion of the examination, via telephone and e-mail to the assigned DPO, the Probation Project Manager and the treatment provider. Test results indicating a probation violation or a high degree of deception shall be reported within four hours of completion of the examination, via telephone and e-mail to the assigned DPO, the Probation Project Manager and the treatment provider.

**13. Monthly Reports**

Contractor shall establish and maintain a monthly report, and make them electronically accessible to Probation:

- 13.1 Monthly Reports shall include the following information, at a minimum:
- 13.1.1 A list of individuals for whom a polygraph was administered (full name and Master List number (A#))
  - 13.1.2 Date and type of polygraph examination
  - 13.1.3 Responses to the individual questions
  - 13.1.4 Total examination by type with the total costs
  - 13.1.5 Requesting Probation Agency

**14. Court Appearance and/or Testimony**

Contractor shall provide necessary persons including technical representatives for testimony at court hearings or trial 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.

**15. 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 Probation and the treatment provider. This procedure shall be submitted for Probation review and approval prior to the commencement of services.

**16. Quality Assurance**

- 16.1 The Contractor shall permit periodic, unannounced visits by Probation and 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.
- 16.2 The Contractor shall participate in a proficiency-testing program by an accredited agency on a quarterly basis and submit results to Probation. If Probation finds a quality assurance problem, Contractor shall be required to provide written plans for corrective action.
- 16.3 The Contractor shall provide signed Individual Daily Case Log sheets for each examiner to the Contract Manager, to be submitted with Contractor's monthly invoice. The Daily Case Log shall include, but not be limited to, name of examiner, examiner's signature, date of examination, name of examinee, case number, examination type, examination start and end time.

**17. Other Contractor Responsibilities**

The Contractor shall:

- 17.1 Employ, at a minimum, two examiners during the entire term of this Contract in order to meet expected and unanticipated usage and volume of up to 800 annual examinations.
- 17.2 Notify the Probation 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 Probation, and determination of the new staff's compliance with the requirements for education and experience contained herein.
- 17.3 Employ examiners who shall be subject to compliance with the established ethical standards and practices of recognized experts in the industry, such as the APA, the American Association of Police Polygraphists, the National Polygraph Association, the California Association of Polygraph Examiners, and the Association for the Treatment of Sex Offenders.
- 17.4 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.
- 17.5 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 staff.
- 17.6 Provide all office space, furniture, utilities, supervision, labor (office support and examiner staff), materials, and equipment necessary to perform the work described herein.
- 17.7 Maintain all equipment required for performing services under this Contract in good operating order.
- 17.8 Provide interpreter services for referred examinees as needed.
- 17.9 Provide oral and written reports to, and in consultation with, Probation staff and treatment providers.

- 17.10 Notify the Probation 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.
- 17.11 In the event Contractor is unable to provide the services as scheduled, Contractor is required to notify the Probation 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 Project Manager.
- 17.12 Maintain the absolute confidentiality of all information pertaining to Probation examinees, releasing no data to anyone without prior written authority of the Probation Project Manager.
- 17.13 Advise each employee, in writing, of Probation's confidentiality requirements, 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.
- 17.14 Notify the Probation 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 Project Manager in order to resolve the emergency.
- 17.15 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.
- 17.16 Attend "Containment Team" meetings at no additional charge to the County, on a monthly basis, or oftener as requested by the Probation Project Manager. Meetings will be attended by the Probation Project Manager, DPOs, and treatment providers.

18. **County's Responsibilities**

The County, acting through Probation, shall:

- 18.1 Provide a Project Manager, as appointed by Probation's Director of Special Supervision, who shall be designated as the "Probation Project Manager".
- 18.2 Have final authority and responsibility for decisions affecting participants' selection for services under this program and for retention in the program.
- 18.3 Assume no financial responsibility for the operations of the Contractor except as provided in Section IV, "Cost/Compensation for Contract Services" herein.
- 18.4 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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#### IV. COSTS/COMPENSATION FOR CONTRACT SERVICES

This is a usage agreement between the County and Contractor for polygraph examination services for adult sex offenders who are under Probation supervision.

