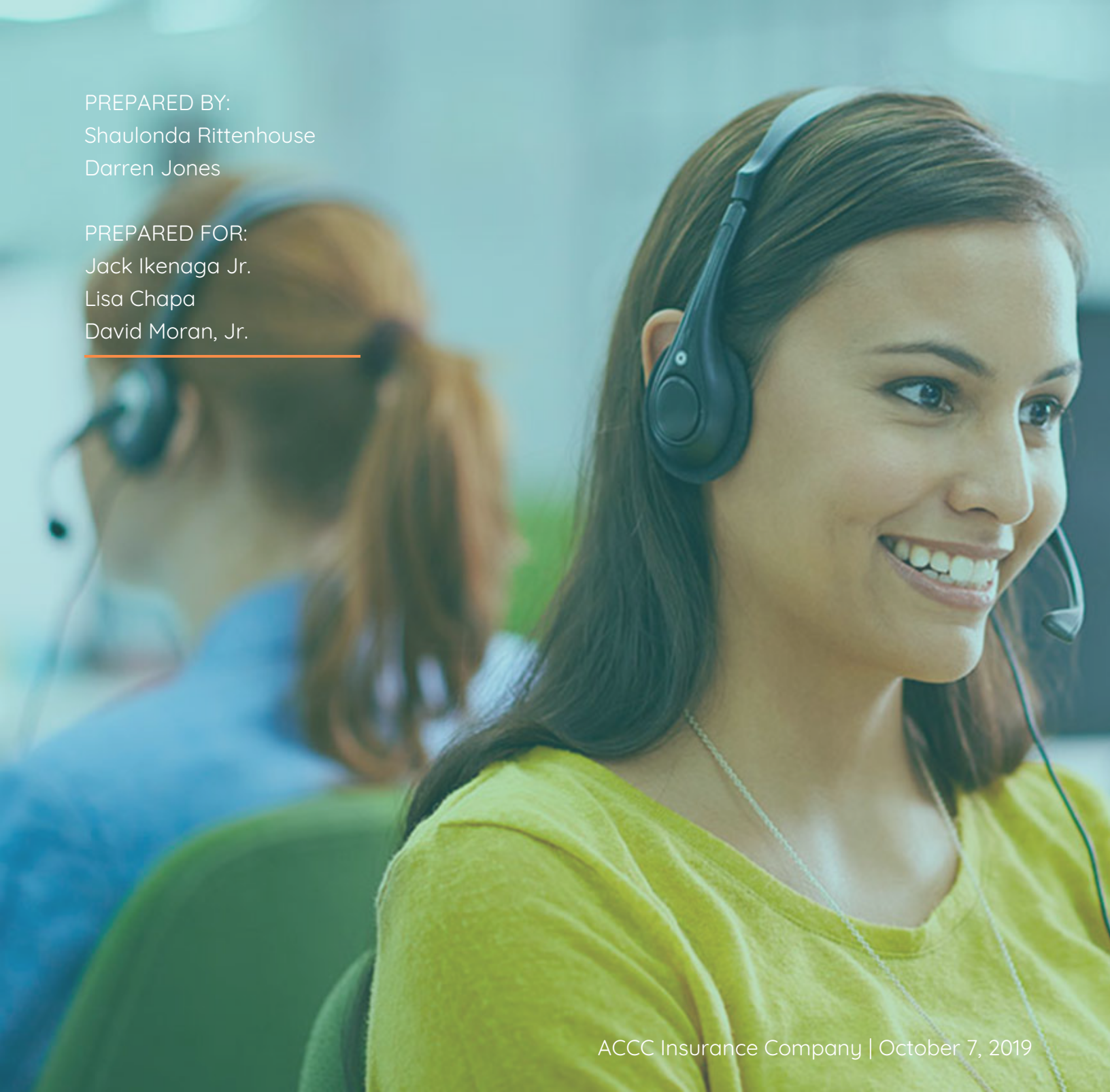




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ACCC Insurance Company | October 7, 2019

ACCC INSURANCE COMPANY

# LANGUAGE PROFICIENCY TESTING PROPOSAL

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# ACKNOWLEDGEMENT

We appreciate the opportunity to collaborate with representatives from multiple departments at ACCC. These employees contributed their time, thoughts, and experience during the process of identifying an ideal language proficiency vendor. The following stakeholders represented their respective department in the language proficiency testing vendor review process:

**David Moran, Jr.** | Vice President of Claims, Claims Department

**Edika Aguilar** | Marketing Manager, Marketing Department

**Francisco Salinas** | Call Center Quality Assurance Manager, Underwriting Department

**Gabriela Castro** | Underwriting Operations Manager, Underwriting Department

**Jennifer Garza** | Sr. Human Resource Manager, Human Resource Department

**John McCarty** | Sr. Claims Manager, Claims Department

**Lauren Welch** | Human Resource Manager, Human Resource Department

**Lisa Chapa** | Vice President of Marketing & Underwriting Director, Marketing and Underwriting Departments

**Marissa Ramirez** | Product Research Analyst, Underwriting Department

**Montoya Mays** | Learning & Development Manager, Learning & Development Department

**Phyllis Howard** | Director of Claims, Claims Department

The following employees tested each language proficiency program from an end user's perspective:

**Blanca Martinez** | Agent Administrator Supervisor, Marketing Department

**Brenda Holmes** | Litigation Adjuster I, Claims Department

**Espana Villarreal** | Call Center Coach, Underwriting Department

**Hugo Rivera** | Marketing Development Trainer, Marketing Department

**Juana Campos** | Subro Adjuster I, Claims Department

**Lorena (Claudia) Rangel** | Marketing Support Coordinator, Marketing Department

**Natalia Gualteros** | HR Representative, Human Resource Department

**Rory O'Gorman** | Learning & Development Trainer, Learning & Development Department

**Thania Reyes** | HR Benefits Representative, Human Resource Department

# INTRODUCTION & PURPOSE

One of our most important values is *Our Customers Are Why We Exist*. Language proficiency and interpretation skills are essential to providing accurate and effective interactions with internal and external customers. To produce these interactions, employees who opt to participate in bilingual communication must be proficient in their stated second language. Utilizing a language proficiency testing vendor will provide the necessary tools to assess the proficiency of employees who opt to participate in bilingual communication with our customers. An initial language proficiency testing needs survey was distributed to all departments to determine the interest in having their staff tested for specific languages. This document summarizes the findings from the needs survey, vendors that provide language proficiency testing, and the recommendation of which vendor best suits the needs of the stakeholders involved.

## Overview

After a brief history of the project, the needs survey, individual language proficiency test vendor offerings, stakeholder/tester feedback, recommendations, and next steps will be provided.

To assess the need for language proficiency testing, we primarily spoke with the project sponsor, Jack Ikenaga Jr., and surveyed all department stakeholders. Our goal was to gather as much information as possible regarding the language proficiency testing needs for employees who opt to participate in bilingual communication with internal and external customers.

As a result of the needs survey and continued conversations with the project sponsor, it is clear that ACCC will need to establish a consistent method to test the language proficiency of employees who opt to participate in bilingual communication with our customers.

# PROJECT BACKGROUND

- ACCC Insurance Company President, Jack Ikenaga Jr. called on the Learning & Development Department to facilitate the process of identifying the need for language proficiency testing and determine which vendor would satisfy the needs of the departments impacted.
- The Learning & Development Department formed a Bilingual Proficiency Testing Needs Survey. Approximately 110 answers were collected about departmental language proficiency testing needs, the number of employees that would go through testing, and the method/type of testing desired.
- The following departments identified that language proficiency testing would impact their staff: Claims, Underwriting, Marketing, Human Resources, and Learning & Development.
- Three language proficiency testing vendors were contacted to provide demonstrations of their offerings. Stakeholders at ACCC attended these demonstrations and provided their feedback.
- Stakeholders provided staff to test the functionality of each language proficiency testing vendor's offerings; in an effort to consider each program from an end user's perspective.
- Stakeholders and testers were polled to identify which language proficiency testing vendor holistically met the needs and requirements of each department.

## SURVEY FINDINGS

### Better Communication

Survey participants were presented with the question “How will your department benefit from second language skill/proficiency testing?” Many of the responses to this question focused on better communication. One participant noted:

*“The communication overall. Understanding our Spanish-speaking customer base and accuracy with verbally understanding and the ability to communicate effectively. It will allow us the ability to truly identify whom is proficient with the language, and how we can utilize them accordingly on specific language queues.”*

And another participant echoed this sentiment:

*“[It] will assure we are providing best customer experience possible and each bilingual employee can provide the same level of service in both languages without any barriers.”*

### Current Staff & New Hires

Many participants in the survey conveyed an interest in testing their existing bilingual staff. Spanish was noted as the most common answer when asked which language required testing. When asked “Approximately how many people in your department will need to be tested?” 60% of those who answered this question indicated they had twenty-five to fifty employees in their department that would require testing. Additionally, 60% of participants indicated that they would like language proficiency for bilingual new hire candidates.

### Language Proficiency Test Type & Format

When asked “What type of proficiency testing would be the most beneficial?” the most common answer was both written and verbal testing. Telephone based testing was preferable in comparison to computer-based testing (44.44% opted for computer-based testing vs 33.33% opted for computer based).

## LANGUAGE PROFICIENCY TEST VENDORS

The Bilingual Proficiency Testing Needs Survey indicated that there was an interest in moving forward with finding a vendor that would be able to provide language proficiency testing. The vendors that were researched included Berlitz, Language Testing International (LTI), and Akorbi. In the following section, we will provide key information about each of these vendors.



## Berlitz

### Overview

The Berlitz Test of Speaking Skills is an oral proficiency testing system designed to accurately measure the active oral communicative ability employees or applicants. This testing system is based on a guided dialogue between the Berlitz Rater and the examinee. Berlitz raters are native-fluent in their test language. Through a series of questions, prompts and tasks set in a relevant context, the Berlitz Rater elicits oral language production from the examinee. It is measured in the areas of fluency, grammatical accuracy, lexical range and phonological control. The results are based on the Common European Framework proficiency scales in the world and easily interpreted to determine employee or applicant language qualification.

### Proficiency Testing Offerings

#### Oral Proficiency Phone Interview

- N/A – Berlitz does not provide phone interview tests.

#### Oral Proficiency Computer Interview

- A language proficiency test that measures the oral communicative ability of examinees through an online computer-based platform.
- This speaking test combines the efficiency and reliability of computer-based administration with the validity of human scoring.
- The Simulated Oral Proficiency Interview (SOPI) consists of six situations where the examinee speaks to a native speaker of the target language.
- The examinee is then given 15-40 seconds to plan his or her response, and 30-90 seconds to respond.

#### Scheduling Advance Notice

- On Demand; no notice required.

#### Results Turnaround Time

- 1 – 3 Days

#### Compatibility & Integration

- ACCC University Virtual Campus (SABA) – Yes
- Namely – Yes

#### Pricing

- Oral – Computer Based: \$65 Per Test
- Oral – Telephone / Automated: N/A
- Oral – Telephone / Live: N/A
- Written: \$65 Per Test

## Language Testing International (LTI)

### Overview

In partnership with the American Council on the Teaching of Foreign Languages (ACTFL), LTI offers valid and reliable reading, writing, speaking, and listening tests. ACTFL proficiency tests compare a person's unrehearsed ability against a set of language descriptors. These guidelines categorize proficiency along a continuum from the very top of the scale (full professional proficiency) to the very bottom (little or no functional ability). Each of the ten levels of proficiency outlined in these guidelines define language abilities in terms of tasks, text type, accuracy, and content areas. A rating on the proficiency scale does not consider how many semesters or years someone has been learning a language, what textbooks or other materials they have used, or even a speaker's knowledge of grammar – but rather is solely based on the speaker's demonstrated ability to use language to accomplish real-life tasks.

### Proficiency Testing Offerings

#### Oral Proficiency Phone Interview

- The ACTFL Oral Proficiency Interview (OPI) is a live, 15-30-minute telephone conversation between a certified ACTFL tester and the candidate.
- The procedure is standardized; measuring language production holistically by determining patterns of strengths and weaknesses.
- Through a series of personalized questions, a sample of speech is elicited and rated against the proficiency levels described in ACTFL Proficiency Guidelines.

#### Oral Proficiency Computer Interview

- An on-demand, computer test available 24/7
- 20-40 minutes interview delivered by an Avatar
- An adaptive test with structured questions includes a warm-up, level checks, probes and wind-down (no two tests are alike)
- Background assessment and self-assessment surveys completed by test taker, creates an individualized test experience for each test taker.

#### Scheduling Advance Notice

- Oral Proficiency Phone Interview: 2 Days (48 hours)
- Oral Proficiency Computer Interview: On Demand; no notice required.

#### Results Turnaround Time

- 1 Business Day

#### Compatibility & Integration

- ACCC University Virtual Campus (SABA) – Yes
- Namely – Yes

#### Pricing

- Oral – Computer Based: \$57 Per Test
- Oral – Telephone / Automated: \$57 Per Test
- Oral – Telephone / Live: \$113 Per Test
- Written: Not Available

## Akorbi

### Overview

Akorbi's linguistic assessment considers locale's unique linguistic rules and norms as well as the different cultural and social aspects with which all affect the end-user experience. The evaluated categories include grammar, meaning, style, compliance, and punctuation. Each category has different weights based on the type of content and the level of severity for each error range from "minor" to "critical". This approach will require ACCC Insurance to work closely with Akorbi in identifying the most applicable text to use for the test. Akorbi recommends a written translation of at least 1,000 words, specific to your company and industry.

### Proficiency Testing Offerings

#### Written Proficiency Test

- Scores are calculated according to the number and severity of concrete errors, as well as the scalar rating and their defined weights.
- The evaluated categories include grammar, meaning, style, compliance, and punctuation. Each category has different weights based on the type of content and the level of severity for each error range from "minor" to "critical".
- The process will be managed online, using a digital file for translation. We would provide the candidate's or employee's translations to Akorbi for evaluation. Akorbi will review and provide all scores back to us, along with a Certificate of Proficiency for any individuals who score accordingly.

#### Oral Proficiency Phone & Computer Interviews

- Oral Proficiency Scale, created by the American Council on the Teaching of Foreign Languages (ACTFL). This will provide data on where employees, and/or potential employees, rank in terms of proficiency with other languages.
- Akorbi will provide a program to executing tests and providing the analytics.

#### Scheduling Advance Notice

- Oral Proficiency Phone Interview: 2 Days (48 hours)
- Oral Proficiency Computer Interview: 2 Days (48 hours)

#### Results Turnaround Time

- Instant results

#### Compatibility & Integration

- ACCC University Virtual Campus (SABA) – Yes
- Namely – Yes

#### Pricing

- Oral – Computer Based: \$100 Per Test
- Oral – Telephone / Automated: \$140 Per Test
- Oral – Telephone / Live: N/A
- Written: \$70 Per Test or \$100 Per Test (Pen & Paper Version)

| LANGUAGE PROFICIENCY TESTING VENDOR COMPARISON |                                                                                     |                                                                                                                                |                                                                                                                   |
|------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
|                                                | Berlitz                                                                             | Language Testing International                                                                                                 | Akorbi                                                                                                            |
| Oral Proficiency Interview: Phone              |    |                                               |                                |
| Oral Proficiency Interview- Computer           |    |                                               |                                |
| Proficiency Scale Used                         | Common European Framework of Reference                                              | American Council on the Teaching of Foreign Languages                                                                          | American Council on the Teaching of Foreign Languages                                                             |
| Scheduling- Advance Notice                     | On Demand; no notice required.                                                      | Oral Proficiency Phone Interview: 2 Days (48 hours)<br><br>Oral Proficiency Computer Interview: On Demand; no notice required. | Oral Proficiency Phone Interview: 2 Days (48 hours)<br><br>Oral Proficiency Computer Interview: 2 Days (48 hours) |
| Results Turn-Around                            | 1 – 3 Days                                                                          | 1 Business Day                                                                                                                 | Instant results                                                                                                   |
| Compatibility SABA & Namely                    |  |                                             |                              |
| Pricing                                        | Oral – Computer Based: \$65 Per Test                                                | Oral – Computer Based: \$57 Per Test                                                                                           | Oral – Computer Based: \$100 Per Test                                                                             |
|                                                | Oral – Telephone / Automated: N/A                                                   | Oral – Telephone / Automated: \$57 Per Test                                                                                    | Oral – Telephone / Automated: \$140 Per Test                                                                      |
|                                                | Oral – Telephone / Live: N/A                                                        | Oral – Telephone / Live: \$113 Per Test                                                                                        | Oral – Telephone / Live: N/A                                                                                      |
|                                                | Written: \$65 Per Test                                                              | Written: Not Available                                                                                                         | Written: \$70 Per Test or \$100 Per Test (Pen & Paper Version)                                                    |
| Cybersecurity Rating                           | 760 (Advanced) BitSight Security Rating                                             | 760 (Advanced) BitSight Security Rating                                                                                        | BitSight Security Rating Not Available                                                                            |

## STAKEHOLDER & TESTER FEEDBACK

Berlitz, LTI, and Akorbi provided web-based demonstrations of their language proficiency testing offering. Additionally, each vendor provided tests to allow a limited number of employees to interact with each language proficiency program to gain insight from an end user's perspective. The stakeholders and participants were given the opportunity to have any follow up questions addressed after the demonstration.

