



*Human Resource Services*

## TEST RENTAL AND USE AGREEMENT

**This Test Rental and Use Agreement (“Agreement”) is by and between Cooperative Personnel Services, dba CPS Human Resource Services, a California Joint Powers Authority (“CPS”) and the Agency or Organization named in the signature block at the end of the Agreement (“Client”).**

- A. Purpose.** This Agreement defines CPS test rental, use and security policies and procedures.

CPS develops and rents tests for a number of purposes and in a number of formats. For that reason, some of the below paragraphs apply under certain circumstances. But, unless specifically limited, each paragraph applies to all testing purposes and formats.

**B. Ownership of CPS Tests.**

1. CPS owns all rights, title and interest, including copyrights, in all tests provided under this Agreement. They are the property of CPS and shall remain the property of CPS, even while in the custody of Client.
2. Additionally, tests that have been constructed or modified based on information provided by the client shall not be considered works made for hire, as that term is defined under U.S. Copyright Law. CPS shall own all rights, title and interest, including the copyright, in any test it creates for the Client.
3. Ownership of tests specifically developed for a client and of individual test questions supplied by Client, if any, shall be governed by a separate Agreement between CPS and Client.

- C. Test Materials.** Test Materials consist of all used and unused test booklets, proctors instructions, proctors manuals, scoring instructions, key sheets, key overlays, keyed booklets, scoring keys, instructions, CDs (for oral tests), and any other materials generated at the test administration, such as completed answer sheets (if applicable), scratch paper, note paper and the like.

- D. Test Security.** CPS security standards are designed to protect the mutual interests of all Clients that use Test Materials as well as the interests of applicants who take CPS tests. In order that no person may gain special advantage by having improper access to the material, all users must sign this Agreement and agree to fulfill its terms, before the Agreement is effective.

1. Client agrees to take all reasonable and diligent steps to keep CPS tests, sample tests, and testing processes confidential and free from unauthorized access and use. This includes, but is not limited to, client agreeing not to divulge, convey, copy in whole or part, duplicate, convert to another format or medium, or otherwise disseminate tests, portions of tests, or test materials.
2. For on-line tests, client further agrees to take all reasonable and diligent steps to prevent any modification to or reverse engineering of the testing software, and any transfer, storage or dissemination of tests or testing software and data on any storage medium or computer server other than those specifically authorized by CPS.

3. Should Client suspect any breach of test security, Client agrees to immediately notify CPS and immediately take all steps necessary to preserve evidence of or related to the breach, whether physical or electronic.

**E. Test Review, Ordering and Administration.**

1. **Review Copies.** Review of CPS tests is subject to the test security standards.
  - (a) **Test Rental Division:** To help in deciding whether to rent exams, Client may review CPS stock tests and other stock test materials free of charge (e.g., stock supplements, structured interview packages, and specialized item sets).
  - (b) **SLPP:** CPS does not offer review copies of the Spanish Language Proficiency Program (SLPP) tests. However, for new clients, CPS can provide a sample written test booklet showing the different components of the test.
  - (c) **On-line Testing:** To help in deciding whether to utilize on-line testing, Client may review sample on-line tests free of charge.
2. **Ordering Testing Materials and Scheduling of Examinations.**
  - (a) **Test Rental Division and SLPP:**
    - (i) To insure materials are received in time, Client must notify CPS at least 10 business days prior to the test date of the total number of candidates in each job classification to be tested. If orders are placed less than 10-business-days prior to the test date, rush shipment charges may apply and timely delivery cannot be guaranteed.
    - (ii) Client shall rent one test booklet per candidate to be tested. CPS shall provide Client with Test Materials including instructions for administering the test, sufficient test booklets and any other material CPS deems necessary.
  - (b) **On-line Testing:**
    - (i) To insure Client equipment is functioning and capable of administering on-line testing, Client must request testing from CPS at least 10 business days prior to the test date on the first time Client utilizes on-line testing. After Client has successfully used on-line testing, 5 working days notice is normally sufficient for subsequent testing.
    - (ii) Client recognizes that CPS has no control over the functioning of the internet, and any problems with on-line testing due to the failure thereof are not attributable to CPS.

**3. After the test date.**

**(a) Test Rental Division and SLPP:**

- (i) Within 10 business days of the test date, Client shall return to CPS all Test Materials including all materials provided by CPS for the test administration.
- (ii) Client shall not reuse printed tests on the test date or on any other date but shall return Test Materials to CPS, whether or not the test was administered.

