Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET September 15, 2010
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
OF
CONTRACT NO. 071B1300019
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Pond Consulting Services, LLC** **487 Cherryview Drive** **Portage, MI 49024** **EMAIL: ppond@charter.net**	TELEPHONE (269) 329-2028 **Patrick J. Pond** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Virginia Bergamo (517) 241-7750 **Polygraph Testing Services – DOC**	
CONTRACT PERIOD: From: **October 1, 2010** To: **September 30, 2013**	
TERMS **5% NET 7**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of RFP #071I0200064, this Contract Agreement and the vendor's quote dated April 16, 2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $461,100.00

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THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. 071I0200064. Orders for delivery will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form. This contract is part of a split award with 071B1300018 and 071B1300020.

All terms and conditions of the RFP are made a part hereof.

FOR THE CONTRACTOR:	**FOR THE STATE:**
Pond Consulting Services, LLC Firm Name	Signature
Authorized Agent Signature	Lance Kingsbury, Buyer Specialist Name/Title

	Services Division
Authorized Agent (Print or Type)	Division
Date	Date

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B1300019

Polygraph Testing Services
For
The Michigan Department of Corrections

Buyer Name: Lance Kingsbury
Telephone Number: 517-241-3768
E-Mail Address: kingsburyL@michigan.gov

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DEFINITIONS

24x7x365 means 24 hours a day, seven (7) days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven (7) year period following Contractor's provision of any work under the Contract.

Bidder(s) are those companies that submit a proposal in response to the RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday (including Office of State Employer mandated furlough day) from 8:00 a.m. EST through 5:00 p.m. EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Containment Approach Model is a widely recognized and an influential approach for sex offender management. Addressing philosophy and practice, the model proposes five (5) key elements as crucial to the effective management of sex offenders in the community. These include targeting: community and victim safety, sex- offender specific management strategies, interdisciplinary collaboration and consistent public policies. This Model maintains that by working as a cohesive team, treatment providers, supervising agents and polygraph examiners can effectively "contain" sex offenders-by promoting offender accountability and ensuring community safety.

Days mean calendar days unless otherwise specified.

Deleted/Not Applicable means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DMB means the Michigan Department of Management and Budget.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Evidentiary Examination means a polygraph examination, the written and stated purpose for which agreed to by the parties involved is to provide the diagnostic opinion of the Examiner as evidence in a scheduled judiciary proceeding. This is not intended to prevent admission as evidence of a confession obtained during an examination.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Investigative Examination means a polygraph examination for which the examination is intended to supplement and 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 of record. Pre-employment examinations must be deemed to be investigative examinations.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

Post-Industrial Waste means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

Specific Issue Examination Polygraph means a single-issue examination, in most cases administered in conjunction with a criminal investigation.

State Location means any physical location where the State performs work. State Location may include State-owned, leased, or rented space.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Validated Testing Technique means a polygraph testing technique for which exists a body of acceptable scientific studies. A polygraph testing technique both endorsed by the APA Research and Development Committee and published in Polygraph, must be presumed to be a validated testing technique.

Waste Prevention means source reduction and reuse, but not recycling.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request
This is a Contract for polygraph testing services for the Michigan Department of Corrections (MDOC). The Contractor is to provide scheduled polygraph examinations for targeted paroled sex offenders in Michigan. All examinations performed under the Contract must be administered consistent with the American Polygraph Association's (APA) testing guidelines.

1.012 Background
The MDOC, Field Operations Administration (FOA), has the exclusive statutory authority to supervise paroled offenders and enforce conditions and terms of parole as imposed by the Michigan Parole Board. Using periodic polygraph examinations will significantly increase the likelihood of detecting illegal and violation behavior and has been demonstrated to deter violation and criminal behavior as well.

1.020 Scope of Work and Deliverables

1.021 In Scope
Presently, MDOC-FOA, conducts polygraph examinations on sex offenders within Wayne, Muskegon, Genesee and Tuscola Counties. These offenders are currently on parole and are participating in the Polygraph Monitoring Program as a condition of parole. Polygraph examinations may be expanded to additional locations within the State at the discretion of MDOC. These areas may include Calhoun, Kalamazoo, Kent, Macomb, Oakland and Saginaw. The Contractor will periodically examine identified parolees to determine it they are in compliance with their conditions of parole and relapse prevention plan. In addition to maintenance examinations, polygraph examinations may be scheduled, at the discretion of MDOC, upon receipt of polygraph reports indicating a deceptive response or other indications of a violation of their parole conditions.

1.022 Work and Deliverable
The Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. Testing
Examinations:
All examinations must consist of, but not be limited to:

- A written pre-test interview.
- Three (3) issue specific test.
- A written post-test interview.

In addition, Examiners would be encouraged to include a stimulation test in the examination process.

2. Pre-Test Practices
The Examiner must obtain information sufficient to identify the Examinee.

The Examiner must obtain the consent of the Examinee prior to testing.

Sufficient time must be spent to endure that the Examinee has a reasonable understanding of the polygraph process and the requirement for cooperation.

Sufficient time must be spent to discuss the issues to be tested and to allow the Examinee to fully explain their answers.

Sufficient time must be spent to ensure the Examinee recognizes and understands each question. Attempts by the Examinee to rationalize should be neutralized by a pre-test discussion in which the Examinee demonstrates they understand the test questions to have the same meaning as the Examiner. Questions must be asked in a form that would prevent a reasonable person, facing a significant issue, from successfully engaging in a rationalization process to avoid culpability.

The Examiner must not express bias in any manner regarding the truthfulness of the Examinee prior to the completion of testing.

3. Post Conviction Sex Offender Testing
A minimum of 40 hours of post conviction specialized instruction, beyond the basic polygraph Examiner training course requirement, must be a requisite for those who practice sexual offender testing.

A final examination, approved by the APA, or its designated representative, must be given subsequent to the approved training. The student must pass this written examination to receive a diploma for the training. The written examination must be properly controlled and protected to prevent exposure of the test questions or answers to any unauthorized persons.

The instructors of the approved course must be informed of the topic areas, along with a pool of possible test questions, for the final written examination. However, those questions specifically selected for any given final examination must not be made known to the instructors before the administration of the test to the students.

All recorded physiological data must be retained as part of the examination file as long as required by regulation or law, but for a minimum of one (1) year.

Each single-issue examination must employ a technique and format that has been validated through research.

Reasonable departures from validated formats are permissible, to the extent that an independent Examiner/reviewer would concur that the employed method was not significantly dissimilar from the format validated in research. Any deviations from validated formats must be fully explained and justified by the Examiner in writing where this test is subjected to an independent quality control.

Post-conviction polygraph examinations are considered compliance-related polygraphs which take into account both stable and acute dynamic risk factors related to treatment and supervision. Tests that address events after parole begins are considered supervisory and may address only parole violations. These include:

- A maintenance test to investigate parole violations/compliance with parole conditions.
- A maintenance test to investigate treatment issues.

4. The Contractor must seek approval from the CCI to conduct additional testing on an Offender when the following conditions are present:

- Testing has resulted in two (2) consecutive findings of “deception” indicated.
- Testing has resulted in two (2) consecutive “inconclusive” results.
- If deemed necessary by the Case Management Team, a sexual history or instant offense examination may be scheduled if the information anticipated will aide in the supervision or treatment of the client.

5. There must be a limit of three (3) preliminary examinations or four (4) follow-up examinations scheduled per Examiner per day to allow for continuity of test results. Each examination must last, at a minimum, 90 minutes. Examinations must be administered within seven (7) working days of the request.

6. All examinations performed under the Contract must be administered consistent with the APA Standards of Practice (Attachment B).

7. All testing must be conducted using, as a minimum standard, a three (3) pen recording device that measures breathing, heart rate and galvanic skin response.

8. The Examiner must make reasonable efforts to determine that the Examinee is a fit subject for testing, where allowed by law. Basic inquiries into the medical and psychological condition of the Examinee as well as any recent drug use should 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, should also be evaluated prior to testing. No test should be conducted where valid results could not be reasonably foreseen. During the pre-test interview, where allowed by law, the Examiner will specifically inquire of the person to be examined whether or not he or she is currently receiving or has in the past received medical or psychiatric treatment or consultation.

If an Examiner has a reasonable doubt concerning the ability of the Examinee to safely undergo an examination, a release from the Examinee and his or her physician must be obtained.

9. The polygraph examination must be conducted with APA approved instrumentation and must record, at a minimum, the following channels or components:

- Respiration patterns recorded by pneumograph components. Thoracic and abdominal patterns must be recorded separately, using two (2) pneumograph components.
- Electrodermal activity reflecting relative changes in the conductance or resistance of current by the epidermal system.
- Cardiograph to record relative changes in pulse rate, pulse amplitude, and relative blood volume.

10. The polygraph must be given a functionality or calibration test consistent with manufacturer recommendations. The functionality or calibration test must be administered prior to all evidentiary examinations. At a minimum, the test results must be maintained by the Examiner for no less than one (1) year. Compliance with State and federal law is required.

11. Conditions under which testing occurs must be free from distractions that would interfere with the ability of the Examinee to appropriately focus on the issues being addressed. The examination site should be relatively free from outside noise and distraction.

12. Examiners performing live polygraph examinations in public must not render opinions regarding the truthfulness or deception of the Examinees. Examiners must attempt to ensure that reenactments of polygraph examinations are clearly conveyed as such to viewers.

An Examiner must, prior to the examination, dedicate sufficient time to identify the issues and any potential problem in any area of testing.

13. The Contractor is required to participate in a quality control procedure for examinations. This may include, but is not limited to, a chart review process conducted by MDOC or its authorized agent. The Contractor must maintain polygraph charts in storage for 24 months after the examinations take place.

14. Testing will occur at various MDOC locations within the State. The MDOC will provide secure conference rooms. The actual number of tests to be performed each year will be contingent upon actions/decisions of the State Parole Board, and changes to the parole laws as enacted by the State Legislature.

15. The Contractor must participate in regularly scheduled Case Management Team (CMT) meetings as required by the Parole Office Supervisor. The CMT is a multi-disciplinary group formed to facilitate information sharing and offender management utilizing the Containment Approach Model. Embedded within this model is the principle of victim-centeredness which ensures that the needs of the victims are not overlooked in supervision strategies and that further victimization is prevented.

16. All examinations must be conducted in compliance with governing local, State and federal regulations and laws.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

All Examiners must:

- Be licensed by, and in good standing with, the Consumer and Industry Services Board of Forensic Polygraph Examiners and complete the required Continuing Education Units (CEU) credits on an annual basis for license retention. Further, all Examiners must be active members of the APA, and the Michigan Association of Polygraph Examiners (MAPE), and maintain membership in same during the term of the Contract.
- Have one (1) year of documented experience in polygraphing offenders, particularly sex offenders.
- Comply with all State continuing education requirements. A Polygraph Examiner conducting evidentiary examinations must have completed a minimum of 30 Continuing Education hours every two (2) years.

Evidentiary examinations must be conducted only by Full or Associate members. Intern members can conduct evidentiary examinations only by stipulation of the parties, or under the supervision of a Full or Associate member.

The Contractor must:

1. Provide and maintain sufficient polygraph examination staff to satisfy testing demand within the State of Michigan.

Provide the State with copies of the Examiners' license and a resume, documenting all previous polygraph examination experience for approval.

2. Provide MDOC with an Examiners' assignment list. This information will be utilized by MDOC for LEIN checks of all examining staff prior to their being allowed on-site. LEIN's must be conducted to ensure that those staff working under the Contract have no outstanding warrants, have no active personal protection orders for domestic violence, for sexual assault and are not currently on probation or parole or otherwise under the jurisdiction of any federal, State, county or local criminal justice agency.