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. Payment and Invoicing Instructions

###### **Payment (Electronic Funds Transfer (EFT)):**

County of Orange offers contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. To request a form, please contact Probation's Contract Development and Administration Manager listed in the bid. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.

###### **Invoicing Instructions:**

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

Contractor shall reference contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the Probation Department and subject to routine processing requirements. The responsibility for providing an acceptable invoice 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 at the minimum following information:

- Contractor's name and address
- Contractor's remittance address
- Name of County agency – Orange County Probation Department
- County Contract number (MA-057-20011586)
- Contractor's Federal I. D. number
- Name of staff performing services
- Classification of staff performing services
- Date, number and type of polygraph examinations conducted
- Unit cost for each type of polygraph examination conducted
- Total amount of invoice

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## 2. 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 under this Contract. The maximum annual amount to be paid under this Contract shall not exceed \$654,000.

2.1 For the period effective July 1, 2020 through June 30, 2023

Estimated Cost for Polygraph Examination Services:

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Item No.</b>	<b>Examination Type</b>	<b>Annual Number of Exams/Interpreter Service Hours (Estimated Average)*</b>	<b>Unit Price**</b>	<b>Total Cost (Estimated)*</b>
1	Sexual History	180	\$ 325 per test	<u>\$ 58,500</u> (B1 x \$C1)
2	Specific Issue	20	\$ 250 per test	<u>\$ 5,000</u> (B2 x \$C2)
3	Maintenance/Monitoring	600	\$ 250 per test	<u>\$ 150,000</u> (B3 x \$C3)
4	<b>Sub-Total</b>	800 Exams		<u>\$ 213,500</u> (\$ Sum of D1 – D3)
5	Interpreter Services Hourly Rate:	100 hours	\$ 45 per hour	<u>\$ 4,500</u> (B5 x \$C5)
6	<b>Total Annual Costs</b>			<u>\$ 218,000</u> (\$ Sum of D4 + D5)
7	<b>Total Costs for 3 Years</b>			<u>\$ 654,000</u> (\$ Sum of D6 x 3)

\* Number of tests/exams/hours and total cost are only estimates and are neither requirements nor guarantees.

\*\* Unit price per test/hour is fixed and will not fluctuate based on the actual number of hours/exams/tests performed.

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3. In the event that this Contract is renewed pursuant to section II.2 (“Additional Terms and Conditions, Term of Contract”), County shall pay Contractor for services rendered under this Contract as follows:

3.1 For the period July 1, 2023 through June 30, 2024:

Estimated Cost for Polygraph Examination Services:

Item No.	A	B	C	D
	Exam Type	Annual Number of Exams/Interpreter Service Hours (Estimated Average)*	Unit Price**	Total Cost (Estimated)*
1	Sexual History	180	\$ 325 per test	<u>\$ 58,500</u> (B1 x \$C1)
2	Specific Issue	20	\$ 265 per test	<u>\$ 5,300</u> (B2 x \$C2)
3	Maintenance/Monitoring	600	\$ 265 per test	<u>\$ 159,000</u> (B3 x \$C3)
4	<b>Sub-Total</b>	800 Exams		<u>\$ 222,800</u> (\$ Sum of D1 – D3)
5	Interpreter Services Hourly Rate:	100 hours	\$ 45 per hour	<u>\$ 4,500</u> (B5 x \$C5)
6	<b>Total Annual Cost</b>			<u>\$ 227,300</u> (\$ Sum of D4 + D5)

\* Number of tests/exams/hours and total cost are only estimates based on the prior year’s average use and are neither requirements nor guarantees.

\*\* Unit price per test/hour is fixed and will not fluctuate based on the actual number of hours/exams/tests performed.