**(b) On-line Testing:**

- (i) After the scheduled test date(s), CPS will suspend access to the on-line test site.
- (ii) Within 10 business days of the test date, Client shall destroy all CPS Test Materials including scratch paper and note paper in a way that make the materials unrecoverable.

**F. Billing, Pricing, and Payment.**

- 1. CPS shall bill Client at the billing address provided in Exhibit A, unless notified in writing of a new billing address.
- 2. The bill shall be derived from the most current applicable Rate Sheet (s): Exhibit B for Test Rental, Exhibit C for SLPP, and Exhibit D for On-line Testing. Client acknowledges and understands that the Test Price List(s) are only effective as of the date shown each of them and are subject to change.
- 3. Client shall be billed for any work done on a canceled or postponed test up to the time CPS is notified of such cancellation or postponement. Under certain circumstances, and in CPS' sole discretion, credit may be given for work already performed if the test is rescheduled.
- 4. CPS may charge Client for lost or compromised tests if Test Materials are not timely returned.
- 5. Client agrees to and shall pay all invoices within thirty (30) days of receipt of invoice.

**G. Candidate Inspections**

**1. Test Materials.**

CANDIDATE INSPECTION OF TEST MATERIALS SHALL **NOT** BE ALLOWED EXCEPT IN CASE OF ANSWER SHEETS AS DESCRIBED BELOW

**2. Answer Sheets.**

- (a) If a candidate files a protest regarding the scoring of his or her test, inspection of a candidate's own answer sheet(s) for the purpose of detecting whether any clerical or other error has been made in the scoring of the answer sheets shall be allowed, upon request by the Client, for a 10-business-day period immediately following the notification to the candidate of test results.
- (b) Candidates are not allowed to review the question booklet during this inspection period.
- (c) Not more than one hour will normally be allowed for answer sheet(s) review. A representative of Client's Personnel or Administrative office shall be present to assure that no changes or marks of any kind are made by the candidate on the answer sheet(s) or keyed answer sheet.

**H. Client Responsibilities.**

- 1. Client shall perform all parts of the testing process which are not performed by CPS. Client has the responsibility for assuring that the testing process performed by Client conforms to any applicable laws, rules or ordinances, and for the test as a whole. Under the federal Uniform Guidelines on Employee Selection Procedures, the Client as test user is responsible for the results of the selection process, and Client understands and acknowledges that it must be prepared to demonstrate that the process is valid and meets other testing standards if it adversely affects groups protected by fair employment laws.
- 2. Client is responsible for insuring that all persons who handle or have access to Test Materials in any capacity for Client shall do so in compliance with this Agreement, and are trained to handle Test Materials and administer tests before they do so.

**I. Legal Proceedings Involving Test Materials.**

- 1. If Client receives notice of any administrative or court proceeding involving a CPS test, or a request for disclosure of Test Materials, such as a subpoena, or a public records or freedom of information request, Client shall notify CPS of such request immediately and well before a response is due.
- 2. Upon CPS request, Client shall maintain the confidentiality of the Test Materials pending the grant or denial of a protective order or the decision of a court or administrative body as to whether the requested Test Materials must be disclosed under the applicable public records statute.
- 3. Client shall cooperate with CPS in seeking any relief necessary to maintain the confidentiality of the Test Materials.
- 4. Each party shall indemnify, defend and hold the other party's agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to, or result from the activities or omissions, negligent or otherwise, under this Agreement
- 5. Each party recognizes and accepts the other party is self-insured and/or that either party may purchase commercial insurance to cover their exposure arising out of this agreement and will provide evidence of insurance or self-insurance upon request by the other party.

**J. Term and Termination of Agreement.**

- 1. Term. This Agreement is effective beginning the date it is signed by both parties and continuing for one year thereafter unless earlier terminated by either party as stated below.
- 2. Immediate Termination upon Material Breach. Either party may terminate this Agreement immediately upon any material breach by the other party. For purposes of this Agreement, but without limiting the meaning of material breach, any breach of the test security provisions, however minor, shall be considered a material breach. Client understands and acknowledges that immediate termination by CPS may result in the withholding or recall of Test Materials.

3. **Termination Without Cause.** CPS and Client may terminate the Agreement without cause upon thirty days written notice to the other party.
4. **Return of Test Materials.** Upon termination of the Agreement, Client shall immediately return to CPS any Test Materials that it possesses.