The stakeholders and testers from each department were asked to vote on which vendor they'd prefer based on the price, offerings, and functionality from an end user's standpoint. The chart below reflects the number of votes each vendor received.

| LANGUAGE PROFICIENCY VENDOR RESULTS |         |     |        |
|-------------------------------------|---------|-----|--------|
| Vendor                              | Berlitz | LTI | Akorbi |
| Votes                               | 4       | 13  | 4      |

Based on the input of the feedback from the stakeholders and the testers, Language Testing International (LTI) was the standout choice for language proficiency testing

## RECOMMENDATION

Of the three vendors, Language Testing International offers the most features that were desired by the department stakeholders: ease of use, live testing, computer testing, company reputation, and cybersecurity rating. Our Recommendation, is partner with LTI to provide language proficiency testing contingent upon the following: a) their ability to integrate with the LMS and HRIS **inexpensively**, b) confirm adequate tech support throughout the duration of the contract, and c) LTI accepts the recommended edits to the Statement of Work (SOW) and Service Agreement.

At this point in time, Adam Swonke in Legal has reviewed the SOW and Service Agreement for LTI to make sure that it is acceptable for our needs. Adam had no concerns or recommended edits for the SOW. Adam did recommend that we add the following clause to the LTI Service Agreement as it is required by various states in which ACCC is active:

### *7. Representations and Warranties:*

#### *7.1 By LTI. LTI hereby makes the following representations and warranties:*

*(v) it has implemented appropriate administrative, technical, and physical measures to protect and secure the information systems and nonpublic information which it holds or to which it has access.*

The LTI statement of work is located in Appendix F. Once the statement of work is approved by all parties, we would pursue the steps outlined below:

1. Integration Meeting
  - LTI Representative, IT, L&D, and HR would meet to determine integration process with SABA and/or Namely
2. LTI Integration
  - Integrate LTI program with SABA and/or Namely
  - Test Integration capabilities
3. Train ACCC Administrators
  - Train HR and/or L&D Staff on LTI program
  - Develop process and procedures for testing existing and potential bilingual staff
  - Communicate process and procedures to ACCC Leadership
4. Production
  - Schedule all existing bilingual employees to complete proficiency testing. As of the time of this proposal, department stakeholders have indicated 118 employees that they would like to go through language proficiency testing.
5. Monitoring
  - Continually monitor the impact that language proficiency testing has on our employees and customers.

## THE FUTURE OF LANGUAGE PROFICIENCY TESTING

After we have implemented language proficiency testing as a standard practice for current employees who opt to participate in bilingual communication with our customers, we will need to consider the following factors:

1. What will happen to current employees that participate in bilingual communication with our customers if they do not meet the criteria to be considered proficient in Spanish?
2. Will employees who are proficient in two languages receive a pay rate differential versus their counterparts that only speak one language?
3. When external candidates apply for a bilingual position, will they be required to complete language proficiency testing as part of the hiring process?
4. How often will bilingual staff have to take language proficiency testing?
5. Will we offer training to encourage/increase language proficiency?

## CONCLUSION

Language proficiency and interpretation skills are essential to providing accurate and effective interactions with internal and external customers. To produce these interactions, employees who opt to participate in bilingual communication must be proficient in their stated second language. Utilizing Language Testing International (LTI) will provide us with the necessary tools to assess the proficiency of employees who opt to participate in bilingual communication with our customers.

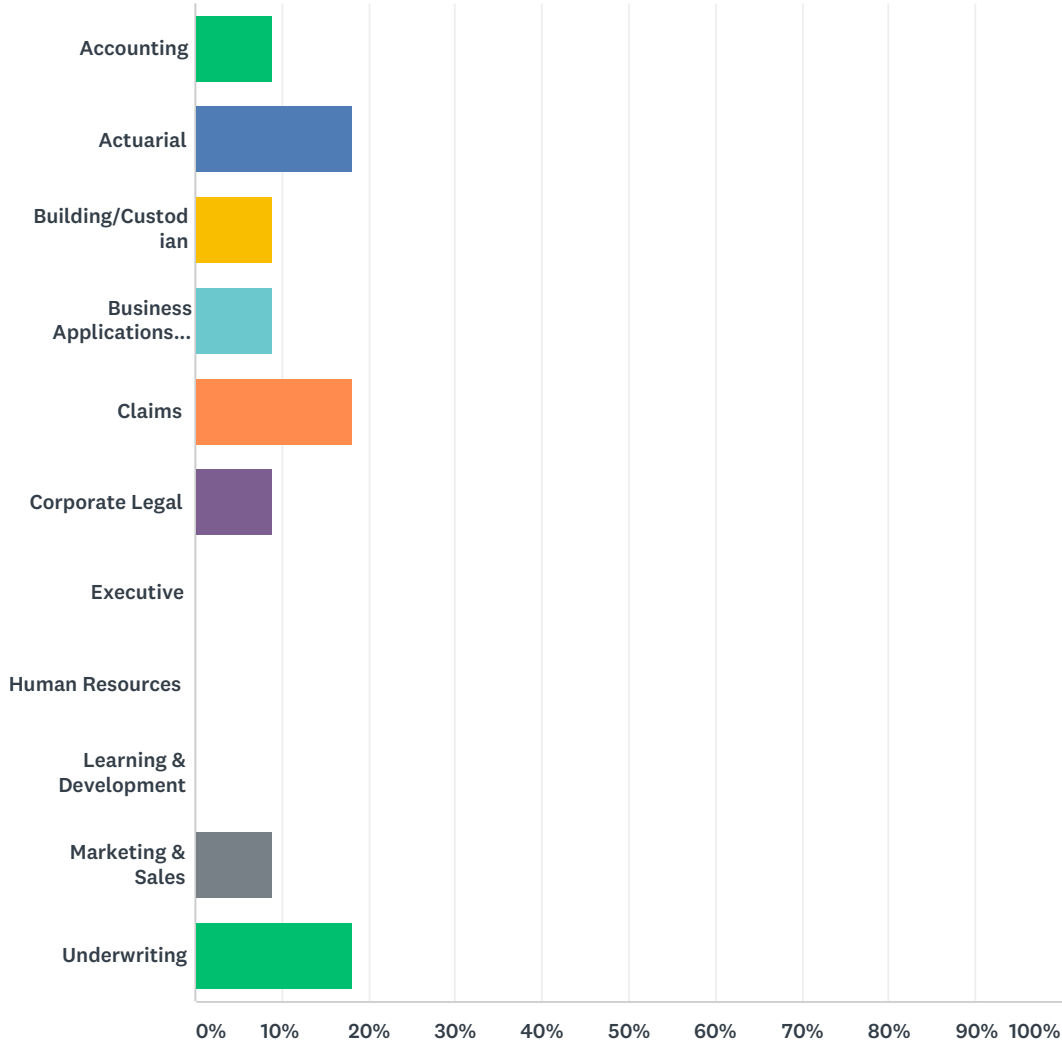
# APPENDICES

The following pages will provide copies of the Bilingual Proficiency Testing Needs Survey (Appendix A), Berlitz Written Overview (Appendix B), LTI Written Overview (Appendix C), Akorbi Written Overview, (Appendix D), Berlitz Statement of Work (Appendix E), LTI Statement of Work (Appendix F), and Akorbi Statement of Work (Appendix G).

# Bilingual Proficiency Testing Needs Survey

## Q1 Department Name

Answered: 11 Skipped: 0



| ANSWER CHOICES                              | RESPONSES |   |
|---------------------------------------------|-----------|---|
| Accounting                                  | 9.09%     | 1 |
| Actuarial                                   | 18.18%    | 2 |
| Building/Custodian                          | 9.09%     | 1 |
| Business Applications & Technology Services | 9.09%     | 1 |
| Claims                                      | 18.18%    | 2 |
| Corporate Legal                             | 9.09%     | 1 |
| Executive                                   | 0.00%     | 0 |
| Human Resources                             | 0.00%     | 0 |
| Learning & Development                      | 0.00%     | 0 |
| Marketing & Sales                           | 9.09%     | 1 |

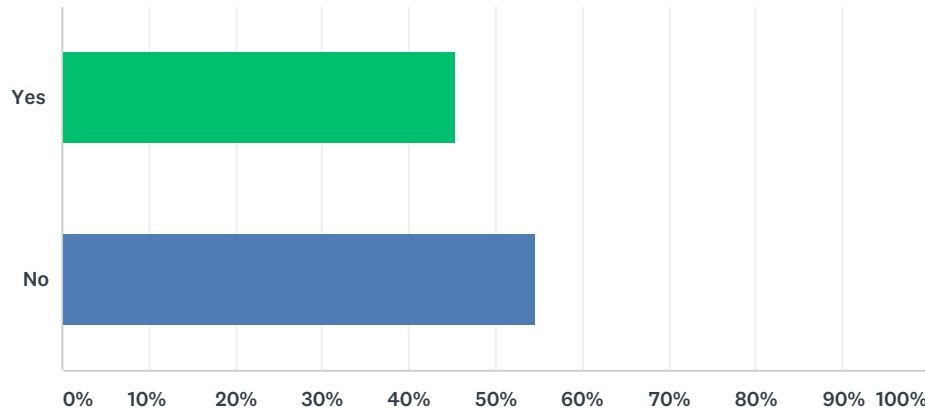
## Bilingual Proficiency Testing Needs Survey

|              |        |    |
|--------------|--------|----|
| Underwriting | 18.18% | 2  |
| TOTAL        |        | 11 |

| # | COMMENT                              | DATE             |
|---|--------------------------------------|------------------|
| 1 | Not a need for testing at this time. | 4/9/2019 1:52 PM |

## Q2 Do you want bilingual staff to receive bilingual proficiency testing? If no, explain your response in the comments.

Answered: 11 Skipped: 0



| ANSWER CHOICES | RESPONSES |    |
|----------------|-----------|----|
| Yes            | 45.45%    | 5  |
| No             | 54.55%    | 6  |
| TOTAL          |           | 11 |

| # | COMMENT                                                                    | DATE              |
|---|----------------------------------------------------------------------------|-------------------|
| 1 | Not necessary                                                              | 4/10/2019 1:34 PM |
| 2 | We don't have a present need for bilingual staff in the Legal Department.  | 4/9/2019 1:56 PM  |
| 3 | Not a need for testing at this time.                                       | 4/9/2019 1:52 PM  |
| 4 | There is no need for it in Actuarial                                       | 4/9/2019 1:50 PM  |
| 5 | We only have one person on the phone currently and they are not bilingual. | 4/9/2019 1:47 PM  |

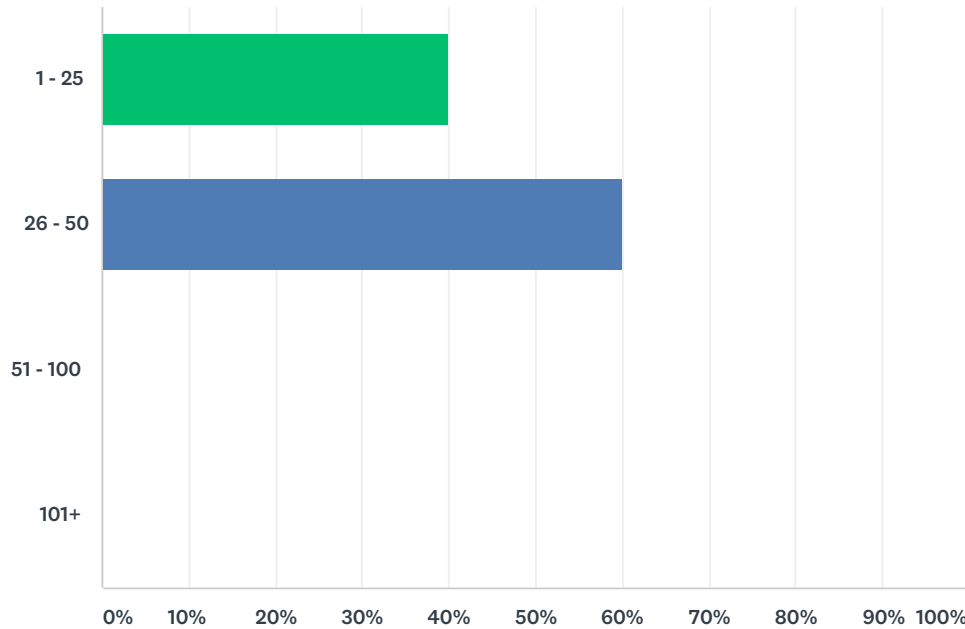
### Q3 How will your department benefit from second language skill/proficiency testing?

Answered: 9 Skipped: 2

| # | RESPONSES                                                                                                                                                                                                                                                                                                                  | DATE               |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1 | to ensure that we are providing the best/professional customer service to our bilingual customers.                                                                                                                                                                                                                         | 4/12/2019 8:20 AM  |
| 2 | Will assure we are providing best customer experience possible and each bilingual employee can provide the same level of service in both languages without any barriers.                                                                                                                                                   | 4/11/2019 10:34 AM |
| 3 | I think it will help them evaluate their professional Spanish skills when communicating with our Spanish speaking agents.                                                                                                                                                                                                  | 4/10/2019 3:41 PM  |
| 4 | n/a                                                                                                                                                                                                                                                                                                                        | 4/10/2019 1:34 PM  |
| 5 | We would cut down the use of a translator.                                                                                                                                                                                                                                                                                 | 4/10/2019 10:39 AM |
| 6 | NA                                                                                                                                                                                                                                                                                                                         | 4/9/2019 1:56 PM   |
| 7 | The communication overall. Understanding our Spanish-speaking customer base and accuracy with verbally understanding and the ability to communicate effectively. It will allow us the ability to truly identify whom is proficient with the language, and how we can utilize them accordingly on specific language queues. | 4/9/2019 1:54 PM   |
| 8 | Not at all                                                                                                                                                                                                                                                                                                                 | 4/9/2019 1:50 PM   |
| 9 | Until we have a larger amount of people on the phone I am not certain we would need the testing at the moment.                                                                                                                                                                                                             | 4/9/2019 1:47 PM   |

## Q4 Approximately how many people in your department will need to be tested?

Answered: 5   Skipped: 6



| ANSWER CHOICES | RESPONSES |
|----------------|-----------|
| 1 - 25         | 40.00% 2  |
| 26 - 50        | 60.00% 3  |
| 51 - 100       | 0.00% 0   |
| 101+           | 0.00% 0   |
| TOTAL          | 5         |

| # | COMMENT                                                                                                                                                    | DATE              |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 1 | 0                                                                                                                                                          | 4/10/2019 1:34 PM |
| 2 | NA                                                                                                                                                         | 4/9/2019 1:56 PM  |
| 3 | The call center to begin with. Eventually would like to also conduct this for new hires, since they are told they will be transitioning to our Call Center | 4/9/2019 1:54 PM  |
| 4 | Zero                                                                                                                                                       | 4/9/2019 1:50 PM  |
| 5 | N/A                                                                                                                                                        | 4/9/2019 1:47 PM  |

## Q5 Which of the following languages do you want tested? (Please select all that apply.)

Answered: 7 Skipped: 4



| ANSWER CHOICES | RESPONSES |   |
|----------------|-----------|---|
| Arabic         | 0.00%     | 0 |
| Cantonese      | 0.00%     | 0 |
| Mandarin       | 0.00%     | 0 |
| English        | 14.29%    | 1 |
| French         | 0.00%     | 0 |
| German         | 0.00%     | 0 |
| Korean         | 0.00%     | 0 |
| Russian        | 0.00%     | 0 |
| Spanish        | 85.71%    | 6 |