3. Certify minimum staff standards in writing to the State for each staff member within in 30 days of the effective date of the Contract and within 30 days of assigning new or additional staff.

4. Immediately report any and all known criminal arrests (excluding traffic), or loss of license by staff which may occur during the performance of the Contract.

5. Require staff to participate in training programs and/or conferences sponsored by the State as it relates to performance of the Contract or enhancing services to clients.

6. Employ quality assurance measures by developing a plan for professional development for each staff member assigned to the Contract, on an annual basis and monitor and document staff progress toward professional development goals as part of the staff member's performance evaluation.

7. Communicate, on its occurrence, to the State Office of Substance Abuse Services, all in appropriate actions by agency staff members, unethical practices by staff or other actions by the organizations staff that are in violation of the State agreement requirements.

8. Train Examiners on parole agent referral process and examination reporting requirements. Provide general orientation training to parole agents on the use of the polygraph.

9. Establish a procedure to handle agent service complaints.

10. Establish a contingency service delivery plan to accommodate Examiner vacations, illness, waiting lists or other interruptions to scheduled service delivery.

11. Develop a plan for periodic on-site Examiner auditing.

12. Develop a plan for immediate notification to MDOC concerning Parolee failure to appear for a scheduled examination or cancellation of appointment by parolee.

13. Develop a procedure for immediate notification to MDOC if Examinee confesses to any new crimes or violations of parole conditions since their last examination.

1.040 Project Plan

1.041 Project Plan Management

Within 10 working days of the award of the Contract, the Contractor must submit to the CCI, for approval, final implementation and transition plans with any differences noted. These final plans must include the following:

- The Contractor's project organizational structure.
- The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
- The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

Project Control

Although there will be continuous liaison with the Contractor team, the client agency's Project Director will meet quarterly with the CCI for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.

The Contractor must submit brief written monthly summaries of progress with outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's Project Director; and notification of any significant deviation from previously agreed-upon work plans.

1.042 Reports

Aggregate Report: A monthly report must be completed by the 15th of each month showing program activity from the previous two (2) months. The report should be completed using an excel format and e-mailed to the Manager of Community Corrections and the CCI by the 15th of each month. This includes, but is not limited to:

- Number of examinations completed during the month and year-to-date by county.
- Number of examinations completed by Examiner during month and year-to-date.
- Number of test results deemed truthful, deceptive and inconclusive by Examiner by month and year-to-date.
- Number of pre-test admissions by Examiner during month and year-to-date.
- Number of post-test admissions by Examiner during month and year-to-date.

Examiners Report: Examiner reporting for every examination must consist of, but is not limited to:

- A verbal summary of examination results to the referring Agent or his/her Supervisor on the day of the examination.
- A written summary of examinations results to the referring Agent or his/her Supervisor on the day of the examination.
- A written report of examination findings within five (5) working days of the examinations to the Agent/Supervisor which includes, but is not limited to:
  - Parolee name and number;
  - Date of examination;
  - List of specific issue questions and results;
  - Pre- and post-test admissions, if any.

- A verbal notification to MDOC relaying pertinent issues regarding the polygraph process within eight (8) business hours of any examination report results that indicate Examinee "deception" or admitted violation behavior.

- A written notification to MDOC within five (5) business days of any examination report results that indicate Examinee "deception" or admitted violation behavior.

1.050 Acceptance

1.051 Criteria
The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

Contractor must submit invoices and documentation to the State within 15 days after the end of the month in which the service was provided. Any invoice received beyond this date may be deemed void and not reimbursable.

There must be a limit of three (3) preliminary examinations or four (4) follow-up examinations scheduled per Examiner per day to allow for continuity of test results. Each examination must last, at a minimum, 90 minutes. Examinations must be administered within seven (7) working days of the request.

All required reports must be completed and submitted as noted in 1.042

1.052 Final Acceptance – See Section 2.258.

1.060 Pricing

1.061 Pricing
For authorized Services and Price List, see Attachment A.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates.

Billing:
Contractor must submit bills and documentation to the State within 15 days after the end of the month in which the service was provided. Any bill received beyond this date may be deemed void and not reimbursable.

1.062 Price Term
Prices quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price
(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback – Deleted/Not Applicable

1.070 Additional Requirements – Deleted/Not Applicable

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term
The Contract is for a period of three (3) years beginning October 1, 2010 through September 30, 2013. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew
The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods.

2.003 Legal Effect
Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits
All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Ordering
The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence
(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005.**

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings
Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.008 Form, Function & Utility
If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not the meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability
Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals
Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default
If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival
Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office
The Contract is issued by the Department of Management and Budget, Purchasing Operations, and MDOC (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contract Administrator within Purchasing Operations for the Contract is:

Lance Kingsbury
Department of Management and Budget – Purchasing Operations
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
email: kingsburyl@michigan.gov
Phone: 517-241-3768

2.022 Contract Compliance Inspector
After DMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with MDOC will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DMB Purchasing Operations**. The CCI for the Contract is:

Virginia Bergamo
Office of Substance Abuse Services
P.O. Box 3003
Lansing, MI 48909
email: bergamov@michigan.gov
Phone: 517-241-7750
Fax: 517-241-8490

2.023 Project Manager
The following individual will monitor and manage the daily operations of this project under the Contract: See Section **2.022 Contract Compliance Inspector** for contact information.

2.024 Change Requests
The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

(a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").

(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices
Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system. Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments
Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties
The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith
Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments
(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases
News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution
Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.033 Permits
Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation
The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion
Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information
All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery
Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables
Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables
If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered
For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General
(a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor after the proposed Contract Agreement has been signed and

accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

2.045 Pro-ration
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

2.046 Antitrust Assignment
The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.

2.047 Final Payment
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement
Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at http://www.cpexpress.state.mi.us. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes
Contractors are expected to collect and pay all applicable federal, State, and local employment taxes.

2.052 Sales and Use Taxes
Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (2) or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications
All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a

similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the CCI and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification
Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties
Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources
The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.068 Contract Management Responsibilities
The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility
Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation
Contractor must not delegate any duties under the Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.

If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract
In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and

responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down
Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection
The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment
The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities
The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks
On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dit. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification
If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Deleted/Not Applicable

2.100 Confidentiality

2.101 Confidentiality
Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information
The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions
Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i)

promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights
Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations
The parties' respective obligations under this Section must survive the termination or expiration of the Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed
The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records
For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules.
The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records
Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution
If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors
(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance

remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10 percent (10%), then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations
The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, or their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability – Deleted/Not Applicable

2.123 Warranty of Fitness for a Particular Purpose – Deleted/Not Applicable

2.124 Warranty of Title – Deleted/Not Applicable

2.125 Equipment Warranty – Deleted/Not Applicable

2.126 Equipment to be New – Deleted/Not Applicable

2.127 Prohibited Products – Deleted/Not Applicable

2.128 Consequences For Breach
In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of the Contract.

2.130 Insurance

2.131 Liability Insurance
The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under the Contract.

All insurance coverage's provided relative to the Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in the Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☑ below:

☑ 1. Commercial General Liability with the following minimum coverage:
$1,000,000 General Aggregate Limit other than Products/Completed Operations
$1,000,000 Products/Completed Operations Aggregate Limit
$1,000,000 Personal & Advertising Injury Limit
$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ 2. If a motor vehicle is used to provide services or products under the Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ 4. Employers liability insurance with the following minimum limits:
$100,000 each accident
$100,000 each employee by disease
$500,000 aggregate disease

☑ 5. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: $2,000,000.00 each occurrence and $2,000,000.00 annual aggregate.

2.132 Subcontractor Insurance Coverage
Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements
Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected.

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State

has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages,
compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under the Contract.

2.145 Continuation of Indemnification Obligations
The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures
The procedures set forth below must apply to all indemnity obligations under the Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure
If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50 percent (50%) more than the prices for the Service/Deliverables provided under the Contract.

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25 percent (25%) or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must: (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for

Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State.

All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor
If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities
If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition
The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition
The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition
The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments
If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from

transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities
In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
(a) Reconciling all accounts between the State and the Contractor;
(b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders
The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order
The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs
If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180.**

2.190 Dispute Resolution

2.191 In General
Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution
(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties

must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board.

A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment
In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

2.204 Prevailing Wage – Deleted/Not Applicable

2.210 Governing Law

2.211 Governing Law
The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws
Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction
Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability
Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation
(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

(i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or

(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

(a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

(i) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.

(ii) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(iii) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of the Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of the Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

(a) the Contractor files for protection under the bankruptcy laws;

(b) an involuntary petition is filed against the Contractor and not removed within 30 days;

(c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

(d) the Contractor makes a general assignment for the benefit of creditors; or

(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.241(a),** Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and

successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

(d) Should the State of Michigan issue an Executive Order thru the Office of State Employer mandating furlough days, the furlough days will not be considered a Business Day. The Contractor will not seek additional costs from the State for project schedule extensions to the extent such extensions are needed due to Contractor's inability to complete deliverables and milestones in accordance with the project schedule as a result of the above mentioned furlough days.

2.242 Service Level Agreements (SLAs)

(a) SLAs will be completed with the following operational considerations:

(i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.

(ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.

(iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.

(iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:

1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service must not affect any tiered pricing levels.

(c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of $5,000.00 and an additional $100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.
For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is $25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of $833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed $50,000.00 per individual.

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused);

Or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail, but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor

cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities – Deleted/Not Applicable

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service.
All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10 percent (10%) of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process for Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages).

The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's

election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance
Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251- 2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State
The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights
With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data
(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials
The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the

State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards
The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dit.

2.272 Acceptable Use Policy
To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/ditservice. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes
Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures.

2.280 Extended Purchasing

2.281 MiDEAL
Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: http://www.michigan.gov/mideal. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to and pay the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under the Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

State Administrative Fee
The Contractor must collect an Administrative Fee on the sales transacted under the Contract. The Contractor must remit the Administrative Fee in U.S. dollars within 30 days after the end of the quarterly sales reporting period. The Administrative Fee equals one percent (1%) of the total quarterly sales reported. Contractor must include the Administrative Fee in their prices.

The Contractor must remit any monies due as a result of the close-out report at the time the close-out report is submitted to Purchasing Operations.

The Contractor must pay the Administrative Fee by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: *Applicable State BPO Number, report amount(s), and reporting period covered.*

Contractor must forward the check to the following address:

Department of Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

Please make check payable to: State of Michigan

2.282 State Employee Purchases – Deleted/Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:
For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources, or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as:

(1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:
The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

Environmental Performance:
Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

Attachment A, Pricing

The State of Michigan is interested in payment terms that reflect cost savings to the State based on an accelerated payment process. There is a five percent (5%) discount off invoice if paid within seven (7) days of receipt of an approved invoice.

