

TEST RENTAL AND USE AGREEMENT EXCLUSIVELY FOR CALIFORNIA MERIT SYSTEM SERVICES PROGRAM PARTICIPANTS

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

A. Purpose. This Agreement defines CPS HR test rental, use and security policies and procedures provided exclusively for Merit System Services positions within counties in the State of California.

CPS HR develops and rents tests for many purposes and in many formats (including but not limited to print and electronic media). 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 HR Tests.

1. CPS HR owns all rights, title and interest, including copyrights, in all tests provided under this Agreement. They are the property of CPS HR and shall remain the property of CPS HR, 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 HR 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 HR and Client.

C. Test Materials. Test Materials consist of all used and unused test booklets, proctor's instructions, proctor's manuals, scoring instructions, key sheets, key overlays, keyed booklets, scoring keys, instructions, CDs, DVDs or any audio files (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 HR 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 HR 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 HR 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.

- (a) Client proctors are required to participate in CPS HR-provided proctor training on a yearly basis, or two weeks before his/her first test administration

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

- (a) At any point, CPS HR reserves the right to require the use CPS HR-provided proctoring services should the Client be found to have breached any required test security standards. The Client would be responsible for payment of proctor time and travel costs for subsequent administrations until such date as CPS HR deems necessary.

E. Test Review, Ordering and Administration.

1. **Review Copies.** Review of CPS HR tests, regardless of format, is subject to the test security standards.

- (a) **Test Rental Division:** To help in deciding whether to rent exams, Client may review CPS HR stock tests and other stock test materials free of charge (e.g., stock supplements, structured interview packages, and specialized item sets).
 - (b) **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:

- (i) Client shall rent one test booklet per candidate to be tested. CPS HR shall provide Client with Test Materials including instructions for administering the test, sufficient test booklets and any other material CPS HR deems necessary.

(b) On-line Testing:

- (i) Client recognizes that CPS HR 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 HR.

3. **After the test date.**

(a) Test Rental Division:

- (i) Within 10 business days of the test date, Client shall return to CPS HR all Test Materials including all materials provided by

Client Initials 

CPS HR for the test administration. All inventory forms shall be completed in full by the Client.

- (ii) Client shall not reuse printed tests on the test date or on any other date but shall return Test Materials to CPS HR, whether or not the test was administered.

(b) On-line Testing:

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

F. Billing, Pricing, and Payment.

1. CPS HR shall bill Client at the billing address provided in Exhibit A, unless notified in writing of a new billing address.
2. In the event that Client employs a proctor not paid by CPS HR for administration, client agrees that CPS HR may charge Client for (i) lost or compromised tests if Test Materials are compromised or not returned according to Section E.3(a) above and for negligent actions of Client's proctors that result in exam materials and/or exam security being compromised, including the actual cost associated with the creation of a substantially similar replacement test up to a maximum of \$15,000.
3. 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.

H. Client Responsibilities.

1. Client shall perform all parts of the testing process which are not performed by CPS HR. 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.
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 HR 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 HR of such request immediately and well before a response is due.

2. Upon CPS HR 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 HR in seeking any relief necessary to maintain the confidentiality of the Test Materials.
4. Client shall indemnify and hold CPS HR harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorney fees and costs) arising out of or in connection with administration of a test, or with maintaining confidentiality of Test Materials.

J. Term and Termination of Agreement.

1. Term. This Agreement is effective beginning February 23, 2018 for two years thereafter through February 22, 2020 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 HR may result in the withholding or recall of Test Materials.
3. Termination Without Cause. CPS HR 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 HR 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 HR at 2450 Del Paso Road, Suite 220, Sacramento, CA 95834.
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) Client acknowledges that breach of this Agreement may result in irreparable harm to CPS HR 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 HR shall be entitled to seek equitable relief, including injunction.
3. **Attorney's 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 attorney's 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 San Benito 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 HR Test Materials on Clients behalf. I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect, and that I will ensure all individuals handling and/or administering tests are properly trained.

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 HR Test Materials on Clients behalf. I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect, and that I will ensure all individuals handling and/or administering tests are properly trained.

Cooperative Personnel Services dba
CPS HR Consulting,
A California Joint Powers Authority

By: Christina Baloreld

Authorized Signature

Name: Christina Baloreld Peacock

Title: Manager Recruitment Solutions

Date: 4/26/18

Client

By: [Signature]

Authorized Signature (Head of County)

Name: Raymond

Title: CA

Email: Raymond@csb.us

Date: 2/22/18

By: [Signature]

Authorized Signature (Director of Social Services)

Name: James Rydington

Title: Agency Director

Email: JRydington@csb.us

Date: 2/22/18

By: [Signature]

Authorized Signature (Director of Child Support Services)

Name: Jamie Murray

Title: Director

Email: Jamie.Murray@sanbenitocounty.us

Date: 2/1/18

Mark System Services Contact Information:

CPS HR Consulting
Attn: MSS
2450 Del Paso Road, Suite 220
Sacramento CA 95834

Telephone: 916.471.3507
Fax: 916.648.1211 / E-mail: mss@cpshr.us

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 HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect.

Name, Title Alisha Cardenas, Branch Manager	Signature <i>Alisha Cardenas</i>
E-mail Address Cardenas.alisha@sanbenito.cse.ca.gov	Phone Number 831-636-6040

Name, Title Maria Arellano, CSST	Signature <i>Maria Arellano</i>
E-mail Address arellano.maria@sanbenito.cse.ca.gov	Phone Number 831-636-6043

Name, Title Jacki Credico, Staff Services Mgr	Signature <i>Jacki Credico</i>
E-mail Address jcredico@cosb.us	Phone Number (831) 636-5841

Name, Title Esmeralda Gomez, Services Support Asst	Signature <i>Esmeralda Gomez</i>
E-mail Address esgomez@cosb.us	Phone Number (831) 636-7940

Name, Title Sofia Arredondo	Signature <i>Sofia Arredondo</i>
E-mail Address sarredondo@cosb.us	Phone Number (831) 636-0435

Name, Title	Signature
E-mail Address	Phone Number

II. Billing Contact

Contact Name and Title Steven Coffee, management Analyst
Agency County of San Benito, 481 4th St, Hollister, CA 95023
Street Address, City, State, Zip
S Coffee at cosb.us 831-636-4000 Ext 15, 831-636-4000
E-Mail Phone Number Fax Number

III. Physical Address

Agency / Department Name County of San Benito
Street Address, City, State, Zip 481 4th St, Hollister, CA 95023