**K. Miscellaneous.**

1. **Notices.** Any notice to the parties required or permitted under this Agreement shall be given in writing and shall be sent to Client at the address provided for the Principal Signer and to CPS at 241 Lathrop Way, Sacramento, CA 95815.
2. **Dispute Resolution; Remedies.**
  - (a) In the event of a dispute, the parties may agree to pursue mediation or either binding or nonbinding arbitration to resolve their dispute, under such rules as the parties may agree.
  - (b) If either CPS or Client determines to file a judicial action, then, in addition to any other remedies available at law or in equity to the parties for breach of this Agreement, Client acknowledges that breach of this Agreement may result in irreparable harm to CPS for which damages would be an inadequate remedy and, therefore, in the event of a breach, in addition to its rights and remedies otherwise available by law, CPS shall be entitled to seek equitable relief, including injunction.
3. **Attorneys Fees.** If any legal action or arbitration or other proceeding is brought to enforce or construe the term of this Agreement or because of an alleged dispute, breach or default in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys fees and other costs incurred in that action, arbitration or proceeding in addition to any other relief to which it may be entitled.

4. **Waiver.** The failure of any party at any time or times to require performance of any provisions of this Agreement shall in no manner affect its right to enforce such provision at a later time. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. No waiver shall be enforceable unless made in writing and signed by the party granting the waiver.
5. **Entire Agreement; Modifications.** This Agreement constitutes the entire Agreement between the parties regarding the subject matter hereof and supersedes all other Agreements, representations and warranties. All modifications and supplements to this Agreement must be in writing and signed by both parties.
6. **Counterparts; Facsimile Signature; Electronic Signature.** This Agreement may be executed in any number of counterparts. If this Agreement or any counterpart is signed and then faxed or e-mailed by PDF or otherwise, the faxed or e-mailed copy bearing the signature shall be as good as the original wet-ink signed copy for all intents and purposes.
7. **Interpretation; Jurisdiction.** This Agreement shall be interpreted and enforced under the laws of the State of California and jurisdiction shall be in Santa Barbara County, California. The Agreement shall be interpreted in a fair and balanced manner to best preserve its intent, and without bias against the drafter.
8. **Authority to Sign.** The person signing this Agreement on behalf of the Client (the Principal Signer) represents that he or she is the head of the agency or is otherwise duly authorized to sign this Agreement and to bind the Client.

**Principal Signer** By signing below, I represent that the persons(s) listed in Exhibit A and on any attached sheets is/are authorized to handle CPS Test Materials on Clients behalf. I affirm that I will handle all CPS Test Materials in accordance with the terms of the CPS Test Rental Agreement then in effect, and that I will insure all individuals handling and/or administering tests are properly trained.

**Cooperative Personnel Services dba  
CPS Human Resource Services,  
A California Joint Powers Authority**

**Client**

By: \_\_\_\_\_  
Authorized Signature

Name: Jeff Hoye

Title: Managing Director, Client Svcs West

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

By: \_\_\_\_\_  
Authorized Signature

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

Title: \_\_\_\_\_

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

## Exhibit A

**Authorized Representative(s)** *(use an additional page if needed)* By signing as an Authorized Representative, I affirm that I will handle all CPS Test Materials in accordance with the terms of the CPS Test Rental Agreement then in effect.

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

## II. Billing Contact

Contact Name and Title	Signature	Date
Agency		
Street Address, City, State, Zip		
E-Mail	Phone Number	Fax Number

## Exhibit B

### CPS Test Rental Division Rates (Effective March 25, 2009 – Subject to Change)

	STOCK TESTS*	MODULAR TESTS	SEMI-STOCK TESTS	CUSTOM TESTS	AGENCY TESTS
<b>Base Fee (per order) ‡</b>	\$295.00	\$395.00	\$595.00	\$995.00	\$350.00
1-100 Candidates (per candidate)	\$9.00	\$12.00	\$14.00	\$15.00	\$10.00
101-500 Candidates (per candidate)	\$8.50	\$11.00	\$13.00	\$14.00	\$9.50
501+ Candidates (per candidate)	\$8.00	\$10.00	\$12.00	\$13.00	\$9.00
New Item Writing/Entry	N/A	N/A	N/A	\$35 per item	N/A
Pick Up/Handling	5%	5%	5%	5%	5%
Standard Shipping/Handling **	10%	10%	10%	10%	10%
Expedited Shipping/Handling **	15%	15%	15%	15%	15%
Premium Shipping/Handling **	20%	20%	20%	20%	20%
Shipping outside contiguous U.S.	CALL FOR DETAILS				
<b>Entry Law/Fire Candidate Preparation Manuals</b>		<b>Structured Interview Packages</b>			
Quantity Per Booklet/Candidate Fee		Base Fee: \$ 595.00			
10 - 1000 \$ 3.00		Per Candidate Fee:			
1001+ Call for volume discount details		1 - 500 \$7.50			