Polygraph Testing Pricing per County (as listed below):

Muskegon County

Description	Estimated Quantity per Year	Unit Price	Estimated Price per Year
Initial Full Examination	50	$400.00	$20,000.00
Follow Up / Maintenance Examination	8	$400.00	$3,200.00
Deceptive / Inconclusive Retest	3	$350.00	$1,050.00
Failure to Show (without 24 hour notification)	3	$200.00	$600.00
Unable to test (positive drug or alcohol test immediately prior to scheduled exam)	3	$200.00	$600.00
		Estimated Three (3) Year Price:	$76,350.00

Kalamazoo County

Description	Estimated Quantity per Year	Unit Price	Estimated Price per Year
Initial Full Examination	120	$350.00	$42,000.00
Follow Up / Maintenance Examination	50	$350.00	$17,500.00
Deceptive / Inconclusive Retest	10	$350.00	$3,500.00
Failure to Show (without 24 hour notification)	0	$200.00	$0.00
Unable to test (positive drug or alcohol test immediately prior to scheduled exam)	0	$200.00	$0.00
		Estimated Three (3) Year Price:	$189,000.00

Calhoun County

Description	Estimated Quantity per Year	Unit Price	Estimated Price per Year
Initial Full Examination	115	$400.00	$46,000.00
Follow Up / Maintenance Examination	50	$350.00	$17,500.00
Deceptive / Inconclusive Retest	5	$350.00	$3,500.00
Failure to Show (without 24 hour notification)	0	$200.00	$0.00
Unable to test (positive drug or alcohol test immediately prior to scheduled exam)	0	$200.00	$0.00
		Estimated Three (3) Year Price:	$195,750.00
		Estimated Total Three (3) Year Contract Price:	$461,100.00

APA Membership Number: 3084

Attachment B, APA Standards of Practice and By Laws

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1. Model Policy. This Model Policy should be considered a description of recommended best-practices for polygraph professionals who engage in post-conviction sex offender testing (PCSOT) activities. This Model Policy is intended to provide a basis for local programs developing or updating their PCSOT regulations, and does not attempt to address all aspects of PCSOT programming or policy implementation at the local level.

1.1. Compliance and local authority. Examiners should be responsible for knowing and adhering to all legal and regulatory requirements of their local jurisdictions. In case of any conflict between the Model Policy and any local practice requirements, the local regulations should prevail. Examiners who work in jurisdictions and programs without local regulations should refer to this Model Policy as a guide.

1.1.1. Compliance with this Model Policy. Although this Model Policy should be considered non-binding and not enforceable by the APA or any local jurisdiction, Examiners whose work varies from the recommendations of this Model Policy should be prepared to provide justification for doing so.

1.1.2. Compliance with professional standards. Unless prohibited by law, regulation or agency policy, all members of the American Polygraph Association (APA) shall comply with the APA Standards of Practice. Additionally, all Examiners should be responsible for knowing and adhering to standards of ASTM International.

1.2. Periodic review and modification. This Model Policy should be reviewed and amended periodically in order to remain consistent with emerging information from new empirical studies.

2. Evidence-based approach. To the extent possible, this Model Policy relies on knowledge and principles derived from existing research pertaining to polygraph testing, risk assessment, risk management, and sex offender treatment. Examiners should be cautious of field practices based solely on a system of values or beliefs. Some elements of this Model Policy are intended to increase professionalism and reliability among field Examiners through the implementation of standardized field practice recommendations in the absence of data from empirical studies.

2.1. Face-valid principles. When an evidence-based approach is not possible, the Model Policy emphasizes face-valid principles pertaining to polygraph testing, field investigation principles and related fields of science. These include psychology, physiology, mental health treatment, forensic threat assessment, signal detection, decision theory, and inferential statistics.

2.2. Evolving evidence. In the event that evidence from future empirical studies reveals the practice recommendations of this Model Policy are inconsistent with empirically based evidence, the evidence-based information should prevail.

3. PCSOT program goals. The primary goal of all PCSOT activities should be to increase public safety by adding incremental validity to risk-assessment, risk-management, and treatment-planning decisions made by professionals who provide supervision and sex-offense specific treatment to convicted sex offenders in community settings.

3.1. Containment approach. Examiners who engage in PCSOT activities should emphasize a multi-disciplinary or multi-systemic containment approach to the supervision and treatment of sex offenders. This approach involves a collaborative effort among professionals from varying disciplines and systems including treatment providers, supervising officers, polygraph Examiners, medical and psychiatric professionals, child-protection/family-services workers, and other professionals.

3.2. Operational objectives. Any or all of the following operational objectives should be considered a reasonable and sufficient basis to engage in PCSOT activities:

A. Increased disclosure of problem behavior that will be of interest to professionals who work with convicted sex offenders;

B. Deterrence of problem behavior among convicted sex offenders by increasing the likelihood that engagement in such behaviors will be brought to the attention of supervision and treatment professionals; and

C. Detection of involvement in or abstinence from problem behavior that would alert supervision and treatment professionals to any escalation in the level of threat to the community or potential victims of sexual abuse.

4. Decision-support. Psychophysiological Detection of Deception (PDD) (polygraph) testing of convicted sex offenders should be regarded as a decision-support tool intended to assist professionals in making important decisions regarding risk and safety. Polygraph testing should not replace the need for other forms of behavioral monitoring or traditional forms of supervision and field investigation.

4.1. Professional judgment. Polygraph testing and polygraph test results should not supplant or replace the need for professional expertise and judgment. Polygraph test results should not be used as the sole basis for revocation of any individual from court supervision or termination of sex offense specific treatment.

4.2. Successive hurdles approach. Examiners should use a successive hurdles approach to testing to maximize both the informational efficiency and sensitivity of multi-issue (mixed-issue) screening polygraphs and the diagnostic efficiency and specificity of event-specific single-issue exams. The term screening, as it applies to PCSOT, is based on the fact that some exams are conducted for exploratory purposes in the absence of known allegations or known incidents. Follow-up examinations should employ a single-issue technique whenever increased validity is required to resolve an issue. Successive-hurdles may include following an unresolved mixed-issue polygraph test with additional attempts to resolve the issue(s), including posttest discussion, additional field or background investigation, or additional polygraph testing. Follow-up examinations may be completed on the same date as the initial exam, or they may be scheduled for a later date.

4.2.1. Multi-issue (mixed-issue) exams. Examiners should use multi-issue polygraph techniques only in the absence of a known incident, known allegation, or a particular reason to suspect wrongful behavior. Exploratory exams may at times be narrowed to a single target issue of concern. However, most exploratory exams involve multiple target issues in which it is conceivable that a person could lie about involvement in one or more issues while being truthful or uninvolved in the other issues of concern.

4.2.2. Single-issue exams. Examiners should use single issue polygraph techniques for follow-up exams conducted in response to a previously unresolved exploratory exam. Event specific diagnostic/investigative exams, conducted in response to known allegations or known incidents for which there is reason to suspect the involvement of the Examinee, may be formulated as multi-facet tests with questions pertaining to several behavioral roles or aspects of a single known allegation.

4.2.3. Multi-facet tests. Event specific diagnostic/investigative exams, conducted in response to known allegations or known incidents for which there is reason to suspect the involvement of the Examinee, may be formulated as multi-facet tests with questions pertaining to several behavioral roles or aspects of a single known allegation.

4.3. Confidentiality and mandatory reporting. Except as provided by law, information from the polygraph examination and test results (outcomes) should be kept confidential and provided only to those involved in the containment approach to the supervision and treatment of sex offenders.

4.3.1. Examiners are not mandated reporters. Examiners should not engage in mandatory child-abuse reporting activities except where required by law (i.e., whenever polygraph Examiners are named or listed in statutes describing mandatory reporting requirements).

4.3.2. Other professionals and mandatory reporting. Examiners should remain aware that other professional members of the multi-systemic containment team will likely be subject to mandatory child-abuse reporting or other mandatory disclosure requirements.

5. General principles. Examiners who engage in PCSOT activities should adhere to all of the generally accepted principles that pertain to polygraph testing, including, but not limited to the following:

5.1. Rights and dignity of all persons. Examiners should respect the rights and dignity of all persons to whom they administer polygraph examinations.

5.2. Polygraph Examiner as part of the supervision and treatment team. Examiners should consider themselves to be an integral part of the multi-disciplinary supervision and treatment team. Contact with supervision and treatment team should be frequent, though contact with an Examinee will be periodic (i.e., the Examiner will not maintain routine contact with the Examinee between examinations).

5.3. Non-interference with ongoing investigations. Examiners who engage in PCSOT activities should not interfere with or circumvent the efforts of any open or ongoing investigation of a new criminal allegation.

5.4. Known and unknown allegations. Examiners who engage in PCSOT activities should investigate and attempt to resolve, if possible, known allegations and known incidents before attempting to investigate or resolve behavioral concerns that do not involve a known allegation or known incident.

5.5. Confirmatory testing. PCSOT activities should be limited to the Psychophysiological Detection of Deception (PDD). Confirmatory testing approaches involving attempts to verify truthfulness of partial or complete statements made subsequent to the issue of concern should not be utilized in PCOST programs. Truthfulness should only be inferred when it is determined that the Examinee has not attempted to engage in deception regarding the investigation targets.

5.6. Ethical and professional roles. Examiners who possess multiple types of credentials (i.e., Examiners who are also therapists, probation officers, or police officers) should be limited to one (1) 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 (5) examinations in a single day, they and should not conduct more than three (3) sexual history disclosure examinations in a single day.

5.7.1. Length of examination. Examiners should not plan to conduct examinations of less than 90 minutes in duration from the start of the pretest interview through the end of the post-test interview. Examiners should not conduct a complete polygraph examination in less than 90 minutes absent exigent circumstances such as when an Examinee is not suitable for testing, an Examinee refuses to continue with the examination, or when the issue under investigation is resolved prior to collection of data.

5.7.2. Number of exams per Examinee. Examiners should not conduct more than four (4) separate examinations per year on the same Examinee except where unavoidable or required by law or local regulation. This does not include re-testing due to a lack of resolution during an initial or earlier examination.

5.8. Examination techniques. Examiners should use a recognized comparison question technique for which there is evidence of validity and reliability, including estimates of sensitivity and specificity, published in the *Polygraph* journal or a peer-reviewed scientific journal. There should not be more than four (4) relevant questions per test series.

6. Operational definitions. Examiners should ensure that every behavior of concern to the multi-disciplinary supervision and treatment team will be anchored by an operational definition that describes the behaviors of concern. Operational definitions should be common among all referring professionals, and should use language that is free of vague jargon. It should be easily understood by the Examinee. Examples of operational definition include the following:

A. Physical sexual contact: refers to rubbing or touching another person's sexual organs (i.e., breasts, buttocks, genitalia) whether over or under clothing, if for the purpose of sexual arousal, sexual gratification, sexual stimulation or sexual “curiosity.” This includes having, allowing, or causing another person to rub or touch one's own sexual organs, whether over or under clothing, for purposes of sexual arousal, sexual gratification, sexual “curiosity,” or sexual stimulation. This does not include parental contact with children's private areas in the form of diapering, wiping, bathing, dressing, or changing, unless done for the purpose of sexual arousal or stimulation.

B. Sexual contact: includes the above definition, and also includes non-contact sexual behaviors such as exhibitionism, voyeurism, public masturbation, child-pornography, or other non-contact sexual behaviors.

C. Force (real or implied violence): includes any form of real or implied violence; physical restraint to prevent a victim from leaving, escaping or moving away from the assault; or threats of harm against a victim's family members or pets.

D. Coercion (non-violent): includes any non-violent means of gaining the compliance of a victim who expresses his or her reluctance to comply (e.g., bribery, threats to end a relationship, etc.).

E. Grooming (child grooming): includes any means of building trust or exploiting a relationship such that a victim tolerates an offense with a perception of complicity.

F. Manipulation: includes any means of trickery to gain the compliance of a victim who is unaware of the sexual motives of the offender (e.g., wrestling, horseplay, tickling or other trickery).

G. Relative (family member): includes aunts, uncles, nieces, nephews, children, grandchildren, parents, grandparents, brothers, sisters, cousins, or any person related by blood, marriage, or adoption, or where a relationship has a legal relationship or the appearance of a family relationship (e.g., a dating or live-in relationship with the person(s) natural, step or adoptive parent).

H. Minor, child, youth, underage person: refers to anyone who has not yet reached the age of majority or adulthood (usually 18). Adolescence, though it refers to older/teenage children, is included in this broad category.