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3.2 For the period July 1, 2024 through June 30, 2025:

Estimated Cost for Polygraph Examination Services:

Item No.	A	B	C	D
	Exam Type	Annual Number of Exams/Interpreter Service Hours (Estimated Average)*	Unit Price**	Total (Estimated)*
1	Sexual History	180	\$ 325 per test	<u>\$ 58,500</u> (B1 x \$C1)
2	Specific Issue	20	\$ 265 per test	<u>\$ 5,300</u> (B2 x \$C2)
3	Maintenance/Monitoring	600	\$ 265 per test	<u>\$ 159,000</u> (B3 x \$C3)
4	<b>Sub-Total</b>	800 Exams		<u>\$ 222,800</u> (\$ Sum of D1 – D3)
5	Interpreter Services Hourly Rate:	100 hours	\$ 45 per hour	<u>\$ 4,500</u> (B5 x \$C5)
6	<b>Total Annual Cost</b>			<u>\$ 227,300</u> (\$ Sum of D4 + D5)

\* Number of tests/exams/hours and total cost are only estimates based on the prior year's average use and are neither requirements nor guarantees.

\*\* Unit price per test/hour is fixed and will not fluctuate based on the actual number of hours/exams/tests performed.

- Signature page follows -

**Signature Page**

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

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

*\* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

Name	Title
Signature	Dated

*\*The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief of Financial Officer; 4) Assistant Treasurer.*

Name	Title
Signature	Dated

**COUNTY OF ORANGE**

By: _____	Dated: _____
Steven J. Sentman, Chief Probation Officer County of Orange, California	

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

By: _____	Dated: _____
Senior Deputy County Counsel	



**ATTACHMENT A**

**American Polygraph Association (March 2018)**

## Model Policy for Post-conviction Sex Offender Testing

March 2018

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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 activities or policy implementation at the local level.
  - 1.1. Compliance and local authority. Examiners should acquaint themselves with and adhere 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. 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.
  - 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 behavioral/mental health treatment of persons convicted of a sexual offense. 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 promote reliability and professionalism 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, inferential statistics, and predictive analytics.
  - 2.2. Evolving evidence. In the event that evidence from future empirical studies reveals that 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 persons convicted of a sexual offenses.

- 3.1. Multidisciplinary collaboration. Examiners who engage in PCSOT activities should emphasize a multi-disciplinary or multi-systemic containment approach to the supervision
- 3.2. and treatment of persons convicted of a sexual offense. 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.
- 3.3. 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 persons convicted of a sexual offense;
  - B. Deterrence of problem behavior among persons convicted of a sexual offense 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 persons convicted of a sexual offense 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. When used as a basis of information for professional decision-making, polygraph test results should be used with consideration for their probabilistic value of the test.
  - 4.2. Successive hurdles. Examiners may 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. Screening, exams in PCSOT are conducted in the absence of known allegations or known incidents. Follow-up examinations should employ a single-issue technique whenever increased decision accuracy is required. Increased overall decision accuracy can be observed when tests are blind, independent and when results are conclusive. Successive-hurdles activities may include the use of mixed-issue or single-issue screening polygraphs followed by additional polygraph testing or other activities, including posttest discussion, additional field or background investigation. 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. Screening 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. Screening exams may at times be narrowed to a single target issue of concern. However, most PCSOT screening exams will involve multiple target issues for which it is conceivable that a person could be involved in one or more behavioral issues and uninvolved other behavioral issues of concern.
- 4.2.2. Event specific diagnostic exams. Event specific diagnostic/investigative exams are conducted in response to known allegations or known incidents for which there is reason to suspect the involvement of the examinee. Examiners should use single issue polygraph techniques for follow-up exams conducted in response to a previously unresolved multiple issue screening exam, and whenever a screening test can be reduced to a single issue of concern.
- 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 professionals involved in the multi-disciplinary supervision and treatment of persons convicted of a sexual offense.
  - 4.3.1. Examiners and mandated reporting. Examiners should follow local and state mandatory reporting laws.
  - 4.3.2. Other professionals and mandatory reporting. Examiners should remain aware that other professional members of the multi-systemic containment team may 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. Examiners should conduct all polygraphs with sensitivity and awareness to diversity.
  - 5.2. Polygraph examiner as part of the supervision and treatment team. Examiners should consider themselves to be an integral part of the multidisciplinary supervision and treatment team. Contact with supervision and treatment team should be on a regular basis as needed, 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 PCSOT programs. Truthfulness may 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,
  - 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 other 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, and 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 thoughts 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 short mental flash of sexual imagery. .
  - 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 behaviors.