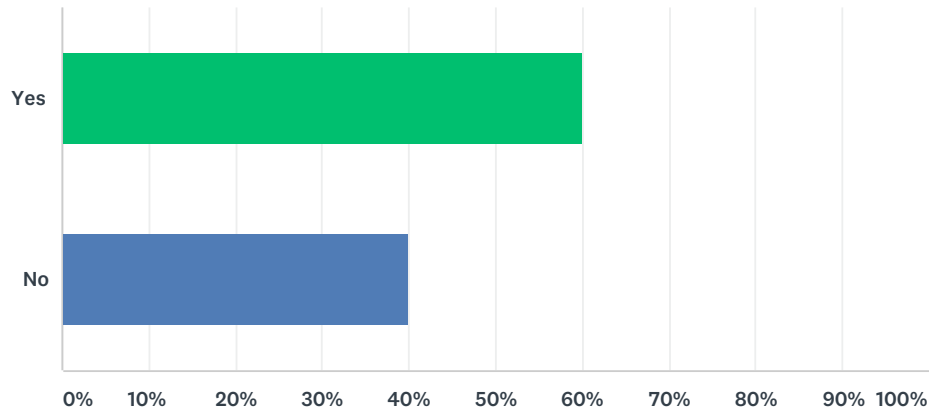
## Bilingual Proficiency Testing Needs Survey

|                      |       |   |
|----------------------|-------|---|
| Tagalog              | 0.00% | 0 |
| Vietnamese           | 0.00% | 0 |
| Total Respondents: 7 |       |   |

| # | COMMENT/OTHER                       | DATE              |
|---|-------------------------------------|-------------------|
| 1 | none                                | 4/10/2019 1:34 PM |
| 2 | NA                                  | 4/9/2019 1:56 PM  |
| 3 | When we do test it would be Spanish | 4/9/2019 1:47 PM  |

## Q6 Would you like proficiency testing for bilingual new hire candidates?

Answered: 10 Skipped: 1

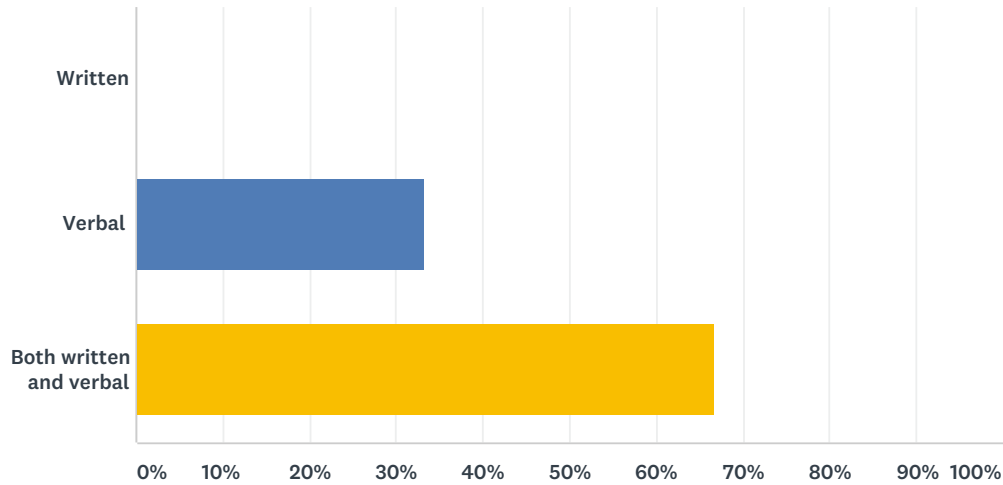


| ANSWER CHOICES | RESPONSES |    |
|----------------|-----------|----|
| Yes            | 60.00%    | 6  |
| No             | 40.00%    | 4  |
| TOTAL          |           | 10 |

| # | COMMENT                                                                       | DATE              |
|---|-------------------------------------------------------------------------------|-------------------|
| 1 | It could prove beneficial in the future.                                      | 4/10/2019 3:41 PM |
| 2 | Absolutely, since we do transition new hires into our call center environment | 4/9/2019 1:54 PM  |
| 3 | If the were to potentially take calls for certain positions.                  | 4/9/2019 1:47 PM  |

## Q7 What type of proficiency testing will benefit your department the most?

Answered: 6 Skipped: 5

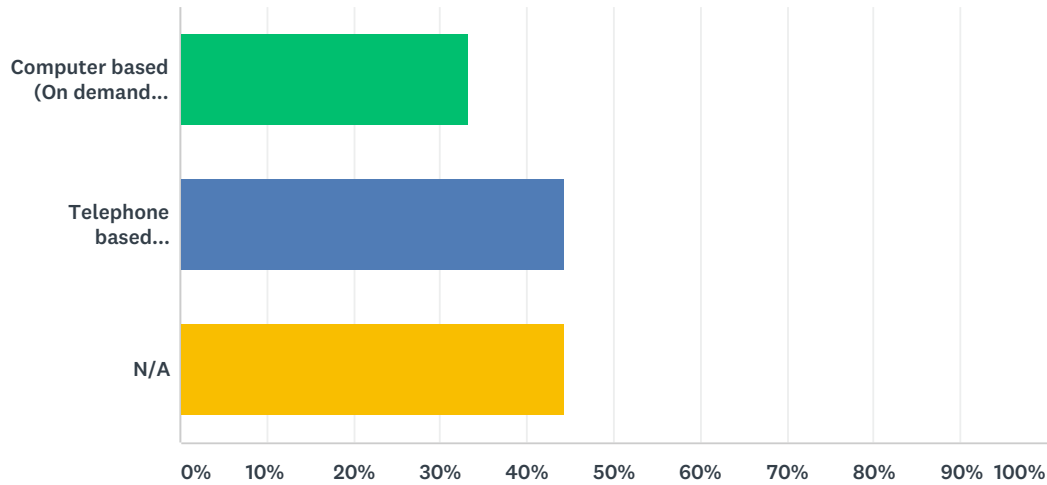


| ANSWER CHOICES          | RESPONSES |
|-------------------------|-----------|
| Written                 | 0.00% 0   |
| Verbal                  | 33.33% 2  |
| Both written and verbal | 66.67% 4  |
| TOTAL                   | 6         |

| # | COMMENT                                                                                                                                            | DATE              |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 1 | but more so on the verbal                                                                                                                          | 4/10/2019 3:41 PM |
| 2 | none                                                                                                                                               | 4/10/2019 1:34 PM |
| 3 | NA                                                                                                                                                 | 4/9/2019 1:56 PM  |
| 4 | At this point in time, for the Call Center. This would only be verbal since they are not required to provide any written communication in Spanish. | 4/9/2019 1:54 PM  |
| 5 | None                                                                                                                                               | 4/9/2019 1:50 PM  |

## Q8 Which of the following proficiency testing formats do you prefer? (Select all that apply)

Answered: 9 Skipped: 2

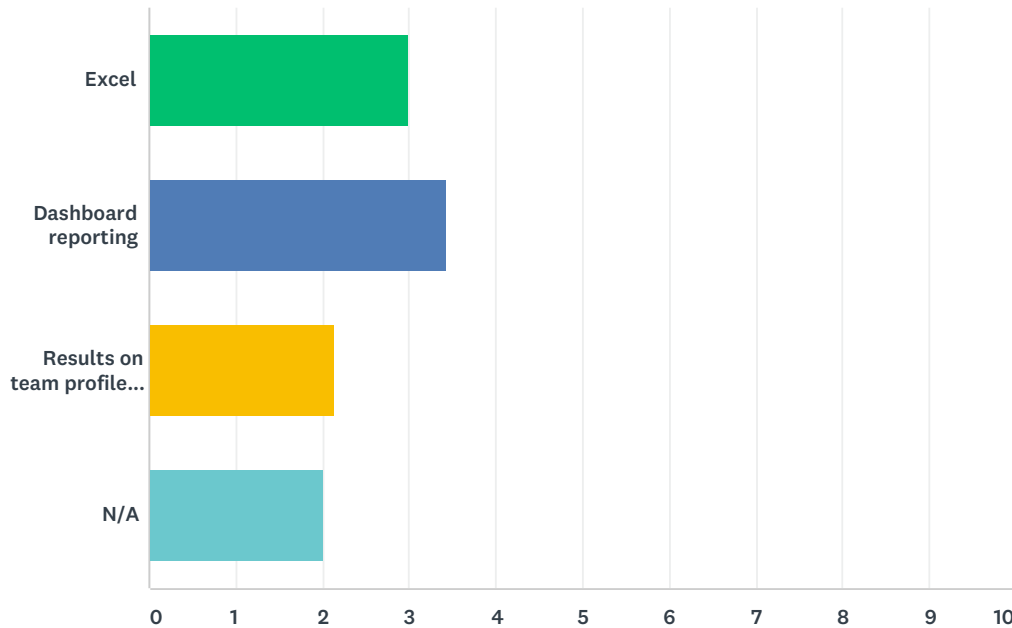


| ANSWER CHOICES                                                  | RESPONSES |   |
|-----------------------------------------------------------------|-----------|---|
| Computer based (On demand testing, On camera while taking exam) | 33.33%    | 3 |
| Telephone based (Scheduled testing)                             | 44.44%    | 4 |
| N/A                                                             | 44.44%    | 4 |
| Total Respondents: 9                                            |           |   |

| # | COMMENT                                                                                         | DATE               |
|---|-------------------------------------------------------------------------------------------------|--------------------|
| 1 | It is important to test the telephone and also the written ability to understand and translate. | 4/11/2019 10:34 AM |
| 2 | Not sure which would be most beneficial for field employees                                     | 4/10/2019 3:41 PM  |
| 3 | Both options if possible would be OK.                                                           | 4/9/2019 1:54 PM   |

# Q9 You will receive your employee's individual test score. What reports do you prefer to conduct a department OR companywide analysis? (Rank)

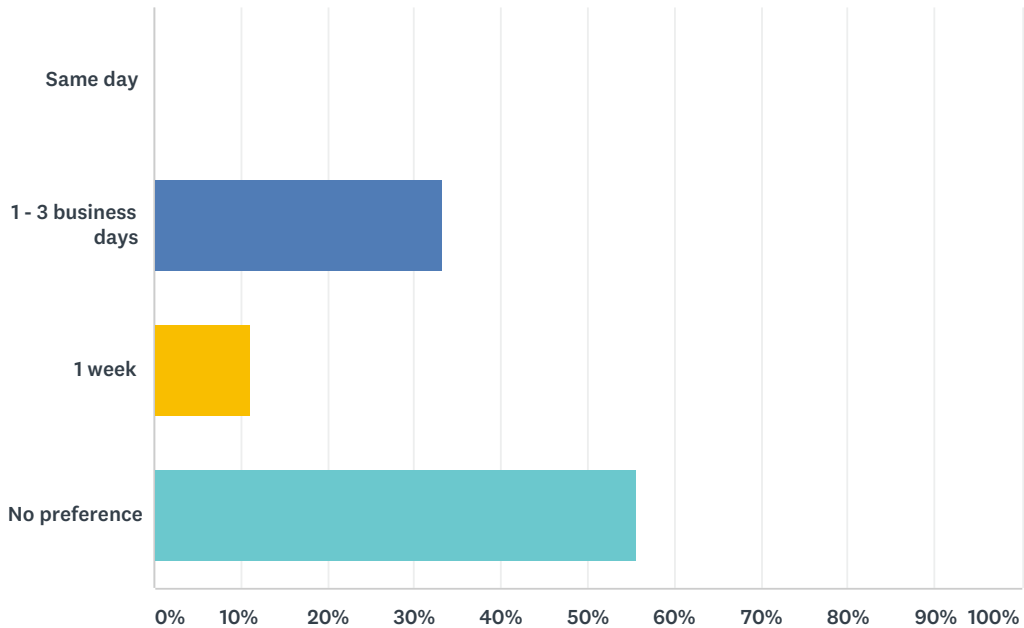
Answered: 8 Skipped: 3



|                                                 | 1           | 2           | 3           | 4           | TOTAL | SCORE |
|-------------------------------------------------|-------------|-------------|-------------|-------------|-------|-------|
| Excel                                           | 14.29%<br>1 | 71.43%<br>5 | 14.29%<br>1 | 0.00%<br>0  | 7     | 3.00  |
| Dashboard reporting                             | 57.14%<br>4 | 28.57%<br>2 | 14.29%<br>1 | 0.00%<br>0  | 7     | 3.43  |
| Results on team profile in ACCCU virtual campus | 14.29%<br>1 | 0.00%<br>0  | 71.43%<br>5 | 14.29%<br>1 | 7     | 2.14  |
| N/A                                             | 33.33%<br>2 | 0.00%<br>0  | 0.00%<br>0  | 66.67%<br>4 | 6     | 2.00  |

## Q10 What are your grading turnaround expectations?

Answered: 9 Skipped: 2



| ANSWER CHOICES      |  | RESPONSES |   |
|---------------------|--|-----------|---|
| Same day            |  | 0.00%     | 0 |
| 1 - 3 business days |  | 33.33%    | 3 |
| 1 week              |  | 11.11%    | 1 |
| No preference       |  | 55.56%    | 5 |
| TOTAL               |  |           | 9 |

| # | COMMENT                                                   | DATE               |
|---|-----------------------------------------------------------|--------------------|
| 1 | Note for new hires and applicants needs to be 1 to 3 days | 4/11/2019 10:34 AM |



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Berlitz Oral Skills Testing  
Overview  
for  
ACCC Insurance Company

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Allison Raets  
Berlitz Business Development  
(619) 218-7335  
allison.raets@berlitz.us  
4/17/2019

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## Berlitz Test of Speaking Skills

The Berlitz Test of Speaking Skills is an oral proficiency testing system designed to accurately measure the active oral communicative ability of your employees or applicants in a professional setting. Designed through a partnership with the University of Illinois Urbana-Champaign, this testing system is based on a guided dialogue between the Berlitz Rater and the examinee by telephone.

Berlitz raters are native –fluent in their test language and trained to lead a Berlitz Proficiency Interview in a professional and pleasant manner. Through a series of questions, prompts, and tasks set in a relevant context, the Berlitz Rater elicits oral language production from the examinee. It is measured in the areas of fluency, grammatical accuracy, lexical range, and phonological control.

The results are based on the Common European Framework-one of the most widely used and recognized language proficiency scales in the world-and easily interpreted to determine employee or applicant language qualification.

The Berlitz Test of Speaking Skills was developed through strict adherence to professional and ethical principles of test design as established in the Standards for Educational and Psychological Testing<sup>1</sup> by the American Educational Research Association, the American Council on Measurement in Education, and the American Psychological Association.

The Berlitz Test of Speaking Skills is currently available in over 40 languages, including, but not limited to the following:

|                 |          |                |            |            |
|-----------------|----------|----------------|------------|------------|
| Arabic          | Danish   | Haitian/Creole | Mandarin   | Spanish    |
| Armenian        | Dutch    | Hindi          | Norwegian  | Swahili    |
| Bosnian         | English  | Hungarian      | Polish     | Tagalog    |
| Bulgarian       | Farsi    | Indonesian     | Portuguese | Taiwanese  |
| Burmese         | Finnish  | Italian        | Punjabi    | Thai       |
| Cantonese       | French   | Japanese       | Romanian   | Turkish    |
| Cambodian/Khmer | German   | Korean         | Russian    | Urdu       |
| Czech           | Gujarati | Lithuanian     | Serbian    | Vietnamese |
| Croatian        | Greek    | Malaysian      | Slovak     | Slovenian  |

The list of available languages is continually being updated based on demand.

### The Assessment Procedure

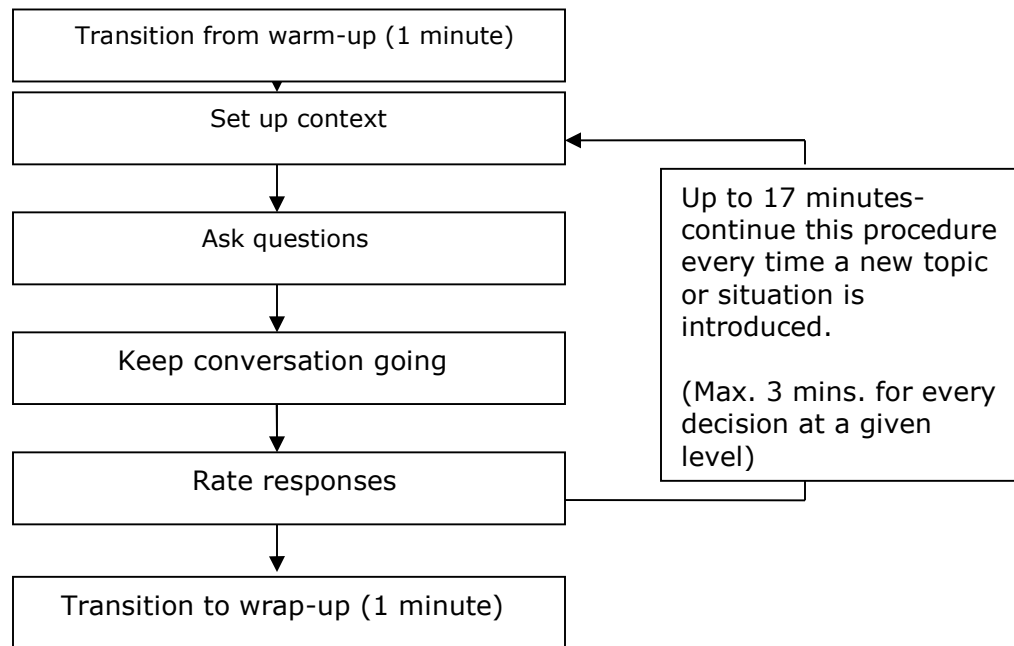
The Berlitz Test of Speaking Skills consists of four different parts:

- 1) Verification of examinees,
- 2) Warm-up,
- 3) Rated conversation
- 4) Wrap-up.