I. Incidental contact: refers to any brief or unanticipated contact, typically concerning minors, including any greeting (e.g., waving, or smiling), interaction (i.e., verbal), or incidental physical contact (e.g., shaking hands, hugging, patting the head, bumping into, exchanging money or merchandise, etc.).

J. Physical contact: includes shaking hands, hugging, patting the back or head, bumping into, exchanging money or merchandise along with other forms of physical contact including sitting on one's lap, holding, wrestling or athletic activities, etc.

K. Alone or unsupervised with minors: refers to any contact or activity with minors in a location where one cannot be seen or heard, and where others are not aware of one's presence or activity with a minor, and in which the activity cannot be monitored or observed.

L. Pornography: refers to the explicit depiction of sexual subject matter for the sole purpose of sexually arousing the viewer, sometimes referred to as X-rated or XXX material, though there is no formal rating system that includes these designations. Minors cannot purchase pornographic materials in most, if not all, jurisdictions.

M. Sexually stimulating materials/erotica: refers to the use of sexually arousing imagery, especially for masturbation purposes.

N. Sexual fantasy/erotic fantasy: refers to a deliberate thought or patterns of thoughts, often in the form of mental imagery, with the goal of creating or enhancing sexual arousal or sexual feelings. Sexual fantasy can be a developed or spontaneous story, or a quick mental flash of sexual imagery, and may be voluntary or intrusive/involuntary.

O. Masturbation: refers to sexual stimulation of one's genitals, often, though not always, to the point of orgasm. Stimulation can be over or under clothing, either manually or through other types of bodily contact, through the use of objects or devices, or through a combination of these methods. Although masturbation with a partner is not uncommon, masturbation for the purpose of this Model Policy refers to self-masturbation.

7. Examination questions. Examiners should have the final authority and responsibility for the determination of test questions and question language, which must be reviewed with the Examinee. Examiners should advise the supervision and treatment professionals to refrain from informing the Examinee of the exact test questions and investigations targets, or coaching the Examinee in the mechanics, principles or operations of the polygraph test. Technical questions about polygraph should be directed to the Examiner at the time of the examination. Examiners should advise community supervision team members and treatment professionals that it is appropriate to inform the Examinee of the purpose or type of each examination.

7.1. Relevant questions. Relevant questions should pertain to a single frame of reference, which refers to the type of PCSOT examination. (See section 8.)

7.1.1 Content. Relevant questions should address behaviorally descriptive topical areas that have a common time of reference, which refers to the time-period under investigation. Content should bear operational relevance to actuarial or phenomenological risk assessment, risk management and treatment planning methods. Examiners should exercise caution to ensure they do not violate any rights of Examinees regarding answering questions about criminal behaviors.

7.1.2 Structure. Relevant question construction should be...

A. answerable by a "NO" without unnecessary mental exercise or uncertainty; and
B. behaviorally descriptive of the Examinee's direct or possible involvement in an issue of concern and, whenever possible, not indirectly addressing that issue by targeting a subsequent denial of it;
C. simple, direct and easily understood by the Examinee;
D. time-delimited (date of incident or time of reference);
E. free of assumptions of guilt or deception;
F. free of idiosyncratic jargon, legal terms; and
G. free of references to mental state or motivational terminology except to the extent that memory or sexual motivation may be the subject of an examination following an admission of behavior.

7.2. Comparison questions. Comparison questions should meet all common requirements for the type comparison question being applied.

7.2.1. Content. Comparison questions should address broad categorical concerns regarding honesty and integrity and should not be likely to elicit a greater physiological response than deception to any relevant question in the same test.

7.2.2. Structure. Comparison questions should be structurally separated from relevant questions by either frame of reference or time of reference. Nothing in this Model Policy should be construed as favoring exclusive or non-exclusive comparison questions.

8. Types of PCSOT examinations. Examiners should utilize five (5) basic types of PCSOT examinations: instant offense exams, prior-allegation exams, sexual history disclosure exams, maintenance exams, and sex offense monitoring exams. These basic types of examinations provide both a frame of reference and a time of reference for each examination. Examiners should not mix investigation targets from different frames of reference (examination types) or times of reference within the structure of a single examination.

8.1. Instant offense exams. Examiners should use two (2) basic types of examinations to investigate the circumstances and details of the instant offense for which the Examinee was convicted: the Instant Offense exam and the Instant Offense Investigative exam. These exams should be conducted prior to victim clarification or reunification in order to reduce offender denial and mitigate the possibility of further traumatizing a victim. These circumstances might result when an offender has attempted to conceal the most invasive or abusive aspects of an admitted offense or whenever the multi-disciplinary community supervision team determines that accountability for the circumstances and details of the instant offense represent a substantial barrier to an Examinee's engagement and progress in sex offense specific treatment.

8.1.1. Instant offense exam. Examiners should conduct the Instant offense (IO) exam as an event-specific polygraph for Examinees who deny any or all important aspects of the allegations pertaining to their present sex offense crime(s) of conviction.

8.1.1.1. Instant offense – examination targets. Examiners, along with the other members of the community supervision team, should select the relevant investigation targets from the circumstances of the allegation that the Examinee denies.

8.1.1.2. Instant offense – testing approach. Examiners should conduct this exam either as a single-issue or multi-facet event-specific exam. However, nothing in this Model Policy should be construed as to prohibit the completion of the Instant Offense exam in a series of single-issue exams when such an approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.1.2. Instant offense investigative exam. Examiners should use the Instant Offense Investigative (IOI) exam to test the limits of an Examinee's admitted behavior and to search for other behaviors or offenses not included in the allegations made by the victim of the instant offense. This examination should be completed prior to victim clarification or reunification.

8.1.2.1. Instant offense investigative – examination targets. Examiners, along with the other members of the community supervision team, should select relevant targets from their concerns regarding additional or unreported offense behaviors in the context of the instant offense. At the discretion of the Examiner and the other professional members of the community supervision team, examination targets may include the following:

A. Number of offense incidents against the victim: when the admitted number of offense incidents is very small.

B. Invasive offense behaviors: when the Examinee denies intrusive or hands-on offense behaviors against the victim of the instant offense.

C. Degree of physical force or violence: when the Examinee denies use of violence, physical restraint, threats of harm, or physical force against the victim of the instant offense.

D. Other sexual contact behaviors: when not included in the allegations made by the victim of the instant offense, at the discretion of the community supervision team.

8.1.2.2. Instant offense investigative – testing approach. Examiners should conduct this exam as a multi-facet or multi-issue (mixed-issue) exploratory exam. However, nothing in this Model Policy should be construed as to prohibit the completion of the Instant Offense Investigative exam in a series of single-issue exams (i.e., in the absence of an allegation involving the behavioral examination targets) when that approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.2. Prior allegation exam. Examiners should use the Prior Allegation Exam (PAE) to investigate and resolve all prior alleged sex offenses (i.e., allegations made prior to the current conviction) before attempting to investigate and resolve an Examinee's history of unknown sexual offenses. This exam should be considered identical in design and structure to the Instant Offense Exam, except that the details of the allegation stem not from the present crime of conviction but from an allegation prior to the conviction resulting in the current supervision and treatment, regardless of whether or not the Examinee was charged with the allegation. Examiners should exercise caution to ensure they do not violate any rights of an Examinee regarding answering questions about criminal behaviors.

8.3. Sexual history exams I and II. Examiners should use two (2) 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 discus sexual behaviors; it can assist Examinees in recognizing sexual behavior that was abusive, unlawful, unhealthy, and identify behaviors that are considered within normal limits.

8.3.1.1. Prior review of the sex history document. Examiners should request that each Examinee review the sexual history document with his or her community supervision team and treatment group prior to the examination date. The Examiner does not need to review this document prior to the examination date, though the content should be reviewed thoroughly during the structured or semi-structured pretest interview.

8.3.1.2. Examiner authority. It should be the Examiner's discretion to administer an alternative form of PCSOT examination if an Examinee has not completed and reviewed the sexual history document prior to the examination date.

8.3.2. Sexual history exam I – unreported victims. Examiners should conduct the Sex History Exam I (SHE-I) to thoroughly investigate the Examinee's lifetime history of sexually victimizing others, including behaviors related to victim selection, victim access, victim impact, and sexual offenses against unreported persons. These target issues provide a summary of the most tangible signal issues that provide interpretable information about victim-age, victim-profile, victim-selection, victim-control/access, and victim-silencing behaviors. SHE-I also provides information about the offender's capacity for grooming, sneakiness, violence, relationship-building and relationship-exploiting in addition to the capacity to offend in the absence of a relationship. Gathering information in these areas is additive to forensic risk assessment and risk management efforts. Ruling out matters in these SHE-I areas is also helpful as it allows the justification of a lower assumption of risk. What a person does or does not do (is capable of doing or not doing) to others is illustrated by past behavior. The best predictor of future behavior is past behavior.

8.3.2.1. Sexual history exam I – examination targets. Examiners, along with the other members of the community supervision team, should select investigation targets that provide operational relevance to actuarial and phenomenological risk/threat assessment protocols pertaining to recidivism, victim selection, and risk management decisions. Examples include the following:

A. Sexual contact with underage persons**,** (refer to local statutes) including sexual contact with persons younger than age 15 while the Examinee was legally adult, or sexual contact with persons four (4) or more years younger than the Examinee if the Examinee is a juvenile.

B. Sexual contact with relatives**,** whether by blood, marriage, or adoption, or where a relationship has a legal relationship or the appearance of a family relationship (e.g., a dating or live-in relationship with the person(s) natural, step or adoptive parent).

C. Use of violence to engage in sexual contact**,** including physical force/physical-restraint and threats of harm or violence toward a victim or victim's family members or pets through the use of a weapon or any verbal/non-verbal means.

D. Sexual offenses against persons who appeared to be unconscious, asleep, or incapacitated, including touching or peeping against persons who were asleep, severely intoxicated, impaired due to drugs, or who were mentally/physically helpless for other reasons.

8.3.2.2 Sexual history exam I – time of reference. The time of reference for the Sex History Exam I may be restricted to the period of time prior to the current court supervision that mandated the present treatment when there are concerns about 1) potential differences in consequences for pre-treatment or pre-conviction acts and those acts occurring post-conviction or after treatment onset, or 2) Examinee rights pertaining to the behavioral targets after conviction while under the supervision of a court or in a treatment program.

8.3.2.3 Sexual history exam I - testing approach. Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Sex History I Exam in a series of more narrowly focused exams when that approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.3.3. General sexual history exam II – sexual deviancy, compulsivity, and preoccupation. Examiners should conduct this General Sex History (GSH) examination to thoroughly investigate the Examinee's lifetime history of sexual deviancy, preoccupation, and compulsivity behaviors not including those behaviors described in the Sex History Exam I. This examination may be most important with Examinees who substantially deny involvement in sexual deviancy, compulsivity and preoccupation behaviors. SHE-II issues are additive to risk-assessment/risk-management/treatment-planning, but in a different way than SHE-I issues. Actuarial risk researchers tell us that sexual deviancy/compulsivity/pre-occupation is also correlated with increased rates of recidivism and increased rates of failure under supervision and failure in sex-offense-specific treatment. SHE-II adds incremental validity to risk-assessment/risk-management/treatment-planning to the extent that it gathers information about involvement in sexual behaviors that are more often compulsive (large-numbers) such as peeping/voyeurism, exhibitionism, theft of undergarments, public masturbation, and child-pornography.

The forensic challenge will be to differentiate no-involvement from minimal-involvement from high-involvement. Polygraph Examiners should be cautious about attempting to test the limits of admitted sexual compulsivity or sexual preoccupation behaviors with the hope of somehow knowing *everything* or *every incident* when an Examinee admits to substantial involvement in the behavioral targets of concern. When an offender admits to being highly involved in these activities, there may be little to be gained from testing the limits of involvement: there is likely more, but it might not be remembered. It is not additive because the answer is already known: he or she is highly involved. Testing these behaviors is additive when an offender denies involvement or admits to only minimal involvement because confirming that will help justify an assumption of absence of compulsivity/deviancy/pre-occupation, which is correlated with an assumed lower level of risk.