7.1.2 Structure. Relevant question construction should be...

- A. answerable by a “NO” without unnecessary mental exercise or uncertainty;
- 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 or as probable or directed lie 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 a single PCSOT 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 the 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 as an event-specific diagnostic 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. When necessary, 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 should happen 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) screening 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 lead 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 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/unreported 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. This examination may be conducted irrespective of whether or not the examinee was charged with or convicted of the prior alleged offense. 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 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. When requested, examiners should conduct the Sex History Exam I (SHE-I) to 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 several tangible signal issues that may provide usable information about victim-age, victim-profile, victim-selection, victim-control/access, and victim-silencing behaviors. SHE-I examinations may also provide information about the examinee's capacity for grooming, manipulation, 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 may permit the justification of a lower assessed risk level.

- 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 (or applicable local statute) while the examinee was legally adult, or sexual contact with persons 4 or more years younger than the examinee (or applicable local statute) 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 order that mandated the present treatment program 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 screening 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 if this approach lends to more satisfactory resolution of the behavioral target issues.

8.3.3. Sexual history exam II – sexual deviancy, compulsivity, and preoccupation. When necessary, examiners should conduct the Sex History (SHE-II) examination to investigate the examinee's lifetime history of sexual deviancy, preoccupation, and compulsivity behaviors not including those behaviors described in the Sex History Exam I (Section 8.3.2). This examination may be most important with examinees who substantially deny involvement in sexual deviancy, compulsivity and preoccupation behaviors.

8.3.3.1. Sexual history exam II - examination targets. Investigation targets for the 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 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 technology 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 may include wearing loose or baggy clothing that allows one's sexual organs to become exposed to others or other acts of exposure in public if done for sexual purposes.
- 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. This may also include incidents of wearing another person's underwear or undergarments without that person's knowledge or permission, in addition to incidents in which underwear, undergarments, or personal property was returned after use for masturbation or other use for sexual arousal.

- D. Frottage/sexual rubbing, including 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. 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.
- 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 online sex-chat or cyber-sex activities via IRC, Instant Messaging, Web Chat, email and/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.
- H. Online sex activities, including sex-chat, sex-games, and webcam sex activities; as well as on-line masturbation and/or tele-dildonic activities.
- 8.3.3.3. [Sexual history exam II – time of reference](#). The time of reference for the Sex History Exam II may be restricted to the period of time prior to the current court supervision order that mandated the present treatment program 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. [Sexual history exam II - testing approach](#). Examiners should conduct this examination as a multi-issue (mixed-issue) screening examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Sex History Exam II in a series of more narrowly focused exams when that approach lends to more satisfactory resolution of the behavioral target issues. Nothing in this Model Policy should be construed as to require the investigation of all or any of the suggested investigation targets, or as to 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 be an expression of sexual compulsivity or sexual preoccupation.

- 8.4. Maintenance exam. Examiners should conduct the Maintenance Examination (ME) to investigate, either periodically or randomly, the examinee's compliance with any of the terms and conditions of probation, parole, and treatment rules.
- 8.4.1 Maintenance exam - scheduling. Maintenance Exams should be completed approximately each six to 12 months. Examiners should discuss with multidisciplinary team members 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 acute 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 emphasize target 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 (section 8.5) do not exist. An elevated level of concern regarding re-offense should 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 of under clothing, for the purpose of sexual arousal/stimulation, sexual gratification, or sexual “curiosity”; and sexual hugging and kissing activities.
- B. Use of pornography, if prohibited. Pornography use includes 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, or computer communication interaction system if used for sexual arousing imagery). 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.
- C. Physical contact with underage persons, which can include purposeful activities such as hugging, shaking hands, or playing together, and may also include unplanned or incidental physical contact. Examinees may or may not be subject to restrictions and reporting requirements in this area. Question should address these restrictions as directly as possible. When there are no restrictions this target should be omitted. When a target involving contact with minors is used, examiners should select from either 8.4.2.3.C or 8.4.2.3.D to avoid an imbalanced loading of test target issues.