---

<sup>1</sup> Standards for Educational and Psychological Testing, American Educational Research Association, 2000, 194pp.

## Rated Conversation Procedure



The “Verification” section is the first part of the overall assessment procedure, and it is not rated. Its purpose is to verify the identity of the examinee. The verification process will last approximately one minute. There may be two to three questions in this section. The first question asks the examinee to verify his/her name and the second question asks the examinee to state the name of the company or business he/she is being tested for. These questions are asked in a conversation-type style and should flow seamlessly into the warm-up.

The “Warm-up” section has two purposes:

- 1) To briefly outline purpose of the call and state that call is recorded.
- 2) To create a climate of comfort between examinee and rater through short questions and answers.

This section consists of a series of short questions, three to five, in a conversation-type format. All the questions are related and ask information about a common theme or topic that is used in our daily lives. Possible themes or topics in the warm-up include everyday topics (i.e., weather, hobbies, and living environment). This warm-up section lasts approximately one minute and flows seamlessly into the rated conversation.

The purpose of the “Rated Conversation” section is to engage the examinee in a conversation in a professional context relevant to the examinee and stakeholder(s). In this section, raters set up a context for the conversation by introducing a relevant professional topic and by asking questions related to the topic of the conversation. They keep the conversation going by asking additional questions or setting up new, similar contexts or situations.

## Quality Assurance

To ensure consistency and quality tests are double-rated, reviewed by two independent Berlitz raters before the final score is issued. If there is a discrepancy in the results, a third independent Berlitz rater reviews the assessment for consensus.

Berlitz raters are university educated and native fluent in the language they are assessing. After their initial 50 hour training, Berlitz raters are mentored by a senior rater, and participate in maintenance trainings every 3 months. Berlitz offers a formal dispute process by which an examinee may request to have their results reviewed additionally, should they believe there to be an error in their results.

## Reports

Results are available to your organization within 3 business day of the test date. All test papers, score reports, and audio recordings of speaking tests will be maintained at the testing center for a minimum of 3 years

The Berlitz Test of Speaking Skills assesses oral proficiency in four key areas below:

**Linguistic Range** refers to how well speakers express themselves using sentence patterns, forms, and idiomatic expressions appropriate in oral communication. Range also refers to the aspects of style, tone, and word choice.

**Grammatical Accuracy** may be defined as knowledge of and ability to use the grammatical structures of a language. Grammatical organization involves such styles and usages as word order, part of speech, and prepositions.

**Fluency** as a factor which determines the functional success of the examinees refers to the ability to articulate and manage conversation smoothly.

**Phonological Control** refers to the ability to produce appropriate intonation, variation in phonological phonemes (/t/ vs. /d/; /r/ vs. /l/), correct sentence-stress placement to express finer shades of meaning, and production of clear intelligible pronunciation.

The examinee's responses are scored against the Berlitz Test of Speaking Skills Scoring Rubric. This Scoring Rubric is based on the Common European Framework of Reference (CEFR) and holistic descriptors. CEF scores range from A1 (Basic) to C2 (Proficient).

Turn-around time for results is 1 to 3 business days from the date the test was delivered.

## Berlitz Simulated Oral Proficiency Interview (SOPI)

The Berlitz Simulated Oral Proficiency Interview (SOPI) is a language proficiency test that accurately measures the oral communicative ability of examinees through an online computer-based platform. This speaking test combines the efficiency and reliability of computer-based administration with the validity of human scoring.

The SOPI consists of six situations where the examinee speaks to a native speaker of the target language. In each situation, the examinee reads and listens to a description of the situation and sees on the computer a picture of the person or people to whom he or she will speak. The examinee is then given 15 to 40 seconds to plan his or her response, and 30 to 90 seconds to respond. After the examinee hears the native speaker say something, he or she begins to record the response.



The SOPI is scored by trained human raters who are native speakers of the target language. The examinee receives a score on the Common European Framework of Reference (CEFR). Each rater undergoes training on the CEFR scale and on how to evaluate responses to each situation on the CEFR scale.

The SOPI has been found through multiple published research studies to correlate highly with the results that are obtained in a person-to-person oral proficiency interview. Reliability refers to the accuracy and consistency of scores where two or more SOPIs are taken by the same examinee and then scored by different raters. All published studies of the SOPI have shown high reliability.

The situations on the SOPI are carefully constructed to provide just the kind of response that shows a learner's true proficiency level. The fact that the speech sample is collected on the computer makes the test more cost effective, since the rater does not have to elicit the speech sample before scoring it.

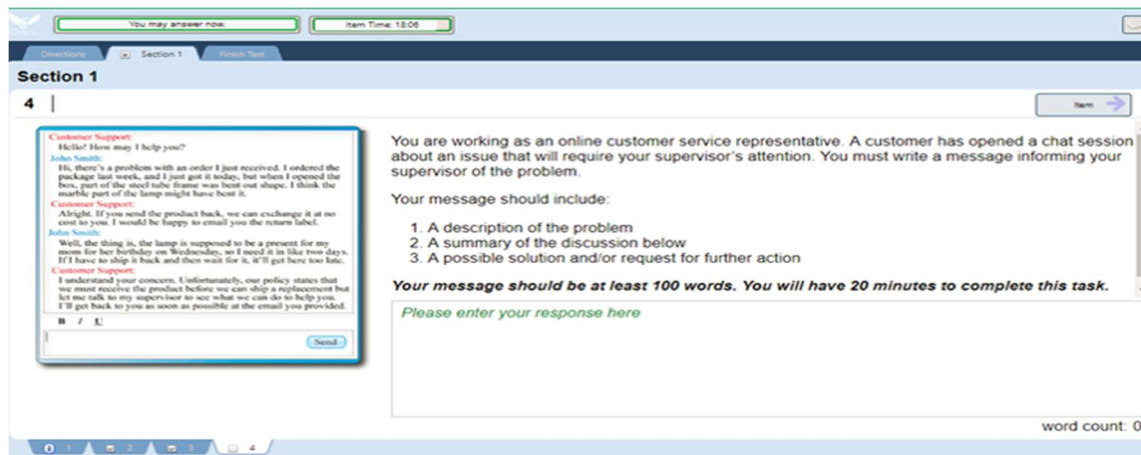
Turn-around time for results is up to 24 hours for English, and 1- 3 days for all other languages.

## Berlitz Writing Proficiency Exam (WPE)

The Berlitz Writing Proficiency Exam (WPE) is a 60-minute assessment of writing skills. This test can be activated in any language and is intended to be used by global organizations, companies, and government agencies in their recruitment, staff training, and benchmarking efforts.

The examinee receives a score on the Common European Framework of Reference (CEFR). Each rater undergoes a minimum of 50 hours of initial training and ongoing quarterly refresher trainings on the CEFR scale and on how to evaluate responses to each prompt on the CEFR scale. Berlitz raters are university educated and native fluent in the language they are assessing. After their initial 50 hour training, Berlitz raters are mentored by a senior rater, and participate in maintenance trainings every 3 months.

The WPE consists of 3 prompts that were chosen based upon research as the most relevant and authentic in a general professional context. For languages other than English, examinees will be given access to a virtual keyboard that includes language specific letters, punctuation, or characters associated with that language.



Examinees will be assessed based on the following:

**Task Fulfillment** – The examinee's understanding of a given input and their ability to meet the content requirements of the response including the ability to use a style appropriate to the audience.

**Idea Organization** – The examinee's ability to organize text using cohesive devices and to plan text following a conventional structure, including an introduction, body, and conclusion. Also assessed will be an examinee's ability to group and present ideas with supporting information.

**Language Use** – The examinee's grammatical and syntactic proficiency, vocabulary use and spelling.

Turn-around time for results is up to 24 hours for English, up to 48 hours for Spanish, and up to 72 hours for other languages. Test status, results, and reports are available in real time via an online portal.

## The Common European Framework: Oral Skills

From "A Common European Framework of Reference for Languages: learning, teaching, assessment". Copyright Council of Europe, all rights reserved.

| Proficiency Level |    | Descriptors of Speaking and Listening Skills                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proficient User   | C2 | Can understand with ease virtually everything heard or read. Can summarize information from different spoken and written sources, reconstructing arguments and accounts in a coherent presentation. Can express him/herself spontaneously, very fluently and precisely, differentiating finer shades of meaning even in more complex situations.                                                                                                                                      |
|                   | C1 | Can understand a wide range of demanding, longer texts, and recognize implicit meaning. Can express him/herself fluently and spontaneously without much obvious searching for expressions. Can use language flexibly and effectively for social, academic and professional purposes. Can produce clear, well-structured, detailed text on complex subjects, showing controlled use of organizational patterns, connectors and cohesive devices.                                       |
| Independent User  | B2 | Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialization. Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options. |
|                   | B1 | Can understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc. Can deal with most situations likely to arise whilst traveling in an area where the language is spoken. Can produce simple connected text on topics, which are familiar, or of personal interest. Can describe experiences and events, dreams, hopes and ambitions and briefly give reasons and explanations for opinions and plans.                  |
| Basic User        | A2 | Can understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, and employment). Can communicate in simple and routine tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate need.                      |
|                   | A1 | Can understand and use familiar everyday expressions and very basic phrases aimed at the satisfaction of needs of a concrete type. Can introduce him/herself and others and can ask and answer questions about personal details such as where he/she lives, people he/she knows and things he/she has. Can interact in a simple way provided the other person talks slowly and clearly and is prepared to help.                                                                       |

## The Common European Framework: Writing Skills

From "A Common European Framework of Reference for Languages: learning, teaching, assessment". Copyright Council of Europe, all rights reserved.

| Proficiency Level |    | Descriptors of Writing Skills                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proficient User   | C2 | Can write clear, smoothly flowing, complex texts in an appropriate and effective style and a logical structure which helps the reader to find significant points. Can produce clear, smoothly flowing, complex reports, articles or essays which present a case, or give critical appreciation of proposals or literary works. Can provide an appropriate and effective logical structure, which helps the reader to find significant points. Can write clear, well-structured expositions of complex subjects, underlining the relevant salient issues...                                                                                                                          |
|                   | C1 | Can write clear, well-structured texts of complex subjects, underlining the relevant salient issues, expanding and supporting points of view at some length with subsidiary points, reasons and relevant examples, and rounding off with an appropriate conclusion. Can expand and support points of view at some length with subsidiary points, reasons and relevant examples. Can write an essay or report which develops an argument systematically with appropriate highlighting of significant points and relevant supporting detail. Can evaluate different ideas or solutions to a problem                                                                                   |
| Independent User  | B2 | Can write clear, detailed texts on a variety of subjects related to his/her field of interest, synthesizing and evaluating information and arguments from a number of sources. Can write an essay or report which develops an argument, giving reasons in support of or against a particular point of view and explaining the advantages and disadvantages of various options. Can synthesize information and arguments from a number of sources. Can write short, simple essays on topics of interest. Can summarize, report and give his/her opinion about accumulated factual information on familiar routine and non-routine matters within his/her field with some confidence. |
|                   | B1 | Can write straightforward connected texts on a range of familiar subjects within his field of interest, by linking a series of shorter discrete elements into a linear sequence. Can write very brief reports to a standard conventionalized format, which pass on routine factual information and state reasons for actions.                                                                                                                                                                                                                                                                                                                                                       |
| Basic User        | A2 | Can write a series of simple phrases and sentences linked with simple connectors like 'and', 'but' and 'because'.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                   | A1 | . Can write simple isolated phrases and sentences.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

## Pricing

| Test                                        | Price per Test |       |
|---------------------------------------------|----------------|-------|
|                                             | 1-49           | 50-99 |
| Berlitz Test of Speaking Skills (BTSS)      | \$105          | \$85  |
| Simulated Oral Proficiency Interview (SOPI) | \$65           | \$55  |
| Writing Proficiency Exam (WPE)              | \$65           | \$55  |
|                                             |                |       |

4/17/2019

- For annual volumes of 100 or more tests, additional discounts apply.
- Volume discounted pricing may be achieved either by upfront payment, or accrued on an annual basis.
- Tests may be proctored in-person by ACCC Insurance Company, at a local Berlitz Center, or online via virtual proctoring.
- For tests proctored virtually or at a local Berlitz Center, additional fees apply.

**For more information contact:**

**Allison Raets, Account Executive**

[allison.raets@berlitz.com](mailto:allison.raets@berlitz.com)

**Phone: +1-619-218-7335**



Exclusive Licensee of ACTFL

Language Testing International

445 Hamilton Avenue, Suite 1104

White Plains, NY 10601 USA

800.486.8444

languageTesting.com

## LTI Summary of Information for Language Proficiency Testing

LTI is the official testing office and exclusive distributor of ACTFL Assessments. [ACTFL](#) (the American Council on the Teaching of Foreign Languages) is a non-profit organization based in D.C. comprised of 12,500 members of language experts, second language acquisition researchers, and language instructors. LTI is the end-to-end delivery system of ACTFL assessments. These assessments follow the [ACTFL Proficiency Guidelines](#) to determine what a test taker “can do” with a language in real-world settings across a wide range of topics and settings. ACTFL proficiency tests reflect and measure a test taker’s ability to carry out real-world tasks.

The [ACTFL proficiency scale](#) ranges from Novice to Superior and was built off the original ILR (Interagency Languages Roundtable) scale used by the federal government. ACTFL was approached by academia and corporations to build assessments and a ratings scale for use outside of federal government standards. The ACTFL scale is 1 of 3 internationally-recognized scales and has been updated three times since its original development. The [Oral Levels in the Workplace infographic](#) outlines suggested minimum levels of language proficiency for job positions. Refer to the Advanced levels for customer service agents – Advanced Low or Advanced Mid based on their job responsibilities).

### Speaking Assessment:

#### ACTFL Oral Proficiency Interview by Computer (OPIc):

- o An on-demand, computer or telephone-based test available 24/7
- o 20-40 minutes interview (depending on the level of the test taker) delivered by an Avatar
- o Available in 13 languages
  - Arabic, Chinese-Mandarin, English, French, German, Italian, Japanese, Korean, Pashto, Persian Farsi, European & Brazilian Portuguese, Russian, **Spanish**
- o An adaptive test with structured questions includes a warm-up, level checks, probes, and wind-down (questions are adapted to the interests of the test taker / no two tests are alike)
  - Background assessment and self-assessment surveys completed by test taker creates an individualized test experience for each test taker
- o [OPIc Demo Link](#)
  - OPIc Price: \$60 per test

### Proctoring the Assessment:

- o **For tests conducted on-site** at a company’s office location, someone on the HR, Recruitment, or Management teams acts as test administrator and proctor for the assessment.
- o **For tests conducted off-site**, LTI has an optional Remote Proctor Service available. The Remote Proctor is an online service that emulates the role of an on-site proctor. Using a webcam-enabled computer, a live, remote proctor confirms the test-taker identity and safeguards the integrity of the exam throughout the full length of the assessment. Remote proctors are available 24/7 allowing for ease of test scheduling any time / anywhere.
  - The fee for the remote proctor service is \$35 (per test session) added to the test fee shown above.



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**Language Testing International**

445 Hamilton Avenue, Suite 1104

White Plains, NY 10601 USA

800.486.8444

languageTesting.com

### **Determining the Minimum Level of Language Proficiency for Job Positions:**

LTI has conducted hundreds of job analyses (task analyses) for over 100 positions across a number of different industries (healthcare, telecom, finance, manufacturing, and others). See separate document on Task Analysis Description.

[The Oral Proficiency Levels in the Workplace infographic](#) shows the types of minimum recommended levels of language proficiency that companies' Subject Matter Experts (SMEs) for these positions have developed in the standard-setting process with LTI.

This is a representation and we recommend each company conduct its own task analyses for unique positions since there are factors that may impact what a light industrial worker does at one company that differs from another company. The task analysis provides an organization with a legally defensible test aligned to the bilingual job requirements for the position(s).