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

A. Voyeurism/sexual peeping activities**,** including all attempts to look into someone's home, bedroom or bathroom without the person's knowledge or permission, in an attempt to view someone naked, undressing/dressing, or engaging in sexual acts. Voyeurism activities include attempts involving the use or creation of a hole or opening to view others for sexual arousal, including all attempts to use any optical devices (e.g., cameras, mirrors, binoculars, or telescope) to view others for sexual purposes.

B. Exhibitionism/indecent exposure**,** including all attempts to intentionally or to have appear to have "accidentally" exposed one's bare private parts to unsuspecting persons in public places. Exhibitionism includes wearing loose or baggy clothing that allows one's sexual organs to become exposed to others, and may also include mooning, streaking or flashing behaviors, and public urination while in view of others.

C. Theft or use of underwear/undergarments for sexual arousal or masturbation, including taking or keeping undergarments (including other personal property or "trophies") from relatives, friends, sexual partners, or strangers for masturbation or sexual arousal. It also includes all incidents of wearing or trying on another person's underwear or undergarments without that person's knowledge or permission, in addition to all incidents in which underwear, undergarments, or personal property was returned after use for masturbation or sexual arousal.

D. Frottage/sexual rubbing*,* including all attempts to sexually rub or touch others without their knowledge or permission, by standing or walking too close in public locations (e.g., work, stores, school, or other crowded places), or during any form of play, horseplay, wrestling/athletic activities, or other similar activities.

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

A. Child pornography**,** including any history of ever viewing, possessing, producing, using, or distributing pornographic images of minors (i.e., infants, children or teenagers under age 18) who were engaging sexual acts.

B. Sexual contact with animals**,** refers to all sexual behaviors (including attempts) involving pets, (those belonging to the Examinee or others) domesticated (farm/ranch) animals, or wild animals, whether living or deceased, and whether whole or dismembered. This target may include animal cruelty behaviors.

C. Prostitution activities, including ever paying anyone or being paid for sexual contact (including erotic massage activities) with either money, property, or any special favors. It also includes ever employing or managing others who were paid to engage in sexual activities.

D. Coerced sexual contacts*,* including bribing, tricking, manipulating, lying, misuse of authority, badgering/pestering, wearing-down boundaries, or not accepting “no” for an answer.

E. Stalking/following behaviors, including all incidents of following someone to his or her home, workplace or vehicle, or following others around a store, aisle, parking lot, workplace/school, campus, or community for sexual or aggressive/angry reasons. It also includes all other efforts to monitor or observe another person's behavior without that person’s knowledge or permission,

F. Use of a computer to solicit minors for sexual activities, including ever using a computer, the Internet, or any electronic communication device in attempt to solicit an underage person for sexual contact. It also includes ever engaging in on-line sex-chat or cyber-sex activities via IRC, Instant Messaging, Web Chat, email or any other electronic method.

G. Masturbation or sexual acts in public places where one could be seen by others such as a vehicle, hiding place, standing outside someone's home or window, or anywhere one could watch others without their knowledge or permission. It also includes masturbation or sexual acts in workplace/school locations, public restrooms, or adult entertainment businesses.

8.3.3.3. General sexual history exam II – time of reference. The time of reference for the Sex History Exam I may be restricted to the period of time prior to the current court supervision that mandated the present treatment when there are concerns about 1) potential differences in consequences for pre-treatment or pre-conviction acts and those acts occurring post conviction or after treatment onset, or 2) Examinee rights pertaining to the behavioral targets after conviction while under the supervision of a court or in a treatment program. The time of reference should be included in the test questions unless clearly established during the pretest interview.

8.3.3.4. General sexual history exam II - testing approach. Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the

completion of the General Sex History Exam II in a series of more narrowly focused exams when that approach will lend to more accurate or satisfactory resolution of the investigation targets. Nothing in this Model Policy should be construed as to require the investigation of all or any of the suggested investigation targets or preclude the selection of alternative targets pertaining to sexual behavior that would assist the supervision and treatment team in determining and responding to the Examinee's supervision and treatment needs.

8.3.3.5. Testing the limits of admitted sexual compulsivity or sexual preoccupation. Examiners should attempt to prioritize the investigation of behaviors in which the Examinee denies any involvement. It may not be realistic to hope to know *everything* when an Examinee admits to substantial involvement in sexual behaviors that may include elements of sexual compulsivity or sexual preoccupation. In these cases community supervision team members should be informed of the Examinee's admission of substantial involvement.

8.4. Maintenance exam. Examiners should conduct the Maintenance Examination (ME) to thoroughly investigate, either periodically or randomly, the Examinee’s compliance with any of the designated terms and conditions of probation, parole, and treatment rules.

8.4.1 Maintenance exam - scheduling. It is recommended that Maintenance Exams be completed every four (4) to six (6) months, or every 12 months at a minimum. Community supervision team members should consider the possible deterrent benefits of randomly scheduled maintenance exams for some Examinees.

8.4.2. Maintenance exam - examination targets. Investigation targets for the Maintenance Exam should bear operational relevance to an Examinee's stability of functioning and any changes in dynamic risk level as indicated by compliance or non-compliance with the terms and conditions of the supervision and treatment contracts. Any of the terms and conditions of the probation or treatment may be selected as examination targets. Investigation targets for Maintenance Exams should emphasize the development or verification of information that would add incremental validity to the early detection of an escalating level of threat or to the community or to potential victims.

8.4.2.1. Unknown allegations. Maintenance Exams should not address known allegations or known incidents, which are properly investigated in the context of an event-specific polygraph exam.

8.4.2.2. Compliance focus. Maintenance Exams should be limited to questions about compliance or non-compliance with supervision and treatment rules. Questions about unlawful sex acts or re-offense behaviors may be included in the examination as long as circumstances related to rights against self incrimination as listed in the section dealing with Sex Offense Monitoring examinations do not exist. An elevated level of concern regarding reoffense would warrant a Sex Offense Monitoring Exam (SOME) – not a Maintenance Exam. Examiners should exercise caution to ensure they do not violate any rights of an Examinee regarding the answering of questions about new criminal behaviors.

8.4.2.3. Examination targets. Examination targets should include, but are not limited to the following:

A. Sexual contact with unreported persons of any age, including any form of rubbing or touching of the sexual organs (i.e., breasts, buttocks, or genitalia) of any person not already known or reported to the supervision and treatment team, either over or under clothing, for the purpose of sexual arousal/stimulation, sexual gratification, or sexual "curiosity." It also includes causing or allowing others to touch or rub one's own private parts either over 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, refers to viewing or using X-rated (or "XXX"), nude, or pornographic images or materials (e.g., pornographic magazines, pornographic movies on cable television, including scrambled television programming, pornographic movie theaters, pornographic video arcades, videotape, CD/DVD, or other recorded media including pornographic images or materials via computer or the Internet, iPod, cell phone, video games, or any electronic messaging system). It may also include using non-pornographic erotica (nude or non-nude) images or materials for sexual stimulation or masturbation purposes (e.g., sexually objectifying entertainment magazines, bikini or car magazines, nudity or erotic scenes in non-pornographic movies, sexually oriented stories in magazines, novels, or Internet/computer resources, and/or anything at all on television). This target may be restricted to using pornographic or sexually stimulating materials for masturbation purposes when the Examinee admits to incidental contact with pornographic images.

C. Masturbation activities and masturbatory fantasies, which may refer to any involvement in masturbation activities when the Examinee is prohibited from those activities, or it may refer to problematic forms of masturbation such as masturbating in a public location or where one could view or be viewed by others. It may also include voluntary or involuntary/intrusive thoughts or fantasies of a minor or past victim while masturbating or masturbation due to stress, boredom, anger, or other negative mood.

D. Unauthorized contact with underage persons, which refers to prohibited physical or other contact with underage persons, or to being completely alone or unsupervised with underage persons if the Examinee has reported or admitted to incidental contact.

E. Sexual offenses while under supervision, including forced, coerced or violent sexual offenses, sexual offenses against underage persons, incest offenses, or sexual contact with unconscious persons. It may also include sexual deviancy/compulsivity/preoccupation behaviors such as voyeurism, exhibitionism, theft of undergarments, public masturbation or other behaviors.

F. Use of alcohol, illegal drugs or controlled substances, including tasting or consuming any beverage containing alcohol (if prohibited), or consuming any product containing alcohol for the purpose of becoming intoxicated, inebriated, drunk, "buzzed," or "relaxed."

It also includes any use of marijuana (whether inhaled or not) or any other illegal drugs. This target also includes any misuse of controlled prescription medications, whether borrowing, sharing, trading, loaning, giving away, or selling one's own or another person's prescription medications or using any medication in a manner that is inconsistent with the directions of the prescribing physician.

8.4.3. Maintenance exam - time of reference. Maintenance Exams should address a time of reference subsequent to the date of conviction or the previous Maintenance Exam, generally not exceeding one (1) year and only exceeding two (2) years in rare circumstances. The time of reference may be described generally as the six (6) month period preceding the examination; although, there may be reasons for lengthening or shortening the time of reference for some exams. All investigation targets in a test series should have a common time of reference.

8.4.4. Maintenance exam - testing approach. Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Maintenance Exam in a series of more narrowly focused exams when that approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.5. Sex offense monitoring exam. Examiners should conduct the Sex Offense Monitoring Exam to explore the possibility the Examinee may have been involved in unlawful sexual behaviors including a sexual re-offense during a specified period of time. Other relevant questions dealing with behaviors related to probation and treatment compliance should not be included.

8.5.1. Sex offense monitoring exam - scheduling. Sex Offense Monitoring Exams should be completed whenever there is a specific request from a supervision or treatment professional to investigate the possibility of a new offense while under supervision. Alternatively, this exam may be used when 1) the likelihood of sexual offense or other sexual crime is elevated because of information received by any member of the team to include the Examiner, or 2) following a previously unresolved maintenance examination that included a relevant question about sexual offense behavior. Whenever the results of a maintenance exam indicated the need for further testing to obtain a more diagnostic conclusion, a single-issue test format will be utilized. A single-issue Sex Offense Monitoring Exam can be expected to have improved diagnostic accuracy over a multi-issue (mixed issue) exam. However, this approach is still an exploratory exam, which should not be regarded as a sole basis for action (such as probable cause for arrest, revocation or removal from a treatment program).

8.5.2. Sex offense monitoring exam - examination targets. Examiners should select investigation targets for the Sex Offense Monitoring Examination that pertain to new sex crimes while under supervision based on concerns expressed by the supervision and treatment team.

8.5.3. Sex offense monitoring exam - time of reference. Sex Offense Monitoring Exams should refer to a time of reference generally following the date of conviction or a previous Monitoring Examination. The time of reference should be clearly stated in the test questions and may include all or any part of the time that the Examinee is under supervision or in treatment, including a specific date or restricted period of time. The time of reference should emphasize the investigation of possible unlawful sexual acts or sexual re-offense during the most recent period of months prior to the Sex Offense Monitoring Exam.

8.5.4. Sex offense monitoring exam - testing approach. Examiners should conduct the Sex Offense Monitoring Exam as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Sex Offense Monitoring Exam as a narrowly focused exam when that approach will lend to more accurate or satisfactory resolution of the investigation targets. Examiners should use a single-issue technique when the Sex Offense Monitoring Exam is used to follow-up on a previously unresolved Maintenance Exam.