- D. Being alone or unsupervised with underage persons, refers to prohibited activities in which others cannot see, hear, monitor or observe the activities, or for which others are unaware of an activity involving the examinee and one or more underage persons.
- 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.
- G. Use of electronic communication devices for sexual purposes, including computers cell phones, tablets and other devices such a cameras or surveillance and recording systems to observe, interact, or access others for sexual arousal or sexual contact.
- H. 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.

- 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. All investigation targets in a test series should have a common time of reference. The time of reference may be described generally as the six-month to a year period preceding the examination; although, there may be reasons for lengthening or shortening the time of reference for some exams.
- 8.4.4. Maintenance exam - testing approach. Examiners should conduct this examination as a multi-issue (mixed-issue) screening 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 (SOME) 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 including 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.
- 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 multidisciplinary 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) screening 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. Understanding right from wrong;
  - D. Telling the basic difference between truth and lies;
  - E. Anticipating rewards and consequences for behavior; and
  - F. Maintaining 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. Trauma and dissociation. Examiners should consult with other professional members about a client's history on trauma and dissociation and proceed with caution.
- 9.3. Unsuitable examinees. Examiners should not test examinees who present as clearly unsuitable for polygraph testing at the time of the examination.
- 9.3.1. Psychosis. Persons who are acutely psychotic, suicidal, or have un- stabilized or severe mental health conditions, including dementia, should not be tested.
  - 9.3.2. 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).
  - 9.3.3. 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.

- 9.3.4. Acute injury or illness. Persons suffering from an acute serious injury or illness involving acute pain or distress should not be tested.
- 9.3.5. Controlled substances. Persons whose functioning is observably impaired due to the influence of non-prescribed or controlled substances should not be tested.
- 9.4. Team approach. Examiners should consult with other professional members of the multidisciplinary supervision and treatment team, prior to the examination, when there is doubt about an examinee's suitability for polygraph testing.
- 9.5. Incremental validity. When there are concerns about an examinee's marginal suitability for testing, examiners should proceed with testing only when the multidisciplinary supervision and treatment team determines that 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. Informed consent. Examiners should obtain an examinee's informed consent to complete the polygraph test. This may be completed 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) a statement that information will be provided to the examinee about the polygraph test 5) a statement that all information and results will be released to professional members of the community supervision team, 6) an advisement that admission of involvement in unlawful activities will not be concealed from the referring professionals and, 7) 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. Recording sensors. The instrument should continuously record the following during the test: thoracic and abdominal movement, electrodermal activity, cardiovascular activity, and activity sensors. A channel that detects vasomotor responses or other validated data channels may also be recorded.
- 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 – screening exams. Test results of screening exams should be reported as Significant Response (SR), No Significant Response (NSR) or Inconclusive (INC)/ No Opinion (NO).
- 10.5.5. Interpretation of the test results. Examiners should render a professional opinion using published and established decision rules to achieve a categorical interpretation of the probabilistic test result. 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 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.
- 10.6. Posttest review. The examiner should review the initial 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. The posttest interview may be done in collaboration with other treatment and supervision professionals.
11. Examination report. Examiners should issue a written report containing a factual and objective account 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 multidisciplinary 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 need for resolution of the behavioral targets of the examination within the scope of the examiner's professional capabilities.
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 assurance. 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 that are recognized by the APA every two (2) years.

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**ATTACHMENT B**

**By-Laws**  
**American Polygraph Association**  
(With Amendments through March 2015)

BY-LAWS  
AMERICAN POLYGRAPH ASSOCIATION  
(With Amendments through March 2015)

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 description 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 inquiries 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 properly functioning 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.