\*Stock tests are prepackaged and are available only in packages of ten. CPS will apply a credit of \$35.00 for each **fully paid UNOPENED package** of test booklets on the current **STOCK test order**. Clients with 49 candidates or less are billed at the number ordered or the number actually tested, whichever is greater.

\*\*Standard shipping applies to orders placed at least 10 business days prior to test date. Expedited shipping applies to orders placed less than 10 business days prior to test date. Orders placed less than 3 business days prior to the test date will be charged at the premium shipping rate.

**Semi-Stock, Modular and Custom Tests require Job Analysis Workbooks or Job Specifications**

‡ Base fee includes the following at no additional charge: Proctor's Manual, Scoring Manual, CPS Scoring, CPS answer sheets and a scoring report.

#### SPECIAL SERVICES

Stock Supplements	\$ 2.00 per book when ordered with a Stock test
Writing Proficiency Exam	\$ 350.00 Base Fee + \$ 15.00 per candidate (Professional Scoring included)
Scoring Keys and Scoring Overlays	\$ 10.00 per key or overlay
Faxing/Emailing of Test Results	Available at no additional charge
Re-Scoring/Hand-Scoring of Answer Sheet	\$ 30.00 (Requested directly by Agency)
Non-specified special services	CALL FOR DETAILS (Billed at applicable hourly rate)

#### Test Rental Contact Information:

CPS Human Resource Services  
Attn: Test Rental Division  
241 Lathrop Way, Sacramento CA 95815

Telephone: 916.263.1800 / Toll Free 866.867.5272  
Fax: 916.921.6240 / E-mail: [testrental@cps.ca.gov](mailto:testrental@cps.ca.gov)

## Exhibit C

### Spanish Language Proficiency Program Test Rental Rates

Effective July 1, 2009 -- Subject to Change

	Written Test	Oral Test
Base Fee	\$295.00	\$295.00
**Per Booklet Fee	\$9.00	N/A
***Per Tape Scoring Fee	N/A	\$120.00
Expedited Shipping	*20%	*20%

\*Orders placed less than two weeks prior to the exam date will incur expedited shipping charges.

\*\*Per Booklet Fee will be charged for number of books ordered.

\*\*\*Billed for the number rated.

### Special Services

Faxing/Emailing Test Results	Available at no additional charge
Hand Scoring	\$30.00
Proctoring Services	Call for details/quote
SLPP Extended Use Program	Call for details

### Charges for Cancellations, and Lost or Compromised Tests

Minimum cancellation charge once a SLPP order is shipped is \$200.00.

For each lost **written** test, there will be a base charge of \$10,000. For each additional copy (test) of the same test that is lost, there will be a \$75 charge with a maximum total charge of \$20,000.

For each lost **oral** test, there will be a base charge of \$15,000. For each additional copy (test) of the same test that is lost, there will be a \$75 charge with a maximum total charge of \$20,000.

#### SLPP Contact Information:

CPS Human Resource Services  
Attn: SLPP  
241 Lathrop Way, Sacramento, CA 95815

Telephone: 916.471.3584  
Fax: 916.561.7230 E-mail: [SLPP@cps.ca.gov](mailto:SLPP@cps.ca.gov)

## Exhibit D

### CPS On-line Testing Rates Effective January 1, 2010 – Subject to Change

Annual Base Fee	\$175.00
Fees for on-line testing in a true tiered scheduled**:	
1 - 25 Candidates (per candidate)	\$25.00
26 - 75 Candidates (per candidate)	\$22.50
76 + Candidates (per candidate)	\$20.00
Non-specified special services – Call for Details	

**\*\*Note:** Tests are considered consumed if test identification is submitted to the system.

#### **Test Rental Contact Information:**

CPS Human Resource Services  
Attn: Test Rental Division  
241 Lathrop Way, Sacramento CA 95815

Telephone: 916.263.1800 / Toll Free 866.867.5272  
Fax: 916.921.6240 / E-mail: [testrental@cps.ca.gov](mailto:testrental@cps.ca.gov)