9. Suitability for testing. Suitable Examinees should, at a minimum, be expected to have a capacity for:
   A. Abstract thinking;
   B. Insight into their own and others' motivation;
   C. Understand right from wrong;
   D. Tell the basic difference between truth and lies;
   E. Anticipate rewards and consequences for behavior; *and*
   F. Maintain consistent orientation to date, time, and location.

9.1. Medications. Examiners should obtain and note in the examination report a list of the Examinee's prescription medication(s), any medical or psychiatric conditions, and any diagnosed acute or chronic medical health conditions.

9.2. Unsuitable Examinees. Examiners should not test Examinees who present as clearly unsuitable for polygraph testing at the time of the examination.

9.2.1. Psychosis. Persons who are acutely psychotic, suicidal, or have un-stabilized or severe mental health conditions, including dementia, should not be tested.

9.2.2. Age. Persons whose chronological age is 12 years or greater should be considered suitable for polygraph testing unless they are substantially impaired. Polygraph testing should not be attempted with persons whose Mean Age Equivalency (MAE) or Standard Age Score (SAS) is below 12 years as determined by standardized psychometric testing (e.g., IQ testing, and adaptive functioning).

9.2.3. Level of functioning. Persons whose level of functioning is deemed profoundly impaired and warranting continuous supervision or assistance may not be suitable for polygraph testing.

9.2.4. Acute injury or illness. Persons suffering from an acute serious injury or illness involving acute pain or distress should not be tested.

9.2.5. Controlled substances. Persons whose functioning is observably impaired due to the influence of non-prescribed or controlled substances should not be tested.

9.3. Team approach. Examiners should consult with other professional members of the multi-systemic containment team, prior to the examination, when there is doubt about an Examinee's suitability for polygraph testing.

9.4. Incremental validity. When there are concerns about an Examinee's marginal suitability for testing, Examiners should proceed with testing only when multi-disciplinary team determines that such testing would add incremental validity to risk assessment, risk management, and treatment planning decisions through the disclosure, detection, or deterrence of problem behaviors.

10. Testing procedures. Examiners who engage in PCSOT activities should adhere to all generally accepted polygraph testing protocols and validated principles.

10.1. Case background information. The Examiner should request and review all pertinent and available case facts within a time frame sufficient to prepare for the examination.

10.2. Audio-visual or audio recording. Examiners should record all PCSOT polygraph examinations. The recording should include the entire examination from the beginning of the pretest interview to the completion of the posttest review. The recording should be maintained for a minimum of three (3) years. The recording documents the quality of the conduct of the testing protocol; documents the content and authenticity of the content of the information provided by the Examinee, thus precluding possible future denials; and facilitates a comprehensive quality assurance review when necessary.

10.3. Pre-test phase. Examiners should conduct a thorough pre-test interview before proceeding to the test phase of any examination. A thorough pretest interview will consist of the following:

10.3.1. Greeting and introduction. Examiners should introduce themselves by their names and orient Examinee to the examination room.

10.3.2. Brief explanation of procedure. Examiners should ensure Examinees have some information about the ensuing procedure and scope of testing prior to obtaining the authorization and release to complete the exam.

10.3.3. Authorization and release. Examiners should obtain an Examinee's agreement, in writing and/or on the audio/video recording, to a waiver/release statement. The language of the statement should minimally include 1) the Examinee's voluntary consent to take the test, 2) that the examination may be terminated at any time, 3) a statement regarding the Examinee's assessment of his or her mental and physical health at the time of the examination, 4) that all information and results will be released to professional members of the community supervision team, 5) an advisement that admission of involvement in unlawful activities will not be concealed from the referring professionals and 6) a statement regarding the requirement for audio/video recording of each examination.

10.3.4. Biographical data/determination of suitability for testing. Examiners should obtain information about the Examinee's background including marital/family status, children, employment, and current living situation in addition to a brief review of the reason for conviction and length/type of sentence. Examiners should obtain, prior to and at the time of the examination, information pertaining to the Examinee's suitability for polygraph testing.

10.3.5. Explanation of polygraph instrumentation and testing procedures. The testing process should be explained to the Examinee, including an explanation of the instrumentation used and the physiological and psychological basis of response. Nothing in this Model Policy should be construed as favoring a particular explanation of polygraph science. In general, an integrated explanation involving emotional attributions, cognitive theory and behavioral learning theory may be the best approach.

10.3.6. Structured interview. The Examiner should conduct a thorough structured or semi-structured pre-test interview, including a detailed review of the Examinee's background and personal information, any applicable case facts and background, a detailed review of each issue of concern, and an opportunity for the Examinee to provide his or her version of all issues under investigation. For event-specific diagnostic/investigative polygraphs of known allegations or known incidents, a free-narrative interview is used instead of a structured or semi-structured interview.

10.3.7. Review of test questions. Before proceeding to the test phase of an examination, the Examiner should review and explain all test questions to the Examinee. The Examiner should not proceed until satisfied with the Examinee's understanding of and response to each issue of concern.

10.4 In-test operations. Examiners should adhere to all generally accepted standards and protocols for test operations.

10.4.1 Environment. All examinations should be administered in an environment that is free from distractions that would interfere with the Examinee's ability to adequately focus on the issues being addressed.

10.4.2 Instrumentation. Examiners should use an instrument that is properly functioning in accordance with the manufacturer's specifications.

10.4.2.1. Component sensors. The instrument should continuously record the following during the test: thoracic and abdominal movement associated with respiratory activity by using two pneumograph components; electrodermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue; and cardiovascular activity to record relative changes in pulse rate and blood pressure. A channel that detects vasomotor responses or other validated data channels may also be recorded.

10.4.2.2. Activity sensors. A motion sensor is recommended and will be required for use by APA members effective January 1, 2012.

10.4.3 Data acquisition. The conduct of testing should conform to all professional standards concerning the data quality and quantity.

10.4.3.1. Number of presentations. Examiners employing a comparison question technique should conduct a minimum of three (3) presentations of each relevant question. It is acceptable to conduct a fourth (4th) or fifth (5th) presentation in order to obtain a sufficient volume of interpretable test data.

10.4.3.2. Question intervals. Question intervals should allow a reasonable time for recovery. For comparison question techniques, question intervals from stimulus onset to stimulus onset should not be less than 20 seconds. It is suggested that a time period between 25 and 30 seconds would be superior to the minimum time of 20 seconds.

10.4.3.3. Acquaintance test. An acquaintance test should be administered during the first examination of each Examinee by each Examiner. Examiners are encouraged to use an acquaintance test during the conduct of other tests as appropriate.

10.5. Test data analysis. The Examiner should render an empirically-based interpretation of the Examinee's responses to the relevant questions based on all information gathered during the examination process.

10.5.1. Scoring methods. Examiners should employ quantitative or numerical scoring for each examination using a scoring method for which there is known validity and reliability, which has been published and replicated.

10.5.2. Results – diagnostic exams. Test results for event-specific diagnostic/investigative tests should be reported as Deception Indicated (DI), No Deception Indicated (NDI) or Inconclusive (INC) / No Opinion (NO).

10.5.3. Results – exploratory exams. Test results of exploratory tests should be reported as Significant Response (SR), No Significant Response (NSR) or No Opinion (NO).

10.5.4. No opinion/inconclusive. Examiners should render No Opinion (NO) whenever test results produce inconclusive numerical scores or whenever the overall set of test data do not allow the Examiner to render an empirically-based opinion regarding the relevant test questions. (I.e., when test results are “inconclusive,” an Examiner should render “no opinion” concerning the truthfulness of the Examinee.) “No opinion” concerning the truthfulness of the Examinee should be reported when an examination was stopped prior to collection of sufficient data to arrive at an empirically-based opinion.

10.5.5. Professional opinions and test results. Examiners should render an opinion that the Examinee was deceptive when the test results are SR or DI for any of the investigation targets. Examiners should render an opinion that the Examinee was truthful when the test results are NSR or NDI for all of the investigation targets. Examiners should not render an opinion that the Examinee was truthful when the test results are SR or DI for any of the investigation targets. Examiners should not conclude an Examinee is deceptive in responses to one or more investigation targets and non-deceptive in responses to other investigation targets within the same examination.

10.5.6. Non-cooperation. Examiners should note in the examination report whenever there is evidence that an Examinee has attempted to falsify or manipulate the test results and whether the Examinee was forthcoming in explaining his or her behavior during the test. An opinion that the Examinee was Purposefully Non-Cooperative (PNC) is appropriate when there is evidence that an Examinee was attempting to alter his or her physiological response data. Examiners reporting an Examinee was PNC are not precluded from rendering an opinion that the Examinee was deceptive (SR/DI) when the numerical scores support a conclusion that there were significant reactions to one (1) 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 (3) interpretable presentations of each of the investigation targets.

10.5.8. Computer algorithms. Computer scoring algorithms should not be used to score examination data that is of insufficient quality for manual scoring, and computer algorithms should never be the sole determining factor in any examination decision.

10.6. Posttest review. The Examiner should review the test results with the Examinee, advise the Examinee of any significant responses to any of the test questions, and provide the Examinee an opportunity to explain or resolve any reactions or inconsistencies.

11. Examination report. Examiners should issue a written report containing factual and objective accounts of all pertinent information developed during the examination, including case background information, test questions, answers, results, and statements made by the Examinee during the pre-test and post-test interviews.

11.1. Dissemination of test results and information. The polygraph examination report should be provided to the professional members of the community supervision team who are involved in risk assessment, risk management, and treatment/intervention planning activities.

11.1.1. Dissemination to other authorities. Reports and related work products should be released to the court, parole board or other releasing agency, or other professionals at the discretion of the community supervision team or as required by law.

11.1.2. Communication after the exam. Following the completion of the posttest review, Examiners should not communicate with the Examinee or Examinee's family members regarding the examination results except in the context of a formal case staffing.

11.2. Scope of expertise. Examiners should not attempt to render any opinion concerning the truthfulness of the Examinee prior to the completing the test phase and test-data-analysis. Examiners should not attempt to render any opinion regarding the medical or psychological condition of the Examinee beyond the requirement to determine suitability for testing at the time of the examination. Post-test recommendations should be limited to needs for further polygraph testing and the resolution of the behavioral targets of the examination.

12. Records retention. Examiners should retain all documentation, data, and the recording of each examination for a period of at least three (3) years or as required by law.

13. Quality control. To ensure Examiner compliance with these recommendations and other field practice requirements and to sustain the quality of the testing process, an independent quality control peer-review of a portion of each Examiner's work product should take place annually.

14. Examiner qualifications. Examiners whose work is to be considered consistent with the requirements of this Model Policy shall have completed a basic course of polygraph training at a polygraph school accredited by the APA or meet other training, experience and competency requirements for professional membership in the APA.

14.1. Specialized training. Examiners shall have successfully completed a minimum of 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 30 continuing education hours every two (2) years. Fifteen of those hours shall pertain to specialized sex offender polygraph training.

14.3. Professional experience. Examiners shall complete a minimum number of examinations in accordance with APA standards prior to undertaking PCSOT examinations unsupervised. Examiners who have conducted fewer than 10 PCSOT exams shall conduct PCSOT exams under the supervision of an APA recognized PCSOT Examiner until 10 exams have been completed in accordance with APA standards. Supervision shall include a thorough review of the examination including target selection, question construction, data quality, test data evaluation, record keeping and reporting procedures.

How to cite this document (attachment B):

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The Model Policy for Post-conviction Sex Offender Testing can be found at:
http://www.polygraph.org/files/Model_Policy_for_Post-Conviction_Sex_Offender_Testing.doc

The By Laws can be found at: http://www.polygraph.org/files/APA_By-Laws_2-26-10.pdf

BY-LAWS
AMERICAN POLYGRAPH ASSOCIATION
(Updated February 26, 2010)

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 (Effective 01/20/2007)

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 Evidentiary Examination: A polygraph examination, the written and stated purpose for which, agreed to by the parties involved, is to provide the diagnostic opinion of the Examiner as evidence in a pending judicial proceeding. This is not intended to prevent admission as evidence of a confession obtained during the examination.