### 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 informed consent of the examinee prior to testing. It is recommended that the informed consent of the examinee be obtained after a reasonable explanation of the polygraph process including polygraph instrumentation and sensors, use of video/audio recording, the deed to report information and results to referring professionals, issues to be discussed, and requirements for cooperation during testing.
- 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 then 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 post-conviction sex offender testing 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: Examiners who conduct PCSOT exams shall complete a minimum of 40 hours of specialized instruction, beyond the basic polygraph training course requirements, through PCSOT training approved by the APA.
- 3.11.3 Written Examination: Passing a final written examination, approved by the APA or its designated representative shall occur prior to receiving a certificate of training for the specialized PCSOT training.
- 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 responsivity, 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 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 education and training program that substantially meets the accreditation standards of the APA in place at the time of graduation.

5.1.1.2 Completed not fewer than two hundred (200) actual polygraph examinations using a validated polygraph technique as taught at an APA accredited education and training program 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 minimum of 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 polygraph examiners who are graduates of an APA accredited education and training program, but do not meet the requirements as Full Member; or,
- 5.2.1.2 Are graduates of any basic polygraph education and training program that substantially meets the accreditation standards of the APA in place at the time of graduation; 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;

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 conviction or its equivalent. For the purpose of this section, conviction shall mean the judgment of any court of competent jurisdiction, local, state or federal and shall include a plea of "no contest."

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 sub-section 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 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 and Ad-Hoc Committees

13.1 The President shall establish the following standing committees and shall appoint a chairperson from the membership of the Board of Directors for each committee:

1 – Communication and Public Relations Committee

2 – Ethics and Grievance Committee

3 – Members Services Committee

4 – Professional Development Committee

5 – Research and Development Committee

6 – Education Accreditation Committee

7 – Standards and Specialized Testing Committee

8 – Post Conviction Sex Offender Testing Committee

13.1.1 Standing Committees shall consist of a Chairperson appointed by the President and no fewer than three eligible members appointed by the Committee Chair, whose total number shall be determined by the Committee Chair dependent on the needs of the Committee. The Committee Chair may appoint a Vice-chair. The Committee Chair shall report to the Board of Directors.

13.1.2 Standing Committees shall have and maintain a standard operating procedure of which any changes to require a majority vote of the Board of Directors or general membership.

13.2 The President may establish Ad-Hoc committees for the purpose of administering the goals and objectives of the Association and may appoint any Voting Member to act as Chairperson of any such committee. Ad-Hoc committees shall dissolve upon the completion of their stated purpose, dissolution by the President or upon the expiration of the office of the appointing President.

13.3 Policies and Procedures established by the Board of Directors in administering the Association shall be documented as historical record by the Secretary and retained at the National Office.

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.

## ATTACHMENT C



STATE OF CALIFORNIA  
HDC 0004B  
(Orig. 11/2005; Rev. 03/2010)

DEPARTMENT OF JUSTICE  
PAGE 1 of 2

**CLETS PRIVATE CONTRACTOR  
MANAGEMENT CONTROL AGREEMENT**

Agreement to allow California Law Enforcement Telecommunications System (CLETS) access by

Orange County Probation Department

CA030023G

(Public law enforcement/criminal justice agency)

(ORI)

to

(Private Contractor)

to perform

(Type of service)

services on its behalf.

Access to the CLETS is authorized to public law enforcement and criminal justice agencies (*hereinafter referred to as the CLETS subscribing agency*) only, which may delegate the responsibility of performing the administration of criminal justice functions (e.g., dispatching functions or data processing/information services) in accordance with the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Security Addendum to a private contractor. The private contractor may access systems or networks that access the CLETS on behalf of the CLETS subscribing agency to accomplish the above-specified service(s). This agreement must be received by the California Department of Justice (CA DOJ) prior to the subscribing agency permitting access to the CLETS. The performance of such delegated services does not convert that agency into a public criminal justice agency, not automatically authorize access to state summary criminal history information. Information from the CLETS is confidential and may be used only for the purpose(s) for which it is authorized. Violation of confidentiality requirements or access authorizations may be subject to disciplinary action or criminal charges.