### **Test Administration:**

Upon account set up, LTI creates a Client Site Portal ([Virtual Demo Here](#)) where test administrators (assigned by your company) are provided access to the system to:

- Submit test requests
- Retrieve ratings results
- View invoices
- Download candidate / test data
- Other site actions

Single sign-on capabilities are available upon request

### **Payment Information:**

- Invoices are issued on the 1<sup>st</sup> and 15<sup>th</sup> of each month
- Terms are net 30
- Tests are billed only for completed and rated assessments
  - o If a test receives an UR (Unratable)-Not Billable rating, the test can be rescheduled
    - UR ratings are often due to tech issues such as a microphone malfunction



## Language Proficiency Testing Proposal For **ACCC Insurance**

Prepared by Justin Bechtel, *Enterprise Sales Manager*  
June 5, 2019

Version 1.0

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Dear ACCC Insurance Team,

Thank you for considering Akorbi as a partner on your Language Proficiency Testing initiatives. As a leading global supplier of language services and technology, we will provide ACCC Insurance a scalable, quality-driven, and centralized program for your testing requirements.

We have tailored this proposal to cover all of ACCC Insurance's criteria, and have provided details for Akorbi's recommended approach. It's important to note that proficiency testing is not 'one size fits all' and we're able to easily customize any approach that aligns with your goals and objectives.

We look forward to the opportunity to provide ACCC Insurance with an innovative, quality-driven plan for meeting your language goals, ultimately leading to a beneficial long-term partnership. If you have any questions, please feel free to contact me at 612-669-8378 or [JBechtel@Akorbi.com](mailto:JBechtel@Akorbi.com).

Sincerely,

Justin Bechtel

*Enterprise Sales Manager at Akorbi*

### Overview

Akorbi specializes in providing enterprise solutions that empower companies to achieve success in the global economy. We help organizations connect with employees, vendors and customers in over 170 languages 24×7, through any modality, from any location. Our customizable, enterprise solutions include localization, interpretation, multilingual staffing, proficiency testing, learning course development, and multilingual contact centers with business process outsourcing capabilities.

With Akorbi, you have access to a variety of language solutions to help meet your global business needs. We help give your product, service, application, website, content, etc., the look and feel of having been created specifically for a target market, no matter their language, culture or location.

We hold several, highly-audited certifications including ISO 9001:2015, ISO 13485:2016, EN 15038:2006 and M/WBE Certification. Akorbi values clients' privacy and security and maintains compliance with strict regulations including HIPAA, PHI, Centers for Medicare and Medicaid Services (CMS) and the Affordable Care Act (ACA), just to name a few.

Akorbi is the 13th fastest-growing woman-owned/led company in the world, according to the Women Presidents' Organization, the #2,568 fastest-growing company on the Inc. 5000 with 166% growth in the last three years and was recently named the 12th largest language service provider (LSP) in the US by global market research and international consulting company, Nimdzi Insights LLC.

### Language Proficiency Testing

Linguistic assessment is an integral part of the language process. It considers a locale's unique linguistic rules and norms, as well as the different cultural and social aspects which all affect the end-user experience.

American companies risk alienating their growing diverse populations if they don't invest in quality language services. For any company wishing to reach a larger, multilingual audience and earn their trust, it is critical the individuals providing these language services have been properly vetted and are setup for success.

Akorbi provides programs for properly testing and vetting individuals' written language capabilities in over 100 languages. We can align an easy-to-use program specific to ACCC Insurance's requirements.

## Written Proficiency Test (WPT)

### TAUS Dynamic Quality Framework

Akorbi recommends utilizing a translation scoring process that has been widely adapted in our industry. There are multiple options, but the most popular and recommended by Akorbi is the TAUS Dynamic Quality Framework (DQF) standards. The scores are calculated according to the number and severity of concrete errors, as well as the scalar rating and their defined weights:

#### *Example Quality Score:*

**Good / Passing** = 90% and above

**Satisfactory** = 85-89%

**Poor / Fail** = 84% and below



The evaluated categories include grammar, meaning, style, compliance, and punctuation. Each category has different weights based on the type of content and the level of severity for each error range from “minor” to “critical”.

This approach will require ACCC Insurance to work closely with Akorbi in identifying the most applicable text to use for the test. Akorbi recommends a written translation of at least 1,000 words, specific to your company and industry. This word volume will ensure optimal data for scoring.

The process will be managed online, using a digital file for translation. ACCC Insurance will provide the candidate's or employee's translations to Akorbi for evaluation. Akorbi will review and provide all scores back to ACCC Insurance, along with a Certificate of Proficiency for any individuals who score accordingly.

### Paper and Pencil Testing

Another option at ACCC Insurance's disposal is to proctor written testing by hand. Each test taker will receive a shipment containing a sealed test booklet along with instructions. These tests will take 90 minutes to complete. Akorbi recommends an online approach, however, can be managed by hand if preferred.

# Oral Proficiency Test (OPT)

## ACTFL Oral Proficiency Scale

Akorbi recommends leveraging the Oral Proficiency Scale, created by the [American Council on the Teaching of Foreign Languages](#) (ACTFL). This will provide ACCC Insurance clear and concise data on where your employees, and/or potential employees, rank in terms of proficiency with other languages.

Akorbi will provide an easy-to-use program to ACCC Insurance for not only executing these tests, but also providing the analytics in a user-friendly manner. You'll be able to see where all individuals sit on this scale, and plan accordingly on where they will best be utilized within your organization.

The Oral Proficiency Scale has four main levels (Novice, Intermediate, Advanced, Superior). The first three levels are each subdivided into three sublevels (Low, Mid, High).

| Oral Proficiency Levels in the Workplace |     |                                                                                                                                  |                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                       |
|------------------------------------------|-----|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ACTFL Level                              | ILR | Language Functions                                                                                                               | Corresponding Professions / Positions                                                                                                                                                                                                                                                               | Examples of who is likely to function at this level?                                                                                                                  |
| Distinguished                            | 5   | Ability to tailor language to specific audience, persuade, negotiate. Deal with nuance and subtlety.                             | Foreign Service Diplomat, Contract Negotiator, International Specialist, Intelligence Specialist                                                                                                                                                                                                    | Highly articulate, professionally specialized native speakers                                                                                                         |
|                                          | 4   |                                                                                                                                  |                                                                                                                                                                                                                                                                                                     | Language learners with extended (17 years) and current professional and/or educational experience in the target culture                                               |
| Superior                                 | 3   | Discuss topics extensively, support opinions, hypothesize. Deal with linguistically unfamiliar situation.                        | University Language Professor, Financial Services Marketing Consultant, Foreign Area Officer, Lawyer, Judge, Court Interpreter                                                                                                                                                                      | Well-educated native speakers<br>Educated language learners with extended with extended professional and/or educational experience in the target language environment |
| Advanced High                            | 2+  | Narrate and describe in past, present and future and deal effectively with an unanticipated complication.                        | Physician, Human Resources Communications Consultant, Financial Services Senior Consultant, Quality Assurance Specialist, Marketing Manager, Financial Advisor, Broker, Military Linguist, Translation Officer                                                                                      | Language learners with graduate degrees in language or a related area and extended educational experience in target environment                                       |
| Advanced Mid                             | 2   |                                                                                                                                  | Banking and Investment Services Customer Service Representative, Fraud Specialist, Account Executive, Medical Interpreter, Patient Advocate, Court Stenographer, Court Interpreter, Human Resources Benefits Specialist, Technical Service Agent, Collection Representative, Estimating Coordinator | Heritage speakers, informal learners, non-academic learners who have significant contact with language                                                                |
| Advanced Low                             |     |                                                                                                                                  | K-12 Language Teacher, Nurse, Social Worker, Claims Processor, Police Officer, Maintenance Administrator, Billing Clerk, Legal Secretary, Legal Receptionist, 911 Dispatcher, Consumer Products Customer Services Representative, Retail Services Personnel                                         | Undergraduate majors with year-long study in the target language culture                                                                                              |
| Intermediate High                        | 1+  | Create with language, initiate, maintain and bring to a close simple conversations by asking and responding to simple questions. | Policeman, Fireman, Utilities Installer, Auto Inspector, Aviation Personnel, Missionary, Tour Guide                                                                                                                                                                                                 | Undergraduate language majors                                                                                                                                         |
| Intermediate Mid                         | 1   |                                                                                                                                  | Cashier, Sales Clerk (highly predictable contexts), Receptionist                                                                                                                                                                                                                                    | Language learners following 6-8 year sequences of study or 4-6 semester college sequence                                                                              |
| Intermediate Low                         |     |                                                                                                                                  |                                                                                                                                                                                                                                                                                                     | Language learners following 4 year high school sequence or 2 semester college sequence                                                                                |
| Novice High                              | 0+  | Communicate minimally with formulaic and rote utterances, lists and phrases                                                      | <i>The levels of proficiency associated with each of the positions above are minimal levels of oral proficiency based on task analysis.</i>                                                                                                                                                         | Language learners following an immersion language program in grades K-6                                                                                               |
| Novice Mid                               | 0   |                                                                                                                                  | <i>The minimal levels were determined by subject matter experts from companies and agencies who use ACTFL proficiency tests.</i>                                                                                                                                                                    | Language learners following content-based language program in grades K-6                                                                                              |
| Novice (Low)                             |     |                                                                                                                                  | <b>(2015 American Council on the Teaching of Foreign Languages)</b>                                                                                                                                                                                                                                 | Language learners following 2 years of high school language study                                                                                                     |

Oral Proficiency Tests can be executed either by telephone or online. We recommend scheduling all Proficiency Tests at least 48 hours in advance. All tests will take between 10-30 minutes.

## **Telephone delivered tests**

Once an assessment has been scheduled, an email within 2-3 business days of the appointment will be sent to the necessary parties. This will specify the date and time of the interview, name of the tester and the telephone number to call for the test.

It is recommended to use a landline telephone for all tests. If you require use of mobile phones, it's important to do so from a fixed location with a strong signal. The test should not be taken using a conference call or speaker phone. All tests should be administered to ensure no use of additional resources (paper, pens, notes, dictionaries, cell phone, laptop, etc.)

## **Internet-based testing**

Very similar to the process of a telephone test, the test can also be taken online. For each applicant, a username and password will be provided for access. A candidate should be allowed 10 minutes to read the test instructions before clicking the start button to begin the actual test. The total time of the test is automatically tracked by the computer. It's important to have these tests administered as well to ensure no usage of additional resources are being used.

## **Automated Testing**

Most of Akorbi's proficiency tests are reviewed and scored by human experts. However, we also have the ability to provide ACCC Insurance an automated review to gauge oral proficiency. This automated review is able to accurately predict ACTFL ratings for 90% of participants, and within one sublevel for 99% of participants.

## Pricing

### Written Proficiency Testing Pricing

| Spanish, United States                    | Cost per test |
|-------------------------------------------|---------------|
| Written Proficiency Test - TAUS           | \$70.00       |
| Written Proficiency Test - Paper & Pencil | \$100.00      |

\*Assuming written test of 1,000 English words translated into US Spanish

\*\*Additional languages can be scoped upon request

### Oral Proficiency Testing Pricing

| Spanish, United States               | Cost per test |
|--------------------------------------|---------------|
| Oral Proficiency Test - Internet     | \$100.00      |
| Oral Proficiency Test - Telephone    | \$140.00      |
| Oral Proficiency Test – Cancellation | \$100.00      |

| Spanish, United States          | Cost per test |
|---------------------------------|---------------|
| Automated Oral Proficiency Test | \$40.00       |

\*If a candidate does not show up for a scheduled testing appointment, there will a cancellation fee of \$100

\*\*Additional languages can be scoped upon request



## SERVICES AGREEMENT & STATEMENT OF WORK

This Services Agreement (the "Agreement") is entered into between Berlitz Languages, Inc., a New York corporation ("Berlitz"), having its registered office at 7 Roszel Road, Princeton, NJ 08540, USA and ACCC Insurance Company ("Client"), a corporation organized and existing under the laws of            with place of business at 390 Benmar Drive, Houston, TX 77060-2901, and shall be effective as of Date 9/15/2019 (the "Effective Date").

Whereas, Client wishes to retain Berlitz to provide certain language and cultural training services to Client and Berlitz is willing to provide such services in accordance with the terms hereof;

NOW THEREFORE, the parties mutually agree as follows:

### I. GENERAL STATEMENT OF WORK

Berlitz will provide to Client the professional training services described in one or more Statements of Work, each to be attached hereto and made a part hereof as an Exhibit A-"X" to this Agreement (where "X" designates the next integer in the sequence starting with the number 1) (the "Services" and the "Deliverables", collectively the "Work"). As mutually agreed by Berlitz and Client, any Statement of Work may be amended in writing from time to time (and shall be marked as "Amended" and attached hereto).

### II. INDEPENDENT CONTRACTOR RELATIONSHIP

Berlitz's relationship to Client in the performance of this Agreement is that of an independent contractor. Any personnel of Berlitz performing the Services under this Agreement ("Berlitz Personnel") shall at all times be under Berlitz's exclusive direction and control. Nothing contained herein shall be deemed to create the relationship of employer-employee, partners, joint ventures, or principals and agent. Berlitz shall in no event represent itself to third persons as acting on behalf of, or serving as the agent of, Client and shall have no power to bind (or impose any obligations on) any third parties on behalf of or in the name of Client.

### III. PROPRIETARY INFORMATION

1. Both parties agree that the Services may include the exchange of information of a proprietary nature to Client and to Berlitz ("Confidential Information"). Each party shall receive such knowledge and information in confidence and shall not, except as authorized in writing by the party who owns the information, publish or disclose or authorize any other party to publish, disclose or make use of such information or knowledge shall have ceased to be confidential and/or proprietary as evidenced by general public knowledge.
2. Confidential information does not include any information which 1) is already in the public domain or which becomes available to the public through no breach of confidentiality by the recipient; 2) was lawfully in recipient's possession on a non-confidential basis prior to receipt from the discloser; 3) is received by recipient independently on a non-confidential basis from a third party free to lawfully disclose such information to the recipient; or 4) is independently developed by recipient without use of the discloser's confidential information. The release of confidential information by the receiving party to satisfy the requirements of any applicable laws shall not be a breach of this Agreement.

#### IV. TERM AND TERMINATION

1. The term of this Agreement commences on the Effective Date set forth above and remains in effect unless either party terminates as set forth in this section.
2. Either party may, at any time, upon thirty (30) days' prior written notice to the non-terminating party, terminate this Agreement for any reason or no reason.
3. CLIENT may, by written notice to Berlitz, immediately terminate this Agreement for cause in any of the following circumstances:
  - (a) Berlitz materially breaches any obligation hereunder and does not cure such breach within sixty (60) days of written notice of breach from Client; or
  - (b) (i) Berlitz is adjudged insolvent or bankrupt; (ii) proceedings are instituted by or against Berlitz seeking relief, reorganization or arrangement under any laws relating to insolvency; (iii) Berlitz makes an assignment for the benefit of creditors; (iv) there is an appointment of a receiver, liquidator or trustee of any of Berlitz' property or assets, or (v) upon liquidation, dissolution or winding up of Berlitz' business.
4. Berlitz may, by written notice to Client, immediately terminate this Agreement if Client breaches any of its material obligations under this Agreement, which breach is not cured within sixty (60) days following receipt of notice of breach from Berlitz.
5. The termination of this Agreement shall serve to terminate all Statements of Work existing as of the termination date. Unless otherwise provided, termination or expiration of any Statement of Work, shall not operate to terminate this Agreement or any other Statement of Work. Promptly after termination, Berlitz shall wind up its Work in a commercially reasonable manner. Upon termination for any reason, Client will pay Berlitz any fees due and owing hereunder and Client will not be granted a refund of any pre-paid fees or charges regardless of Berlitz's receipt of required written notice under this section. Any cancellation and rescheduling policies set forth in any Statement of Work and/or schedule or exhibit incorporated by reference shall also apply.