3.2.2 Paired-testing: Polygraph examinations conducted in tandem on two (2) 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. Paired-testing must be conducted under the same standards as an evidentiary examination.

3.2.3 Investigative Examination: A polygraph examination for which the examination is intended to supplement and 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 of record. Types of investigative examinations can include applicant testing, counterintelligence screening, and post-conviction sex offender testing, as well as routine multiple-issue or multiple-facet criminal testing. Investigative examinations are required to be conducted with a testing and analysis technique that has been validated through published and replicated research.

3.2.4 Effective January 1, 2012 (previous passage deleted January 1, 2012) Validated Testing Technique: A polygraph technique for which exists a body of published and replicated studies demonstrating an average accuracy of:

3.2.4.1 Ninety percent (90%) or greater for evidentiary examinations, excluding inconclusive results, which cannot exceed 20%.

3.2.4.2 Eighty six percent (86%) or greater for paired-testing examinations, excluding inconclusive results, which cannot exceed 20 percent (20%).

3.2.4.3 Eighty percent (80%) or greater for investigative examinations, excluding inconclusive results, which cannot exceed 20 percent (20%).

3.2.5 Specific Issue Polygraph Examination: A single-issue examination, generally administered in conjunction with an investigation.

3.2.6 Standards of Practice: The generally accepted principles for the best/most appropriate way to conduct a polygraph examination are required to be observed and followed in conducting, analyzing, documenting, and reporting polygraph examinations. Standards are mandatory and may be accompanied by enforcement sanctions.

3.2.7 Guidelines: Recommended practices for the conduct, analysis, documentation and reporting of polygraph examinations. They differ from standards in that standards are mandatory whereas guidelines convey better practices. Within the standards of practice, guidelines are explicitly set forth as recommendations.

3.3 Polygraph Examiner

3.3.1 A polygraph Examiner is required to 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 Evidentiary examinations shall be conducted only by a Full or Associate member.

3.3.3 Polygraph examinations of sex offenders as a condition of treatment, probation or parole are required to be conducted by members who have completed specialized training consistent with guidelines found in section 3.11.

3.3.4 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.

3.3.5 Examiners are required to accurately represent their category of APA membership, their academic credentials, their licensure, and their certification status.

3.3.6 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 is required to make reasonable efforts to determine that the Examinee is a fit subject for testing. Basic inquires into the medical and psychological condition of the Examinee as well as any recent drug use must 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 is required to 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 are required to be conducted with instrumentation that records with, at a minimum, the following channels or components:

3.5.1.1 Respiration patterns recorded by pneumograph components. Thoracic and abdominal patterns are required to 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 Cardiograph to record relative changes in pulse rate, pulse amplitude, and relative blood pressure.

3.5.1.4 A motion sensor is required for all examinations and will become mandatory as of January 1, 2012. This technology is recommended for investigative examinations. Effective January 1, 2012, this section is replaced as follows (previous passage deleted January 1, 2012): 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 are required to be continuous, and are required to be of sufficient amplitude to be easily readable by the Examiner and any reviewing Examiner. Pneumograph and cardiograph tracings between one-half (1/2) inch and one (1) 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 is required to be given a functionality or calibration test consistent with manufacturer recommendations and in compliance with state and federal law. Effective January 1, 2012, in the absence of manufacturer's recommendations, Examiners should semi-annually record a chart demonstrating correct functioning of the instrument. A functionality or calibration test is required to be administered prior to all evidentiary examinations. These tests, where applicable, are required to be maintained by the Examiner for not less than one year.

3.6 Test Location and Conditions

3.6.1 Conditions under which testing occurs are required to be free from distractions that would interfere with the ability of the Examinee to appropriately focus during the examination process.

3.6.2 Examiners conducting polygraph examinations for public viewing are prohibited from rendering opinions regarding the truthfulness of the Examinees on the basis of that examination. It is recommended Examiners attempt to 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 is required to immediately notify the Manager of the APA National Office.

3.7 Preparation

3.7.1 Prior to an examination, the Examiner is required to 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 is required to obtain information sufficient to identify the Examinee.

3.8.2 The Examiner is required to obtain the consent of the Examinee prior to testing. It is recommended the consent of the Examinee be obtained after there is a reasonable understanding of the polygraph process, including the duration, the issues to be covered, and the instrumentation to be used.

3.8.3 Sufficient time is required to 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 is required to 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 is required to 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 are required to 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 is required not to 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 is required to use a validated testing technique. Examinations are not permitted to materially deviate from the protocols of a validated testing technique. Where examinations deviate from the protocols of a validated testing technique it is recommended the deviations be noted and justified in writing from question onset.

3.9.2 A stimulation test or acquaintance test is required for all evidentiary and initial PCSOT examinations. A stimulation or acquaintance test is recommended for all initial examinations for any specific issue or investigative examination.

3.9.3 For the resolution of specific issues, a validated testing technique must be used.

3.9.4 Questions are required to be asked with clarity and distinctiveness.

3.9.5 Questions are required to be balanced in terms of length and impact for each category of questions utilized. Questions used in the assessment of truth and deception are required to be followed by time intervals of not less the 20 seconds from question onset to question onset. When approved validated research supports the use of another time interval, that time interval will be acceptable.

3.9.6 Examiners are required to collect a sufficient number of charts so as to acquire sufficient data for proper evaluation, in conformance with a validated testing technique.

3.9.7 Nothing in these standards is intended to prevent the use of new or not validated testing techniques for purposes of research.

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

3.9.9 An audio/video recording of the pretest and in-test phases is required to be made and maintained as part of the examination file for as long as required by regulation or law, but for a minimum of one (1) year for all evidentiary and paired-testing examinations. Audio/video recording is recommended for PCSOT examinations.

3.9.10 A member polygraph Examiner is prohibited from conducting more than four investigative or three (3) evidentiary examinations in one (1) day, and no more than five (5) examinations of any type in one (1) day. On rare occasion, exigent circumstances may warrant a waiver of this requirement.

3.10 Scoring

3.10.1 Examiners conclusions and opinions are required to be based on quantitative or numerical scoring for all evidentiary examinations and for all specific issue investigative examinations. The scoring method and decision rules shall have been validated through published and replicated research demonstrating that they are valid and reliable, and appropriate for the type of examination.

3.10.2 Examiner notes of the test evaluation are required to have sufficient clarity and precision so that another Examiner could read them.

3.10.3 Examiners are prohibited from disclosing the results of the examination until the analysis has been completed.

3.10.4 Examiners are required to 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 is required to fully disclose all relevant information regarding the case under review. Any doubts as to relevancy are required to be resolved through disclosure.

3.10.6 Examiners conducting polygraph examinations should annually submit to a quality control review of their work product. 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 are required to satisfy the provisions set forth in the Standards of Practice for investigative examinations as well as the following mandatory standard:

3.11.2 Minimum Training: A minimum of hours of specialized instruction through PCSOT certification training approved by the APA, beyond the basic polygraph training course requirements. In the event an Examiner attends and successfully completes the advanced training prior to completing 200 polygraph examinations, the Examiner must participate in an internship program consisting of at least 10 PCSOT examinations, under the supervision of a PCSOT certified Examiner, and upon successful completion of that testing, will receive an APA certificate reflecting satisfactory completion of training requirements, thus being considered to possess the requisite knowledge to conduct polygraph testing in conjunction with sex offender treatment and monitoring programs.

3.11.3 Written Examination: Passing a final written examination, approved by the APA or its designated representative is required prior to receiving a diploma for the training. The written examinations are required to be properly controlled and protected to prevent exposure of the test questions or answers to any unauthorized persons.

3.11.4 Maintaining of Written Examinations: The instructors of the approved course are required to maintain a copy of the final written examination. Upon completion of the 40-hour PCSOT course instructors are required to administer the examination to those students who qualify for the final examination. Upon completion of the examination the instructors are required to submit the tests to the APA National Office for scoring verifications.

3.11.5 Recording Requirements: All PCSOT polygraph examinations submitted for quality control are required to be audio/visually recorded in their entirety. When required for quality control purposes these recordings will be made available. All recorded physiological data is required to be retained as part of the examination file as long as required by regulation or law, but for a minimum of one (1) year.

3.11.6 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.

3.11.7 PCSOT Examiners who are probation or parole officers shall not conduct a polygraph examination on any individual that they directly or indirectly supervise.

Division IV: Code of Ethics ***(01/10/99)***

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 (3) 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. 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 (1) year, all polygraph data and documentation related to the conduct of a polygraph examination.

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 or expulsion from the Association, as provided by Article IV of the APA Constitution.

5. Division V: Membership **(MODIFIED AUGUST 2005) –**
(DELETED CATEGORY OF INTERN MEMBER & INTERNATIONAL AFFILIATE**)**

5.1 Full Member.

5.1.1 Full members of this Association are those persons who have:

5.1.1.1 Graduated from an APA Accredited School.

5.1.1.2 Completed not less than 200 actual polygraph examinations using a standardized polygraph technique as taught at an APA Accredited School and hold a current and valid license to practice polygraphy issued by a state or federal agency requiring such license.

5.1.1.3 Received a Baccalaureate Degree from a college or university accredited by a regional accreditation board.

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, as well as serve as the Chair of any such 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:

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

5.2.1.2 Are graduates of any basic polygraph school of at least six (6) weeks in continuous, full time duration which was in existence on or before 1 August 2001, and are practicing polygraph Examiners; and,

5.2.1.2.1 Have attended an APA sponsored seminar; and,

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

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

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

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

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

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

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

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

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

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

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

5.2.2.7 They have satisfied all financial obligations to the APA.

5.3.3 Associate Members shall:

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

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

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

5.4 Life Member

5.4.1 A Life Member is any member of the Association:

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

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

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

5.4.2 Life Members shall:

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

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

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

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

5.4.2.5 Be exempt form annual membership dues to the Association.

5.5 Science and Technology Membership.

5.5.1 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.

5.5.2 Science and Technology members shall:

5.5.2.1 Not have the right to vote in matters before the General Membership.

5.5.2.2 Not be eligible to hold any elective office in the Association.

5.5.2.3 Not be eligible to hold any appointed position in the Association.

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

5.5.2.5 Meet all financial obligations to the Association.

5.6 Honorary Member.

5.6.1 Honorary Members are those persons who:

5.6.1.1 Have made an outstanding contribution to the Association and the polygraph profession, and;

5.6.1.2 Have been nominated by any Member for Honorary Membership, and;

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

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

5.6.2 Honorary Members shall:

5.6.2.1 Not have the right to vote in matters before the General Membership.

5.6.2.2 Have the right to speak on any issue before the General Membership or the Board of Directors.

5.6.2.3 Not be eligible to hold any elective office in the Association.

5.6.2.4 Not be eligible to Chair any Standing or Ad-Hoc Committee.

5.6.2.5 Be exempt from annual membership dues to the Association.

5.7 Retired Members.

5.7.1 Retired members are those persons who:

5.7.1.1 Are at least 65 years of age.

5.7.1.2 Are no longer engaged in profit-making polygraph employment.

5.7.1.3 Have at least 20 years of membership in the American Polygraph Association.

5.7.1.4 Have attended a minimum of five American Polygraph Association Annual Seminars.

5.7.1.5 Whose nomination has been approved by a two-third (2/3) majority vote of the Board, and;

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

5.7.2 Retired Members shall:

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

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

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

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

5.7.2.5 Be exempt from annual membership dues to the Association.

5.8 Divisional Members.

5.8.1 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:

5.8.1.1 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.