Pursuant to the policies outlined in the *CLETS Policies, Practices, and Procedures (PPP)* and the Federal Bureau of Investigation's (FBI) *CJIS Security Policy*, it is agreed the CLETS subscribing agency will maintain responsibility for security control as it relates to the CLETS access. Security control is defined as the ability of the CLETS subscribing agency to set, maintain, and enforce:

1. Standards for the selection, supervision, and termination of personnel. This does not grant hiring/firing authority to the CLETS subscribing agency, only the authority to grant CLETS access to personnel who meet these standards and deny it to those who do not.
2. Policies governing the operation of computers, access devices, circuits, hubs, routers, firewalls, and other components that make up and support a telecommunications network and related CA DOJ criminal justice databases used to process, store, or transmit criminal justice information, guaranteeing the priority, integrity, and availability of service needed by the criminal justice community.

Security control includes, but is not limited to, the supervision of applicable equipment, systems design, programming, and operating procedures associated with the development, implementation, and operation of any computerized message-switching or database systems utilized by the served law enforcement agency or agencies. Computer sites must have adequate physical security to protect against any unauthorized viewing or access to computer terminal, access devices, or stored/printed data.



STATE OF CALIFORNIA  
HDC 0004B  
(Orig. 11/2005, Rev. 03/2010)

DEPARTMENT OF JUSTICE  
PAGE 2 of 2

### CLETS PRIVATE CONTRACTOR MANAGEMENT CONTROL AGREEMENT

Additionally, it is the responsibility of the CLETS subscribing agency to ensure that all private contractors receiving information from the CLETS meet the minimum training, certification, and background requirements that are also imposed on the CLETS subscribing agency's staff. The minimum requirements are applicable also to staff having access to record storage areas containing information from the CLETS. The minimum requirements include, but are not limited to:

1. Prior to allowing the CLETS access, train, functionally test, and affirm the proficiency of all the CLETS computer operators to ensure compliance with the CLETS and the FBI's National Crime Information Center (NCIC) policies and regulations, if applicable. Biennially, provide testing and reaffirm the proficiency of all the CLETS operators, if applicable.
2. State and FBI criminal offender record information searches must be conducted prior to allowing access to the CLETS computers, equipment, or information. If the results of the criminal offender record information search reveal a record of any kind, access will not be granted until the CLETS subscribing agency can review the matter to decide if access is appropriate. If a felony conviction of any kind is found, access shall not be granted.
3. Each individual must sign a CLETS Employee/Volunteer Statement form (HDC 0009) prior to operating or having access to CLETS computers, equipment, or information.

In accordance with CLETS/NCIC policies, the CLETS subscribing agency has the responsibility and authority to monitor, audit, and enforce the implementation of this agreement by the private contractor. The private contractor agrees to cooperate with the CLETS subscribing agency in the implementation of this agreement and to accomplish the directives for service under the provisions of this agreement. The CLETS Management Control Agreement (HDC 0004B) shall be updated when the head of either agency changes or immediately upon request from the CA DOJ.

By signing this agreement, the vendors and private contractors certify they have read and are familiar with the contents of (1) the FBI's CJIS Security Addendum, (2) the NCIC 2000 Operating Manual, (3) the FBI's CJIS Security Policy, (4) Title 28, Code of Federal Regulations, Part 20, and (5) the CLETS PPP and agree to be bound by their provisions. Criminal offender record information and related data, by its very nature, is sensitive and has potential for great harm if misused. Access to criminal offender record information and related data is therefore limited to the purpose(s) for which the CLETS subscribing agency has entered into the contract. Misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; use, dissemination, or secondary dissemination of information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. Accessing the system for an appropriate purpose and then using, disseminating, or secondary dissemination of information received for another purpose other than execution of the contract also constitutes misuse. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