#### V. MATERIAL OWNERSHIP

1. It is expressly understood and agreed that as of the date hereof there is no intention by Client or Berlitz that any work product be developed or created by Berlitz in the course of Berlitz's provision of Work that is the subject of this Agreement. Nor shall the Work hereunder constitute a "work made for hire" under the U.S. Copyright Act of 1976 or other similar international, federal, state or local law or judicial decision. Any and all reports, documents, materials, ideas, concepts, processes, procedures, techniques, methods, know-how, show-how, learning tool or aids, academic courses or portion(s) thereof, discoveries, inventions, specifications, plans, notes, diagrams, drawings, designs, pictures, images, text, audiovisual works, data, information and other items, expressions, or work of any kind that is authored, produced, created, conceived, collected, developed, discovered or made by Berlitz in the performance of this Agreement or which derive from, evolve from or result from any Services performed by Berlitz in connection with this Agreement, and any expression or physical embodiment thereof, including, without limitation, any sound or visual recording, multimedia presentation, other composition of matter, plan, or record, whether now existing, known or discovered or developed in the future, and with respect to all of the above, and any and all Intellectual Property (the legal rights in and to all of the above as provided by applicable statute, regulation or judicial decision), including, without limitation, patent, copyright, trademark, service mark, and trade secret) embodied therein, shall constitute Berlitz Proprietary Information to which Berlitz shall own all right, title and interest and which is subject to the confidentiality provisions of this Agreement.
  2. Furthermore, Client acknowledges and agrees that (except as otherwise set forth below) (i) possession of and access to any and all Berlitz materials ("Materials"), including but not limited to possession of or access to physical pedagogical and other materials and access to on-line materials furnished to students taking Berlitz
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training or courses, which may be kept by students or to which students may retain online access after the training or courses are completed, does not create or give rise to a license or any other grant of rights to Client or to such student to copy, revise, distribute, display or exploit those Materials or create any derivative works based thereon and (ii) such Materials are not and shall not be deemed to be work product. To further avoid doubt, so-called 'customized' content (planned, pre-mediated or incidental), if any, created by Berlitz and based upon existing Berlitz Materials or the Work shall not be deemed to be work product.

3. All copyrights and other intellectual property rights in and to such Materials owned or controlled by Berlitz (and/or its affiliates) shall remain the property of Berlitz (and/or its affiliates). The right to reproduce and use Berlitz Materials by CLIENT in any internally delivered program shall be granted to Client only upon the purchase of a Material License from Berlitz.
4. The provisions of this section are an essential part of this Agreement and shall survive for the duration of copyright of any Berlitz Materials (or Berlitz's affiliates' Materials) encompassed hereby.

## VI. NON-SOLICITATION

1. Client agrees not to solicit for hire or other retention any employee of Berlitz during the term of this Agreement. This restriction shall not apply to any individual employed by Berlitz who voluntarily seeks employment with Client on their own initiative or in response to employment advertisements in newspapers, trade publications or other public commercial media or as an unsolicited walk-in candidate.

## VII. COMPENSATION, BILLING AND PAYMENTS

1. Client agrees to pay Berlitz for the performance of Work rendered hereunder the amounts and upon the terms set forth herein and in the applicable Statement of Work attached hereto and made a part hereof as Exhibit A-"X".
2. Invoices shall be issued with such supporting documents as Client may require by Berlitz US in USD. All invoices shall be due and payable by Client no later than thirty (30) days after the receipt of invoice. All payments shall be made in U.S. funds by wire transfer pursuant to banking instructions provided by Berlitz or by check drawn on a U.S. bank and sent to Berlitz at the address listed below:

Berlitz Languages, Inc.  
Attn: Accounts Payable  
7 Roszel Road  
Princeton, NJ 08540

3. Unless directed otherwise in writing by Client, all invoices under this Agreement shall be addressed to:

ACCC Insurance Company

and/or

email to

## VIII. SUBCONTRACTING OR ASSIGNMENT

Berlitz shall not subcontract, assign or otherwise delegate any portions of the work or any moneys due hereunder without the prior written consent of Client, except that this Agreement may be assigned without consent to an affiliate and/or to an entity acquiring substantially all of the assignor's business. To avoid doubt, Client agrees that the

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employment by Berlitz of independent contractors to perform certain professional services hereunder shall not be or be deemed to be acts of subcontracting or assignment.

## **IX. WARRANTIES**

1. Each party warrants and represents to the other party that it has all requisite power and authority to enter into and fulfill its obligations under this Agreement.
2. Each party shall comply with all applicable international, national, regional, and local laws and regulations with regard to its performance of this Agreement, including any applicable laws related to privacy, publicity, data protection, and electronic communications, anti-corruption and bribery and copyright and trademark infringement nor shall encourage or afford convenience to its employees to commit any illegal act.
3. Berlitz warrants and represents to Client that it has all necessary resources and expertise to provide the Services; and it is not subject to any contractual or other restriction imposed by its own or any other organization's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with this Agreement.
4. Berlitz shall be responsible for the professional and technical competence of the personnel it assigns to perform work hereunder and will select reliable and competent individuals who will be able to effectively perform the obligations under the Agreement and who, while doing so, will respect local laws and customs and conform to a high standard of moral and ethical conduct.
5. Berlitz may at its discretion make substitutions or reassignments involving Berlitz Personnel assigned to perform the Work. Such substitutions or reassignments shall be made only with persons of equal abilities and qualifications. Berlitz shall notify Client of any removal of key personnel.

## **X. DATA PROTECTION**

1. Berlitz and Client shall at all times comply with all obligations under all applicable data protection and privacy legislation.
2. Berlitz and Client shall not, by any act or omission in connection with this Agreement, place one another in breach of any applicable data protection legislation.
3. The parties acknowledge and agree that where, in the course of performing its obligations under this Agreement, Berlitz uses personal data on behalf of Client, it shall not be entitled to use or otherwise process that personal data for any other purpose.

## **XI. ANTI-DISCRIMINATION**

1. Berlitz and Client shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
  2. Berlitz and Client shall take all reasonable steps to secure the observance of clause X(1) by all its employees or agents engaged in the performance of this Agreement.
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## XII. INDEMNIFICATION AND LIMITATION OF LIABILITY

Berlitz shall defend, indemnify and hold Client, its officers, agents and employees harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages ("Losses") arising out of the performance of this Agreement to the extent such losses are caused by or result from the negligent, reckless or unlawful acts or omissions of Berlitz, its officers, agents or employees.

Client shall defend, indemnify and hold Berlitz, its officers, agents and employees harmless from and against any and all Losses arising out of the performance of this Agreement to the extent such Losses are caused by or result from the negligent, reckless or unlawful acts or omissions of Client, its officers, agents or employees.

In no event will either party be liable to the other party for any lost profits or lost revenue, or for any indirect, special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement provided however, that the foregoing limitation of liability will not apply to: a) party's breach of the confidentiality provisions of this Agreement; b) any infringement of intellectual property rights in violation of this Agreement; c) any gross negligence, willful misconduct or fraud by a party in the performance of this Agreement; d) any failure by a party to comply with applicable laws in the performance of this Agreement; e) any failure by a party to comply with data protection and privacy legislation; or f) other categories of liability which cannot by applicable laws be limited.

## XIII. COMPLETE AGREEMENT, GOVERNING LAW AND MISCELLANEOUS PROVISIONS

1. The Agreement contains the full and complete understanding of the parties. No oral statements or agreements made prior to or at the signing of the Agreement, if any, shall be deemed to supplement or modify the written terms hereof. Neither party shall claim any amendment, modifications, waiver or release from any provisions hereof unless the same is in writing, signed by the parties hereto.
  2. In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this Agreement, Statements of Work (including Schedules thereto), and any amendments to any of the foregoing, the order of preference is: (i) the terms of any amendment to this Agreement; (ii) then the terms of this Agreement, unless expressly overridden by a Statement of Work; (iii) then the terms of any Schedules to the Statement of Work; (iv) then the terms of any amendment to a Statement of Work, and (v) the terms of any Statement of Work.
  3. This Agreement shall be construed in accordance with the laws of the State of New York applicable to contracts made and fully performed therein. In the event of any disputes arising hereunder, Berlitz and Client agree to resolve any such dispute by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and each party hereby consents to any such disputes being so resolved. Judgment on the award rendered in any such arbitration may be entered in any court having jurisdiction. All arbitration proceedings shall take place either in Princeton, New Jersey, or in the County of New York in the City and State of New York unless both Berlitz and Client shall otherwise agree. Berlitz and Client are both responsible for retaining their own legal counsel and the associated costs thereof including any court fees.
  4. If any provision in this Agreement contravenes or is otherwise invalid under any applicable laws, then such provision shall be deemed eliminated from this Agreement and the Agreement shall, as so modified, remain valid and binding on the parties hereto and in full force and effect.
  5. Berlitz shall not be liable for failure to perform its obligations if such failure is due to Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or significant interruption or failure of electricity. Berlitz shall not be entitled to any remuneration for the duration of an Act of God. Client may, during the continuance of any Act of God, terminate this Agreement by
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written notice to Berlitz if an Act of God continues for more than 21 (twenty one) business days. In the event of such termination, Client shall pay Berlitz for the Services provided up to the date when the Act of God first occurred.

6. The parties to this Agreement do not intend any person or entity not a party of this Agreement to be a beneficiary of any provision of this Agreement, and no provision of this Agreement shall be interpreted or construed as being for the benefit of any third party, and no third party shall by virtue of any provision contained herein be entitled to rely hereon or have a claim under this Agreement or with respect to the services provided pursuant to this Agreement. The foregoing shall not limit the right of Client, or any third party authorized by Client, to use Berlitz's Services and Deliverables as contemplated by this Agreement and any applicable SOW.
7. The parties and their respective counsel have had the opportunity to review this Agreement, and the Agreement will not be construed against any party merely because the Agreement or any provisions thereof were prepared by a particular party.
8. Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than Client that may receive services, deliverables or benefits pursuant to the Agreement is an incidental beneficiary only.
9. Any notice or other writing required by the Agreement shall be deemed to have been given when mailed by U.S. mail, postage prepaid, addressed as follows:

ACCC Insurance Company

Berlitz Languages, Inc.  
7 Roszel Road  
Princeton, NJ 08540

With copy to Office of General Counsel:  
legaldepartment@berlitz.us

IN WITNESS WHEREOF, the parties have caused this Master Services Agreement to be executed by their authorized representatives as of the Effective Date.

ACCC INSURANCE COMPANY

BERLITZ LANGUAGES, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# STATEMENT OF WORK TO THE SERVICES AGREEMENT

This Statement of Work ("SOW") is entered into between Berlitz Languages, Inc., a New York corporation ("Berlitz") and ACCC Insurance Company, is effective as of 9/15/2019 (the "Effective Date").

## I. GENERAL STATEMENT OF WORK

In accordance with the terms and conditions of the Services Agreement entered into by the parties effective as of 9/15/2019 (the "Agreement"), Berlitz will provide professional services (the "Services") and deliverables (the "Deliverables") (collectively, the "Work") as described herein to Client in accordance with this SOW and the Agreement. This SOW may be amended from time to time by written agreement of the parties. Some Services and Deliverables to be performed hereunder may be provided by subsidiaries or affiliates of Berlitz.

## II. TERM AND TERMINATION OF SOW

The term of this SOW commences on the "Effective Date" and terminates one (1) year following the Effective Date unless terminated earlier by either Party as set forth in the Agreement (the "Initial Term"). Subject to the Agreement, this SOW may be extended by written agreement of the parties (each an "Extension Period") and/or renewed for one or more additional one year terms (each a "Renewal Period"). After the Initial Term, for the Term of any agreed upon Extension Period or Renewal Period, Berlitz reserves the right to review and modify prices in its sole and absolute discretion.

## III. INVOICING AND PAYMENT TERMS

Invoicing and payment terms shall be as set forth in the Agreement.

## IV. SERVICES AND DELIVERABLES

### A. Language Testing Services

a) Berlitz shall provide language proficiency assessment and evaluation services for those of CLIENT's employees, potential employees, service providers or employees of any of CLIENT's affiliates or service providers, designated and identified to Berlitz by CLIENT or its affiliates in writing ("Examinee"), of the type and on the dates scheduled by CLIENT. Scoring for the assessments shall be in accordance with the scale outlined in [Exhibit B -The Common European Framework \(CEF\) Scale](#).

b) The Berlitz Simulated Oral Proficiency Interview and Berlitz Writing Proficiency Exam shall be conducted via computer.

c) The assessments shall be conducted at a CLIENT's facility with CLIENT's Human Resources or other qualified employees acting as proctors. CLIENT shall be solely responsible for ensuring the identity of the examinee is correct and integrity of the testing experience maintained. No fee shall be charged for assessments conducted at the CLIENT's facility.

e) Berlitz shall provide test results as follows:

- i) Berlitz Writing Proficiency Exam (WPE) via online portal no later than three business days after the time of the assessment.
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- ii) Berlitz Simulated Oral Proficiency Interview (SOPI) via online portal no later than three business days after the time of the assessment.

f) The Berlitz Simulated Oral Proficiency Interview (SOPI) is a 20-minute assessment delivered via computer. It comprises test items to elicit responses that involve language usage in general professional contexts. The final score is a proficiency level that describes the examinee's performance in several areas of oral proficiency.

g) The Berlitz Writing Proficiency Exam is a 60-minute assessment delivered via computer. It comprises test items to elicit responses that involve language usage in general professional contexts. The final score is a proficiency level that describes the examinee's performance in several areas of written proficiency.

## A - 2. COMPENSATION/FEES, BILLING AND PAYMENTS

### A – 2 – a. TESTING FEES

4. Client agrees to pay Berlitz for the performance of Work in accordance to [Exhibit A – Language Proficiency Testing Fees](#)

### A – 2 – b. BILLING

1. No later than 20 days following the end of any month, Berlitz shall invoice CLIENT for services provided in the preceding month. Each invoice shall include the following information: Period of Service(s) Covered; Number of Assessments and/or other services provided, and Invoice Date.

### A – 2 – c. PAYMENTS

All Payments shall be made in U.S. funds by wire transfer pursuant to banking instructions provided by Berlitz or by check drawn on a U.S. bank and sent to Berlitz at the address listed below no later than thirty days from the date of each monthly invoice:

Berlitz Languages, Inc.  
Attn: Accounts Payable  
7 Roszel Rd  
Princeton, NJ 08540

IN WITNESS WHEREOF, the parties have caused this Statement of Work to be executed by their authorized representatives as of the Effective Date.

ACCC INSURANCE GROUP

BERLITZ LANGUAGES, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXHIBIT A to Statement of Work, Effective as of 9/15/2019

Language Proficiency Testing Fees – rates expire at completion of this SOW term.

| Test                                                | Pricing       |
|-----------------------------------------------------|---------------|
| Berlitz Simulated Oral Proficiency Interview (SOPi) | \$65 per test |
| Berlitz Writing Proficiency Exam (WPE)              | \$65 per test |

## **Exhibit B – The Common European Framework of Reference (CEFR) Scale**

### **Oral Skills**

From "A Common European Framework of Reference for Languages: learning, teaching, assessment". Copyright Council of Europe, all rights reserved.

| <b>Proficiency Level</b> |           | <b>Descriptors of Speaking and Listening Skills</b>                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Proficient User</b>   | <b>C2</b> | Can understand with ease virtually everything heard or read. Can summarize information from different spoken and written sources, reconstructing arguments and accounts in a coherent presentation. Can express him/herself spontaneously, very fluently and precisely, differentiating finer shades of meaning even in more complex situations.                                                                                                                                      |
|                          | <b>C1</b> | Can understand a wide range of demanding, longer texts, and recognize implicit meaning. Can express him/herself fluently and spontaneously without much obvious searching for expressions. Can use language flexibly and effectively for social, academic and professional purposes. Can produce clear, well-structured, detailed text on complex subjects, showing controlled use of organizational patterns, connectors and cohesive devices.                                       |
| <b>Independent User</b>  | <b>B2</b> | Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialization. Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options. |
|                          | <b>B1</b> | Can understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc. Can deal with most situations likely to arise whilst traveling in an area where the language is spoken. Can produce simple connected text on topics, which are familiar, or of personal interest. Can describe experiences and events, dreams, hopes and ambitions and briefly give reasons and explanations for opinions and plans.                  |
| <b>Basic User</b>        | <b>A2</b> | Can understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, and employment). Can communicate in simple and routine tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate need.                      |
|                          | <b>A1</b> | Can understand and use familiar everyday expressions and very basic phrases aimed at the satisfaction of needs of a concrete type. Can introduce him/herself and others and can ask and answer questions about personal details such as where he/she lives, people he/she knows and things he/she has. Can interact in a simple way provided the other person talks slowly and clearly and is prepared to help.                                                                       |

## **Exhibit B (Cont.)– The Common European Framework of Reference (CEFR) Scale**

### **Writing Skills**

#### *Common Reference Levels: Global Scale*

From “A Common European Framework of Reference for Languages: learning, teaching, assessment”. Copyright Council of Europe, all rights reserved.

| Proficiency Level |    | Descriptors of Writing Skills                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proficient User   | C2 | Can write clear, smoothly flowing, complex texts in an appropriate and effective style and a logical structure which helps the reader to find significant points. Can produce clear, smoothly flowing, complex reports, articles or essays which present a case, or give critical appreciation of proposals or literary works. Can provide an appropriate and effective logical structure, which helps the reader to find significant points. Can write clear, well-structured expositions of complex subjects, underlining the relevant salient issues...                                                                                                                          |
|                   | C1 | Can write clear, well-structured texts of complex subjects, underlining the relevant salient issues, expanding and supporting points of view at some length with subsidiary points, reasons and relevant examples, and rounding off with an appropriate conclusion. Can expand and support points of view at some length with subsidiary points, reasons and relevant examples. Can write an essay or report which develops an argument systematically with appropriate highlighting of significant points and relevant supporting detail. Can evaluate different ideas or solutions to a problem                                                                                   |
| Independent User  | B2 | Can write clear, detailed texts on a variety of subjects related to his/her field of interest, synthesizing and evaluating information and arguments from a number of sources. Can write an essay or report which develops an argument, giving reasons in support of or against a particular point of view and explaining the advantages and disadvantages of various options. Can synthesize information and arguments from a number of sources. Can write short, simple essays on topics of interest. Can summarize, report and give his/her opinion about accumulated factual information on familiar routine and non-routine matters within his/her field with some confidence. |
|                   | B1 | Can write straightforward connected texts on a range of familiar subjects within his field of interest, by linking a series of shorter discrete elements into a linear sequence. Can write very brief reports to a standard conventionalized format, which pass on routine factual information and state reasons for actions.                                                                                                                                                                                                                                                                                                                                                       |
| Basic User        | A2 | Can write a series of simple phrases and sentences linked with simple connectors like ‘and’, ‘but’ and ‘because’.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                   | A1 | Can write simple isolated phrases and sentences.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

From “A Common European Framework of Reference for Languages: learning, teaching, assessment”. Copyright Council of Europe, all rights reserved.