5.8.1.2 Be granted Divisional Membership upon a two-thirds (2/3) majority vote of the Board.

5.8.2 Divisional Members shall:

5.8.2.1 Be autonomous in all matters, but must be in compliance with the Code of Ethics and Standards of Practice of this Association.

5.8.2.2 Not represent themselves as other than a Divisional Members 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.

5.8.2.3 Maintain separate financial accounts and records from the American Polygraph Association and not bind the Association to any financial commitment or responsibility.

5.8.2.4 The Board of Directors may upon a two-thirds (2/3) majority vote, revoke the Divisional Membership of any such member who:

5.8.2.4.1 Fails to subscribe to or enforce upon its members the American Polygraph Association Code of Ethics and Standards of Practice.

5.8.2.4.2 Fails to hold a meeting of its General Membership within a 12 month period.

5.9 General Provisions.

5.9.1 Subject to the terms and conditions of this Article, membership in the Association shall be terminated upon the conviction of any member, other than a Divisional Member, of any felony crime or any crime of moral turpitude. Conviction, for the purpose of this section, shall mean the judgment of any court of competent jurisdiction, local, state or federal and shall include a plea of "no contest" to a crime amounting to a felony or when included as a lesser offense or when included as a condition of probation. Such termination of membership shall be automatic and without action by the Grievance Committee or the Board.

5.9.2 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 30 days of such arraignment, notify the Chairperson of the Grievance Committee of such arraignment. Notification shall be in writing and shall include the nature of the charge, the name and address of the court where the member was arraigned, the date of the arraignment and the case or docket number assigned by the court.

5.9.2.1 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 31st day after being formally charged and shall continue until the member complies with the requirements of this sub-section.

5.9.3 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:

5.9.3.1 Qualifies for the class of membership to which he or she qualified at the time of resignation.

5.9.3.2 Meets all financial obligations to the Association for the year in which the reinstatement is sought.

5.9.3.3 Was not the subject of investigation by the Grievance Committee or failed to meet his or her financial obligations to the Association at the time of his or her resignation.

5.9.4 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 further membership processing unless their current grievance investigation is deemed unfounded and closed.

6. Division VI: Nominations and Fair Elections Committee

6. Division VI: Nominations and Fair Elections Committee (Amended August 4, 2009)

6.1 Any member qualified under Division V of the By-Laws may have their name appear on the ballot if they are nominated by at least one (1) voting member of the Association. A voting member may nominate oneself. The nomination shall be made on a form provided by the Association.

6.2 All completed nomination forms shall be delivered to the Immediate Past President by January 1 in the calendar year of the election. Upon receipt of the nominations, the Immediate Past President shall examine the authenticity of each nomination and that the nominees meet all qualifications required by the Association to hold the office to which they have been nominated.

6.3 All nominees shall deliver to the Immediate Past President by February 5 in the calendar year of the election a letter in support of their candidacy for inclusion in the ballot packet for APA members. The letter shall not be more than 500 words.

6.4 The Immediate Past President shall present to the Board of Directors a slate of all qualifying nominees. The Board of Directors considers any challenge as to whether the candidate meets all qualifications required by the Association to hold the office to which they have been nominated. The Board of Directors shall timely certify the slate of nominees for the ballot.

6.5 The Immediate Past President shall notify all nominated candidates of their status for the ballot.

7. Division VII: Election Procedures

7.1 A Fair Elections Committee shall be appointed by the Immediate Past President, immediately after leaving the office of President, to conduct the annual election. The Fair Elections Committee shall consist of at least five Full Members of the Association and the Immediate Past President who shall serve as Chair. At least one (1) appointed member shall be selected from each of the three (3) categories of membership, Private, Law Enforcement and Government; an additional Full member shall be selected so as to make the Committee broadly representative of the constituent interests of the Association.

7.2 A printed ballot shall be mailed to all regular members qualified to vote. The ballot shall include the names of the candidates for each office in last name alphabetical order and a space for write-in candidates. Election materials will be mailed to the membership by February 15 of each year.

7.3 Enclosed with the printed ballot shall be biographical and goals statements by the candidates for each office, a self-addressed envelope, and a smaller inner envelope bearing only the statement, “Secret Ballot.” The marked ballot must be returned in the inner envelope, within the self-addressed envelope. Members may insert and return the “Secret Ballot” envelope in their own envelope or an agency envelope if preferred.

7.4 As a means of certifying that the return envelope and the enclosed ballot were the result of a regular member’s vote the member’s printed name and signature shall be placed on the outside of the “Secret Ballot” envelope. The Fair Elections Committee shall count only official “Secret Ballot” envelopes designed for return ballots.

7.5 Thirty days shall be allowed for the voting process, i.e., for the receipt of election materials and the return of marked ballots. In the instructions accompanying the election material, a deadline for receipt of the ballots shall be announced. No ballots received after this date shall be counted.

7.6 The Fair Elections Committee will then tabulate the results of the election and notify the entire membership of the Association and report the results to the Board of Directors.

7.7 If no candidate for an office has received a majority of those valid ballots cast, a runoff election shall be held. Such ballot shall include only the two (2) persons who receive the highest number of votes on the original ballot. A period not exceeding 30 days shall be allowed for conducting the runoff election. The Chairman of the Fair Elections Committee shall retain the ballots and all other election material until the election has been certified at the annual meeting. The Board may authorize the destruction of the ballots and other election material at its annual meeting provided there is no pending contest of the election.

7.8 Anyone 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.

7.9 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 three-fourths (3/4) majority vote of the Board of Directors, the President-Elect shall act to discharge the duties of the presidential office it the event of the President’s absence, disability, of 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 (1) 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 meeting of the Board upon request of the president, or as may be required by majority vote of the Board.

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

12.2.4 Perform other duties as assigned by the President.

12.3 The National Office Manager shall:

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

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

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

13. Division XIII: Standing Committees

13.1 Standing Committees shall consist of a Chairperson appointed by the General Chair and not less than three (3), whose total number shall be determined by the General Chair dependant on the needs of the Committee.

13.1.1 The Ethics and Grievance Committee

13.1.1.1 The Ethics and Grievance Committee receives and expeditiously, fairly, and impartially investigates all allegations of misconduct against members of the Association. An ethics or grievance investigation shall be initiated by filing a complaint.

All complaints shall be in writing, signed by the complainant, and submitted to the APA National Office**.** The Committee shall not consider, investigate, nor act upon any allegation that does not meet these criteria.

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

The General Chair shall notify, in writing, the complainant and the accused member of the decision of whether to initiate a disciplinary proceeding.

13.1.1.3 If a disciplinary proceeding is initiated, the accused member shall have 30 days from the date of notification by the General Chair to request a hearing. Such request shall be in writing and addressed to the General Chair. The hearing is to provide the accused member of an opportunity to present any additional evidence or argument in response to the grievance complaint. The General Chair shall, after receipt of the accused member's request for a hearing, appoint a hearing officer from a list of hearing officers, which have been nominated and approved by the Board of Directors, to conduct the hearing in the state, province, or country of the accused member. This hearing may be accomplished by telephone, videoconference or in person. The investigating Committee member shall provide at least 10 days written notice to the accused member of the time, place, and date of the hearing. The accused member shall have the right to legal counsel or other advocate and may call witnesses to provide evidence on his or her behalf. The appointed hearing officer may examine witnesses called by the accused member and may call other witnesses as deemed necessary.

13.1.1.4 Upon consideration of the evidence and testimony, within 10 days, or such longer time as granted by the General Chair, the hearing officer shall submit his or her findings to the Ethics & Grievance Committee who will make a determination of whether the grievance is founded or unfounded. The General Chair shall be governed by a majority vote of the Committee and shall notify the accused member, in writing, of its findings and recommendations.

13.1.1.5 If disciplinary action is recommended, the General Chair or the appointed hearing officer shall present the evidence, findings, and recommendations to the Board of Directors. The accused member may appear or submit in writing to the Board of Directors, on such conditions as determined by the Board of Directors, only mitigating or extenuating matters that may effect the Board of Directors decision concerning types of disciplinary actions to be imposed. The Board of Directors shall by majority vote determine whether, and the nature of**,** disciplinary action to be taken against the member. The Board of Directors may publicly or privately censure, suspend, or terminate membership in the Association or take such other actions as deemed

appropriate. The General Chair shall notify the accused member, in writing, of the Board's determination. The General Chair shall advise the complainant of whether disciplinary action was taken.

13.1.1.6 If the accused member fails to request a hearing or fails to appear at a hearing subsequent to a request for such, the General Chair shall appoint a member of the Committee to proceed with an investigation as he or she deems necessary to make findings and recommendations. The appointed Committee member shall submit his or her findings and recommendations to the General Chair for submission to the full Committee for review and comment. The Committee shall determine whether to accept, reject or modify the findings and recommendations.

The General Chair or his appointed representative shall notify the accused member, in writing of its findings and recommendations. If disciplinary action is recommended, the General Chair or his or her appointed Committee representative shall present the matter to the Board of Directors as set out in 9.1.5 above.

13.1.1.7 Except as otherwise contemplated by the Constitution and By-Laws, information obtained by the Grievance Committee is considered confidential and should not be released outside the Committee or Board of Directors.

13.1.1.8 If an ethics or grievance complaint is filed by or against a member of the Ethics and Grievance Committee or a member of the Board of Directors, that member shall recuse himself or herself from investigation or consideration of the complaint.

13.1.1.9 The Ethics and Grievance Committee performs other duties as assigned by the President of the Board of Directors.

13.1.2 The Legislative Committee:

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

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

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

13.1.3 The Membership Committee:

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

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

13.1.4 The Seminar Committee:

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

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

13.1.5 Research and Development Committee:

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

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

13.1.6 Educational Accreditation Committee:

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

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

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

13.1.7 Public Relations and Information Committee:

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

13.1.7.2 Establishes public relations programs to promote the best interest of the polygraph profession.
13.1.7.3 Answers media inquiries regarding polygraph matters.

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

13.1.8 Continuing Education Committee:

13.1.8.1 Offers educational seminars for American Polygraph Association members at various regional locations.

13.1.8.2 Provides training and information on technological advances in the polygraph profession.

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

13.1.9 Budget Committee

13.1.9.1 Is chaired by the Treasurer

13.1.9.2 By May 1 each year, provides an estimated budget of income and expenses for the American Polygraph Association to the Board of Directors.

13.1.9.3 Monitors the budget and provides such information to the Board of Directors.

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

13.1.10 Awards Committee:

13.1.10.1 Identifies those persons who through their unselfish and extraordinary efforts promote and advance the best interests of the polygraph profession.

13.1.10.2 The following are current Awards offered by the American Polygraph Association:

13.1.10.2.1 William L. and Robbie S. Bennett Memorial Award: For unrelenting efforts and display of ability in the interest of the American Polygraph Association.

13.1.10.2.2 Al & Dorothea Clinchard Award: For extended, distinguished, devoted and unselfish service in behalf of the American Polygraph Association membership.

13.1.10.2.3 Cleve Backster Award: Honoring an individual or group that advances the polygraph profession through tireless dedication to standardization of polygraph principles and practices (January 28, 2006).

13.1.10.2.4 Leonarde Keeler Award: For long and distinguished service to the American Polygraph Association.

13.1.10.2.5 David L. Motsinger Horizon Award: In recognition of a new shining star in the profession or association who early in their career demonstrates loyalty, professionalism and dedication to the polygraph profession (less than 10 years) (January 28, 2006).

13.1.10.2.6 John E. Reid Award: For achievement in research teaching and writing of the polygraph profession.

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

13.1.10.2.8 Merit and Service award certificates.

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

14 Division XIV: Ratification

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