\_\_\_\_\_  
Signature (CLETS Subscribing Agency Head)

\_\_\_\_\_  
Signature (Private Contractor Agency Head)

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Exhibit 1**

STATE OF CALIFORNIA  
HDC 0012  
(Orig. 02/2009; Rev. 04/2016)

DEPARTMENT OF JUSTICE  
PAGE 1 of 1

**FEDERAL BUREAU OF INVESTIGATION  
CRIMINAL JUSTICE INFORMATION SERVICES  
SECURITY ADDENDUM**

PRINT

RESET

**CERTIFICATION**

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

\_\_\_\_\_  
Printed Name/Signature of Contractor Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name/Signature of Contractor Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Organization and Title of Contractor Representative

**Exhibit 2**

**EMPLOYEE/VOLUNTEER STATEMENT FORM**

**USE OF CLETS CRIMINAL JUSTICE INFORMATION  
AND DEPARTMENT OF MOTOR VEHICLES RECORD INFORMATION**

As an employee/volunteer of \_\_\_\_\_, you may have access to confidential criminal records, Department of Motor Vehicle records, or other criminal justice information, much of which is controlled by statute. All access to California Law Enforcement Telecommunications System (CLETS) related information is based on the need-to-know and the right-to-know. Misuse of such information may adversely affect an individual(s) civil rights, and violates the law and/or CLETS policy.

Penal Code section 502 prescribes the penalties relating to computer crimes. Penal Code sections 11105 and 13300 identify who has access to criminal history information and under what circumstances it may be released. Penal Code sections 11141-11143 and 13302-13304 prescribe penalties for misuse of public record and CLETS information. California Vehicle Code section 1808.45 prescribes the penalties relating to misuse of Department of Motor Vehicle record information. Penal Code sections 11142 and 13303 state:

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor.

Any person/volunteer who is responsible for CLETS misuse is subject to immediate dismissal from employment. Violations of the law may result in criminal and/or civil action.

I HAVE READ THE ABOVE AND UNDERSTAND THE POLICY REGARDING MISUSE OF ALL CLETS ACCESSIBLE INFORMATION.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

**Exhibit 3**

**CONFIDENTIALITY OF CORI INFORMATION**

Criminal Offender Record Information (CORI) is that information which is recorded as the result of an arrest, detention or other initiation of criminal proceedings including any consequent proceedings related thereto. As an employee of \_\_\_\_\_, during the legitimate course of your duties, you have access to CORI. The Orange County Probation Department has a policy of protecting the confidentiality of Criminal Offender Record Information.

You are required to protect the information contained in documents against disclosure to all individuals who do not have a right-to-know or a need-to-know this information.

The use of any information obtained from case files or other related sources of CORI to make contacts with probationers or their relatives, or to make CORI available to anyone who has no real and proper reason to have access to this information as determined solely by the Probation Department is considered a breach of confidentiality, inappropriate and unauthorized.

Any employee engaging in such activities is in violation of the Probation Department’s confidentiality policy and will be subject to appropriate disciplinary action and/or criminal action pursuant to Section 11142 of the Penal Code.

I have read and understand the Probation Department’s policy concerning the confidentiality of CORI records.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Classification

\_\_\_\_\_  
Date

Copy to be forwarded to Probation Juvenile Court Services Assistant Division Director within five (5) business days of start of employment.

**Exhibit 4**

**EMPLOYEE ACKNOWLEDGMENT OF EMPLOYER**

I acknowledge that I am an employee of \_\_\_\_\_ and not of the County of Orange.

I understand that my employer, \_\_\_\_\_ and not the County of Orange will be solely responsible for providing on my behalf, all legally required employee benefits.

I understand that the County shall not assume any liability for the payment of salaries, wages, benefits, or other compensation to, or on my behalf.

\_\_\_\_\_  
**(Employee Name – Please Print)**

\_\_\_\_\_  
**(Signature of Employee)**