## Language Proficiency Testing Statement of Work

The following Statement of Work (“SOW”) is entered into as of the date last executed below, and is issued pursuant to, and subject to the terms and conditions of the Master Services Agreement between ACCC Insurance and Language Testing International (LTI), effective \_\_\_\_\_ (“Agreement”) with respect to the following services. If there is any conflict between the terms of the SOW and the terms of the Agreement, the terms of the Agreement shall prevail, unless by the parties agree by specific references to the Agreement that one or more of its terms do not apply to this SOW.

### Proficiency Tests

| Test Type                                            | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Oral Proficiency Interview by Computer (OPIc)</b> | <p>*Test Description: An on-demand, computer-delivered speaking test with prompts delivered by an Avatar</p> <p>* Background assessment and self-assessment surveys completed by test taker creates an individualized test experience for each test taker (no two tests are alike)</p> <p>*Available Languages: Arabic, Mandarin Chinese, English, French, German, Italian, Japanese, Korean, Pashto, Persian Farsi, Portuguese, Russian and Spanish</p> <p>* Test Length: 20-40 minutes</p> <p>*Ratings results delivered within 1 business day</p> |
| <b>Oral Proficiency Interview (OPI)</b>              | <p>*Test Description: A scheduled, live, telephone test conducted by an ACTFL-certified tester</p> <p>*Available Languages: 120+ (including Spanish)</p> <p>*Test Length: 15-30 minutes</p> <p>*Ratings results delivered within 1 business day</p>                                                                                                                                                                                                                                                                                                  |

### Proficiency Ratings

The OPIc and OPI proficiency tests are live rated by ACTFL certified raters who have been trained and certified by the American Council on the Teaching of Foreign Languages (ACTFL).

### Proficiency Testing Services

Language Testing International is the exclusive licensee of the American Council on the Teaching of Foreign Languages (ACTFL), a leader in the development of proficiency evaluation methods and in the training of academicians in proficiency testing and proficiency-based teaching. ACTFL licensed LTI to act as the official ACTFL Testing Office in 1992. LTI administers over 600,000 language proficiency assessments annually in over 60 countries.

ACTFL develops its assessments through [validation studies and reliability evidence](#) and therefore affirms the appropriateness of the test and the accuracy of its results to inform the user about language proficiency and about an individual’s skills and abilities in speaking the target language. Should a test taker challenge the appropriateness of any ACTFL assessment or the accuracy of

results of a particular administration of an ACTFL assessment, ACTFL will provide expert assistance to the customer's own counsel in defending the test and results.

Before testing ACCC Insurance bilingual candidates and employees, LTI will work with ACCC Insurance's Subject Matter Experts (SMEs) in order to set a fair and appropriate, legally defensible minimum proficiency level for the bilingual positions.

LTI will create a customized client utility website to facilitate the online scheduling of the assessments selected for this position. Through this site, ACCC Insurance will be able to order tests, view schedules and retrieve ratings at any time.

In the event of a rating dispute, LTI will retrieve the recording of the test and forward it to an ACTFL Tester Trainer who will blindly rate the test to confirm the rating, and if requested, provide a rating rationale. This process, in its entirety, is offered at no cost.

### **Determining Minimum Levels of Language Proficiency**

LTI has conducted hundreds of job analyses (task analyses) for over 100 positions across a number of different industries (healthcare, telecom, finance, insurance, manufacturing, and others).

The [Oral Proficiency Levels in the Workplace](#) infographic shows the types of minimum recommended levels of language proficiency that companies' Subject Matter Experts (SMEs) for these positions have developed in the standard-setting process with LTI. For high volume testing and establishing a legally defensible assessment specific to ACCC Insurance's bilingual positions, we recommend conducting a Language Needs Assessment known as the LTI Task (Job) Analysis

### **Task Analysis Overview**

1. ACCC Insurance to provide LTI with detailed job description of the position(s) to be filled
2. ACCC Insurance to provide LTI with a list of 2-8 Subject Matter Experts (SMEs) for the position , including the contact information for all SMEs, their current titles and whether or not they are bilingual
3. Schedule a Project Kickoff call with our Task Analysis team and the person(s) responsible for managing the Task Analysis project at ACCC Insurance (**approximately 15min**)
4. Schedule a Task Analysis Kickoff call with the SMEs for the position (**approximately 15min**)
5. SMEs to provide information and opinions through an online survey for the position (**1 hour**)
  - a. LTI Task Analysis Survey for Speaking (**20min**)
    - i. Used to identify the communication tasks and functions, range and types of situations, content/context areas, level of accuracy, and degree of elaboration needed to effectively perform the job functions. The survey questions gather data directly related to language proficiency levels according to the [ACTFL Proficiency Guidelines for Speaking](#).
  - b. ACTFL Proficiency Descriptions Review (**20min**)
    - i. SMEs will be asked to read descriptions of the levels of proficiency for speaking based on the *ACTFL Proficiency Guidelines for Speaking*. SMEs will be asked to identify whether each proficiency level is acceptable (or not) for the position.

- c. Review of Speech Samples (20min)
      - i. SMEs will be asked to listen to a range of speech samples at different levels of proficiency, and state if the competence exhibited in each sample was acceptable (or not) to perform the communication tasks required of the position.
6. Task Analysis team compiles data and conducts analysis
7. LTI delivers final Task Analysis report, including recommended minimum level(s) of proficiency for the position

**Total Estimated Time: 2-4 weeks**

### **Proctoring the Assessment**

On-Site: For tests conducted on-site at a company's office location, a company-assigned HR, Recruitment, or Management staff member acts as proctor for the assessment to validate the identity of the candidate.

### **Test Administration**

Upon account set up, LTI creates a Client Site Portal where test administrators (assigned by your company) are provided access to the system to:

- Submit test requests
- Retrieve ratings results
- View invoices
- Download candidate / test data
- Maintain user access

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### **Price Quote for Language Assessment Services**

**ACTFL Oral Proficiency Interview by Computer** (OPIC)-----\$57 USD per test

**ACTFL Oral Proficiency Interview** (OPI)-----\$113 USD per test

OPI No-Show Fee-----\$55 USD per test

\*If LTI is not notified of test reschedule or cancellation 24 hours prior to the scheduled test time, a No-Show fee is Charged.

**LTI Task Analysis** (optional)-----\$1,000 (one-time fee)

**LTI Client Site (Test Administration) Portal**-----No charge

A unique test administration site is created for assigned HR test administrator(s) to schedule tests, review ratings, print certificates, download data, add/delete/edit test admin users. There is no additional cost to add or delete test types (speaking, writing, reading, or listening) or languages to any test type.

**On Board Training and Support**-----No charge

LTI provides virtual onboard training for your HR department test administrators at a date & time convenient to your organization. Included are a Client Site User Manual and Examinee Handbook(s) for test takers. Customer and Technical Support is provided M-F 8am – 6:30pm ET via [support@languagetesting.com](mailto:support@languagetesting.com) or 800-486-8444 extension 708.

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**LTI Point of Contact**

Renée Tarrant  
Global Accounts Manager  
[rtarrant@languagetesting.com](mailto:rtarrant@languagetesting.com)  
1-800-486-8444 ext. 158

ACCC INSURANCE COMPANY

LANGUAGE TESTING INTERNATIONAL, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

## MASTER AGREEMENT FOR LANGUAGE TESTING SERVICES

This Master Agreement for Language Testing Services (this “Agreement”) is made and entered into this [ ] day of (month, year) (the “Effective Date”), between Language Testing International, Inc., a Delaware corporation having its principal place of business at 445 Hamilton Avenue, Suite#1104, White Plains, NY 10601, (“LTI”) and [ ], having its principal place of business at [ ] (“Customer”).

**WHEREAS**, LTI holds the exclusive license with The American Council on the Teaching of Foreign Languages (“ACTFL”) to administer and score the ACTFL Oral Proficiency Interview (“OPI”), the ACTFL Oral Proficiency Interview Computer (“OPIc”) and other testing facilities for evaluating a candidate’s proficiency in the target language (the “Tests”), and uses ACTFL-trained and certified oral proficiency experts to administer and/or score those tests;

**WHEREAS**, Customer desires to purchase certain test administration and scoring services (“Testing Services”) from LTI for the purpose of assessing individual candidates for proficiency in various languages;

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained in this Agreement, the Parties hereby agree as follows:

**1. Testing Services.** LTI shall provide the Testing Services in accordance with the terms stated herein below. LTI shall only be obligated to evaluate each candidate’s proficiency in the target language, which will be generated by LTI through scoring of the Tests in accordance with the ACTFL Proficiency Guidelines (which are incorporated herein and made a part hereof by this Agreement reference). LTI shall provide the Customer only the final rating for each candidate, which rating shall include all standard explanations of the rating pursuant to the ACTFL Proficiency Guidelines. If the Customer requests individualized feedback or information about a candidate’s rating, LTI will provide to the Customer an individualized written report containing diagnostic comments identifying the areas of unsustained performance according to the ACTFL Proficiency Guidelines (each, a “Report”) in exchange for a reasonable fee to be mutually agreed between LTI and the Customer. LTI shall not provide, and shall not be obligated to provide, the Customer with copies of the candidate’s Test, recorded interview, any transcription of that interview, scoring protocols or related materials, all of which are and shall remain the exclusive and confidential property of LTI.

### **2. Fees.**

**2.1 Prices.** All costs for the Testing Services shall be in accordance with the Price List attached hereto as Exhibit A, which prices shall remain fixed through the first anniversary of the Effective Date.

**2.2 Payment.** LTI shall deliver an invoice semi-monthly for all Testing Services completed in the half month period preceding the invoice. The invoice shall be payable on or before the 30<sup>th</sup> calendar day following the invoice date. If the Customer disputes any portion of an invoice, the Customer shall pay the undisputed portion of the invoice by the applicable due date and advise

LTI promptly of the portion of the invoice disputed and the reason for the dispute. LTI and the Customer shall confer in good faith to resolve any such dispute. All payments to LTI shall be made free and clear of, and without deduction for, any and all present and future taxes, levies, charges, set-offs, counterclaims, netting or withholding. LTI shall provide the Customer with a completed Form W-9.

**3. Term.** This Agreement shall be effective as of the Effective Date first set forth above and shall continue in full force and effect until anniversary date or terminated in accordance with Section 4 (the “Term”). The Initial Term will be automatically extended for successive terms of one (1) year each commencing on the day following the then current Expiration Date and terminating on the next anniversary of the Expiration Date, which date shall become the new Expiration Date, unless either Party gives the other Party notice to terminate this Agreement at least ninety (90) days prior to the original Expiration Date, and in the case of any extension of the Initial Term or any Renewal Term, prior to the new Expiration Date. The total period of time during which this Agreement remains in effect will be the “Term.”

**4. Termination.** This Agreement shall terminate on the first of the following events to occur.

4.1 Termination by the Customer. The Customer may terminate this Agreement or any Statement of Work on contemporaneous written notice to LTI if LTI: (i) refuses or is unable to perform the Tests; (ii) materially breaches any provision of this Agreement or any Statement of Work; (iii) commits an illegal act that constitutes a felony or an act that constitutes a misdemeanor involving fraud, misappropriation or material dishonesty; or (iv) becomes the subject of a proceeding under Federal or state bankruptcy, receivership, insolvency or similar law, which is not dismissed within thirty (30) days after being instituted, or makes an assignment for the benefit of its creditors.

4.2 Termination by LTI. LTI may terminate this Agreement or any Statement of Work on contemporaneous written notice to the Customer if the Customer: (i) materially breaches any provision of this Agreement or any Statement of Work; (ii) commits an illegal act that constitutes a felony or a misdemeanor involving fraud, misappropriation or material dishonesty; or (iii) becomes the subject of a proceeding under Federal or state bankruptcy, receivership, insolvency or similar law, which is not dismissed within thirty (30) days after being instituted, or makes an assignment for the benefit of its creditors.

4.3 Payment Upon Termination. If this Agreement is terminated pursuant to this Section 3, the Customer shall pay LTI all fees and expenses, if any, owed to LTI up to and including the date of termination in accordance with Section 2.2.

**5. Agents and Subcontractors.** A portion of the services provided by LTI under this Agreement, including the experts retained to administer and score the Tests, may be performed for the Customer by agents and subcontractors, which may be affiliates of LTI or third parties selected by LTI (“Agents”). LTI shall select any Agents in good faith and with reasonable care and shall

ensure that all Agents administering or scoring a Test are trained and certified by ACTFL in the target language.

**6. Candidate Information.** The Customer shall not provide LTI with any confidential or personal information concerning any candidate, except the Customer may provide the candidate's name, a unique identifying number (which number shall not be the candidate's social security number or any other number issued to the candidate by any federal, state or other government authority), and contact information. The foregoing information shall be deemed Confidential Information for purposes of Section 8 but shall become the property of LTI upon its receipt.

**7. Representations and Warranties.**

7.1 By LTI. LTI hereby makes the following representations and warranties:

(i) it is duly organized and validly existing under the laws of the jurisdiction of its organization and is in good standing thereunder;

(ii) it, and its signatory, has the requisite power and authority to enter into, deliver and perform its obligations under this Agreement;

(iii) it has a valid, exclusive license to administer the Tests from ACTFL and such license shall remain in force and effect through the Term;

(iv) in connection with performing the Testing Services, it will not violate or infringe upon the rights of any third party, including but not limited to confidential relationships, publicity rights, privacy rights, patent, trademark, service mark, trade secret or copyright rights; and

(iv) this Agreement is valid and legally binding against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally;



7.2 By the Customer. The Customer hereby makes the following representations and warranties:

(i) it is duly organized and validly existing under the laws of the jurisdiction of its organization and is in good standing thereunder;

(ii) it, and its signatory, has the requisite power and authority to enter into, deliver and perform its obligations under this Agreement; and

(iii) this Agreement is valid and legally binding against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally;

7.3 Continuing Representations. The foregoing representations and warranties shall continue during the term of this Agreement. If, at any time, any event occurs that would make any representation or warranty of a party not true, that party shall notify the other party in writing within ten (10) business days.

## **8. Confidentiality.**

8.1 Definition. The “Confidential Information” of a disclosing party means any and all oral, written or recorded (in any media format) information of the disclosing party (or its affiliates, directors, officers and agents (including, LTI’s Agents)) that the disclosing party identifies as confidential at the time of disclosure or is reasonably understood by the receiving party to be confidential due to the nature of the information disclosed and the circumstances of disclosure, including, without limitation: (i) the Tests; (ii) Test questions; (iii) candidate responses; (iv) candidate scores; (v) recordings and transcripts of Tests; (vi) the administration of the Tests; (vii) testing procedures; (viii) scores and scoring produces and protocols; (ix) the identity of the individuals administering and scoring the Tests; and (x) the identity of candidates. Confidential Information shall not include information that: (A) at the time of disclosure is available to the public; (B) after disclosure becomes available to the public through no fault of the receiving party, provided that the obligation of the receiving party shall cease only after the date on which such information has become available to the public; (C) the receiving party can demonstrate through tangible evidence that the information was in its possession before receipt from the disclosing party; (D) is disclosed to the receiving party without restriction on disclosure by a third party who has the lawful right to disclose the information; or (E) is approved for release by written authorization of the disclosing party;. Confidential Information shall not be deemed to be within the foregoing exceptions because it is: (1) specific and embraced by more general information in the public domain or the receiving party’s possession; or (2) a combination which can be pieced together to reconstruct the Confidential Information from multiple sources, none of which shows the whole combination, its principle of operation and method of use.

8.2 Protection of Confidential Information. The receiving party shall exercise reasonable care to prevent the disclosure of the disclosing party’s Confidential Information to any third party, shall restrict its use to the services to be performed under this Agreement and shall limit its disclosure within the receiving party’s own organization to individuals whose duties justify the need to know the information, who have a clear understanding of the obligations of this Agreement, and who are legally obligated to comply with the terms of this Agreement.

8.3 Ownership of Confidential Information. This Agreement does not grant any right or license, express or implied, to the receiving party to use the Confidential Information of the disclosing party except for the purpose of this Agreement, nor any right or license, express or implied, under any patent, nor any right to purchase, distribute or sell any Confidential Information. The Customer specifically acknowledges that it is not purchasing any Test and that this Agreement shall not entitle Customer to own or control all or any part of a Test and any materials related to the Test. The Customer acknowledges that ACTFL owns all right, title and interest in the Tests and all materials related to the Tests and that such materials are subject to a copyright owed by ACTFL.

8.4 Return of Confidential Information. Upon the earlier of the termination of this Agreement or the written demand of the disclosing party, the receiving party shall promptly return to the disclosing party any and all Confidential Information together with any copies or reproductions thereof and shall permanently destroy all related data in its computer and other electronic files, provided, however, that LTI may retain materials concerning, and shall not be obligated to provide to the Customer, information related to or arising out of Tests administered under this Agreement, including candidate identity, test scores and recordings or transcripts of Tests, provided that LTI retains such information in compliance with its obligations under Section 8.2.

8.5 Breach. If a receiving party breaches Section 8.2 of this Agreement, the receiving party shall within one (1) business day following the discovery of the breach or the reasonable probability of a breach notify the disclosing party. The notice may initially be oral or in writing and shall summarize the breach or potential breach, the date and time of the breach or potential breach, a description of how the breach or potential breach was discovered and a description of the Confidential Information disclosed or potentially disclosed, all in reasonable detail. If the initial notice is provided orally, the receiving party shall deliver a written notice within one (1) business day of the initial notice.

## **9. Agency; Non-Exclusivity.**

9.1 Independent Contractor. LTI shall for purposes of this Agreement and the Testing Services be deemed an independent contractor with respect to the Customer. The Customer understands, agrees and acknowledges that in no event shall LTI be deemed a general agent, partner or joint venture partner of the Customer or responsible for any of the Customer's actions, activities or omissions.

9.2 Non-Exclusive Relationship. LTI shall not be precluded from providing services of a comparable or a different nature to any other customer, including without limitation any of the Customer's affiliates, competitors, suppliers, vendors or customers.

## **10. Liability; Indemnification.**

10.1 Limited Liability. Neither LTI nor the Customer shall be liable to the other party for any indirect, incidental, consequential, special, punitive, or exemplary damages whatsoever arising under or related to this Agreement, except this limitation shall not apply to a breach of Section 8.

10.2 Indemnification by Customer. The Customer shall promptly defend, indemnify and hold harmless LTI, ACTFL, each of their respective parents, subsidiaries and affiliates, each of their respective successors and assigns and all of the foregoing entities' officers, directors, employees and agents, (each, an "LTI Indemnified Party") against any and all losses, claims, judgments, liabilities, costs, expenses (including reasonable attorneys' fees) and amount paid in settlement (provided such settlement was approved in writing by the Customer, which approval shall neither be unreasonably delayed or denied) of any third party claims arising out of or related to: (i) a candidate's Test (including any claim based on a candidate's employment or other business interest affected by such Test); (ii) any attempt by the Customer or any candidate related to the Customer, to

obtain copies of any Test or any materials relating to the Testing Services, other than the final rating or Report expressly to be provided under Section 1; (iii) any material breach of this Agreement, including without limitation Section 8; (iv) an act by the Customer, its parent, subsidiaries or affiliates, each of their respective successors and assigns and all of the foregoing entities' officers, employees or agents that constitutes willful misconduct, gross negligence or the commission of a felony or an act that constitutes a misdemeanor involving fraud, misappropriation or material dishonesty.

10.3 Indemnification by LTI. LTI shall promptly defend, indemnify and hold harmless the Customer, its parents, subsidiaries and affiliates, each of their respective successors and assigns and all of the foregoing entities' officers, directors, employees and agents, (each, a "Customer Indemnified Party") against any and all losses, claims, judgments, liabilities, costs, expenses (including reasonable attorneys' fees) and amount paid in settlement (provided such settlement was approved in writing by LTI, which approval shall neither be unreasonably delayed or denied) of any third party claims arising out of or related to: (i) infringement of a third party's intellectual property rights in connection with the Tests or the Testing Services; (ii) any material breach of this Agreement, including without limitation Section 8; or (iii) an act by LTI, its parent, subsidiaries or affiliates, each of their respective successors and assigns and all of the foregoing entities' officers, employees or Agents that constitutes willful misconduct, gross negligence or the commission of a felony or an act that constitutes a misdemeanor involving fraud, misappropriation or material dishonesty.

10.5 Indemnification Claims. With respect to any third party claim for which indemnification will be sought by an LTI Indemnified Party or a Customer Indemnified Party (each an "Indemnified Party"), the Indemnified Party will as promptly as practicable, after knowledge of the claim, notify LTI or the Customer, as the case may be, (the "Indemnifying Party") in writing in as much detail as possible as to the existence and nature of the claim, but the failure to so notify shall not relieve the Indemnifying Party from any liability that it may otherwise have to such Indemnified Party except to the extent that the Indemnifying Party is materially prejudiced or forfeits any substantive rights or defenses as a result of such failure. The Indemnifying Party shall have the right to control the defense of any claim, subject to the obligation to obtain the Indemnified Party's prior consent to any settlement.

10.4 Claims Support. If a candidate sues Customer in connection with the rating provided by LTI or its Agent under Section 1, LTI shall make available to Customer in defense of its program an ACTFL and/or LTI expert witness for purposes of deposition and/or direct testimony as to the testing process, the validity of the Test and rating, and the use of the test in the Customer's testing program; provided however, that the cost of such expert witness shall be borne solely by the Customer. In exchange, Customer shall not participate in any attempt and shall use its best efforts to resist requiring any individual that scored the Test to be allowed to testify under any circumstances. If the Customer or LTI is required to provide copies of any Test or any materials related to the Test by order of a court of law, the Customer shall use its best efforts to resist such order, and if the Customer is unable to resist the order, the Customer shall use its best efforts to ensure that such disclosure shall only be made under seal pursuant to the terms and conditions of a confidentiality order of that court.

## **11. Dispute Resolution.**

11.1 Mediation/Arbitration. If a dispute arises out of or relates to this Agreement or the Testing Services, LTI and the Customer: (i) shall work in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association; and (ii) if the mediation is unsuccessful, shall submit the dispute to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, except that the arbitration shall be conducted before a panel of three arbitrators, one of whom shall be appointed by LTI, one of whom shall be appointed by the Customer, and the third of whom shall be appointed by the arbitrators selected by the parties. Such arbitration shall take place in White Plains, New York. Judgment upon the award rendered by the arbitrators may be entered in accordance with Section 11.3. The arbitrators shall award all costs of the arbitration, including attorneys' fees, in accordance with what they deem to be just and equitable under the circumstances.

11.2 Injunction. Notwithstanding the foregoing, if a party breaches or threatens to breach Section 8 of this Agreement, the parties each acknowledge and admit that monetary damages will likely be inadequate to compensate the non-breaching party for the damages that would likely arise as a result of that breach. Accordingly, pending the selection of the arbitrators under Section 11 and not in lieu of any other damages to which that party may be entitled, the non-breaching party shall be entitled to seek temporary and preliminary relief enjoying the breaching party's breach or threatened breach of Section 8, without the need to post a bond.

11.3 Jurisdiction. The parties consent to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court is unable to exercise jurisdiction for any reason, the New York State Supreme Court, New York County, Commercial Division, to compel or enforce mediation or arbitration under Section 11.1 or to enter an injunction under Section 11.2. Each of LTI and the Customer: (i) consent to the exercise of personal jurisdiction over it by these courts; (ii) waive any objection to jurisdiction based on improper venue or inconvenient forum; and (iii) waive to the maximum extent permitted by law to have any dispute arising under or related to this Agreement decided by a jury.

**12. Governing Law.** This Agreement shall be governed by the internal laws, and not by the laws regarding conflicts of laws, of the State of New York.

**13. Force Majeure.** Either party may terminate this Agreement, upon written notice, without liability as a result of acts of God over which neither party has control, including, but not limited to, government regulation, terrorism, disaster, strikes of others than those employed by the parties, civil disorder, unavailability of transportation facilities consistent with those in existence at the time the contract, reasonable threat or endangerment to the party or its officers, employees or Agents and other factors over which neither party has any control, making it impossible, illegal, commercially impracticable, or inadvisable to perform materially respective obligations within this Agreement.

**14. Notices.** Notices, certificates or other communication sent or given under this Agreement shall be in writing and may be served by personal delivery, overnight express courier or

by postage prepaid, registered or certified mail, return receipt requested, to the respective parties at the mailing address set forth in the Preamble to this Agreement or to such other addresses as they may subsequently designate by written notice in the prescribed manner.

**15. Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and legal representatives; provided, however, that neither party shall assign its rights or delegate its obligations hereunder without the express prior written consent of the other party which consent shall not be unreasonably withheld or delayed. Notwithstanding the preceding, however, upon written notice to the other party, either party may assign its rights and obligations under this Agreement to a parent or subsidiary that is controlling, controlled by, or under common control with, said party provided that the party assuming obligations under this Agreement agrees to do so in writing and has adequate resources to meet its obligations hereunder. Any attempted assignment of this Agreement not in accordance with this subsection shall be null and void. Upon completion of any assignment under this section, the assigning party shall have no further liability with respect to any of the rights or obligations assigned.

**16. Survival.** Sections 8, 10 and 11 shall survive the termination of this Agreement for any reason.

**17. No Waiver.** Any waiver must be in writing and shall be valid only for the specific instance for which given. No failure or delay on the part of LTI or the Customer in exercising any right, power or remedy under this Agreement shall operate as a waiver of that right, power or remedy, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy.

**18. Amendment.** This Agreement or any Statement of Work entered under this Agreement may only be amended or modified in a written document executed by both parties.

**19. Severability.** If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby and shall remain enforceable to the fullest extent permitted by law.

**20. Entire Agreement.** This Agreement, any Statement of Work entered under this Agreement and other documents incorporated herein or therein by reference, are the final, full and exclusive expression of the acknowledgement of the parties and supersedes all prior acknowledgements, understandings, writings, proposals, representations and communications, oral or written, of either party with respect to the subject matter hereof and the transactions contemplated hereby.

**21. Headings.** Headings to Sections in this Agreement are for the convenience of the parties only, and are not intended to be or to affect the meaning or interpretation of this Agreement.

**22. Counterparts.** This Agreement may be signed in one or more counterparts (which signatures may be exchanged by facsimile or by electronic .PDF, .TIFF, JPEG or similar file), each of which shall be deemed an original and all of which, when taken together, shall constitute one, original instrument.

**WHEREFORE,** LTI and the Customer have entered into this Agreement as of the Effective Date.

**[ ]**

**LTI, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Name: Jin Kim \_\_\_\_\_

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

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

EXHIBIT A  
PRICE LIST

- |                                                 |                                    |
|-------------------------------------------------|------------------------------------|
| • Oral Proficiency Interview by Computer (OPIC) | \$60 per test                      |
| • Oral Proficiency Interview (OPI)              | \$119 per test                     |
| • OPI No Show                                   | \$55 per missed OPI scheduled test |
| • Task (Job) Analysis                           | \$1,000 (one time)                 |

## Statement of Work

This statement of work (the “**SOW**”) is entered into as of \_\_\_\_\_, 2019 (“**SOW Effective Date**”) and is governed by the Master Services Agreement (the “**Agreement**”), dated as of \_\_\_\_\_, 2019, by and between Elahi Enterprises Inc. dba Akorbi (“**Supplier**”) and ACCC Insurance (“**Client**”). All terms of the Agreement shall apply to this SOW and the parties hereunder. All capitalized terms not defined in this SOW have the meanings ascribed to them in the Agreement.

| Product                     | Rate  | Number of Tests | Total Price |
|-----------------------------|-------|-----------------|-------------|
| TrueNorth Speaking Test     | \$20  |                 | \$          |
| Annual Testing Platform Fee | \$250 | Basic           | \$          |
| Written Translation Test    | \$70  |                 | \$          |
| <b>Total</b>                |       |                 | \$          |

*Note: The above pricing rates are estimates based on the anticipated volume tier as of the SOW Effective Date. All pricing terms are subject to the terms and conditions below.*

### Suppliers Responsibilities:

- Provide online assessment, technical support, initial training, and client/user guides and documentation for oral Spanish Proficiency Testing
- Provide online dashboards, technical support, initial training and onboarding for written Spanish Proficiency Testing

### Assessment Pricing Terms:

- The Total Price is due in 12 equal monthly payments beginning on the SOW Effective Date and due on the same day each month. Total Price can also be paid upfront at the beginning of a term.
- The Testing Fee covers [\_\_\_\_] tests per year. If Client exceeds the number of tests covered by the Testing Fee within the 12-month term, Supplier will invoice Client each month for any testing that exceeds the tests covered by the Testing Fee. Payment is due within 30 (thirty) days of the date of invoice.
- If Client is on track to exceed annual testing volume within a Term, Client may elect in writing at any time to renew the Agreement for a higher volume/lower priced tier. This will effect the beginning of a new 12-month Term and the testing volumes will reset at such time.

### Annual Testing Platform Fee:

- The Annual Testing Platform Fee set forth in the table below is due at the beginning of each 12-month period during the term of the SOW.
- If Client chooses to upgrade from a lower to a higher level platform, Payments of the Access Fee for a lower platform may be counted as credit towards the Access Fee of a higher platform within a given 12-month Annual Testing Platform Fee payment period.

## Annual Testing Platform Fee

|                                         | \$250<br>Basic |                  | \$800<br>Classic |                           | \$1,000<br>Enterprise |                            |
|-----------------------------------------|----------------|------------------|------------------|---------------------------|-----------------------|----------------------------|
|                                         | Available      | Price            | Available        | Price                     | Available             | Price                      |
| Annual Tests / Reports Limit            | 999            |                  | 4,999            |                           | Unlimited             | Included                   |
| Number of Admins Available              | up to 2        |                  | up to 5          |                           | up to 10              | Included                   |
| Additional Admins                       | No             |                  | No               |                           | Yes                   | \$50/year/user             |
| Connected Accounts                      | No             |                  | No               |                           | Up to 2               | Included                   |
| Immediate Score Report                  | Yes            | Included         | Yes              | Included                  | Yes                   | Included                   |
| Administrative Dashboard                | Yes            | Included         | Yes              | Included                  | Yes                   | Included                   |
| Assign Tests by Email or Link           | Yes            | Included         | Yes              | Included                  | Yes                   | Included                   |
| White Labeling                          | Yes            | \$1,000 annually | Yes              | \$1,000 annually          | Yes                   | Included                   |
| Custom Sub-domains                      | No             |                  | Yes              | \$500 per domain per year | Yes                   | \$500 per domain per year  |
| Multi-Tests / Scale Comparison          | Yes            | Included         | Yes              | Included                  | Yes                   | Included                   |
| Additional Connected Accounts Available | No             |                  | No               |                           | Yes                   | \$500 per account annually |
| Custom API Integration                  | No             |                  | No               |                           | Yes                   | Custom                     |
| Custom Integration / Implementation     | No             |                  | No               |                           | Yes                   | Custom                     |
| Custom Analytics                        | No             |                  | No               |                           | Yes                   | Custom                     |
| Custom Test Features                    | No             |                  | No               |                           | Yes                   | Custom                     |

### Term:

- This SOW will commence on the SOW Effective Date and will continue for an initial period of one (1) year (the **“Initial Term”**). After the Initial Term, the SOW will automatically renew at the same volume tier for subsequent twelve (12) month periods (the **“Renewal Term”** and collectively with the Initial Term, each a **“Term”**), unless either party provides written notice to the other party not to renew no later than thirty (30) days prior to the end of the then current Term.

#### “Client”

**ACCC Insurance**

Signed: \_\_\_\_\_

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

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

Address for Notice: \_\_\_\_\_

\_\_\_\_\_

#### “Supplier”

**Akorbi**

Signed: \_\_\_\_\_

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

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

Address for Notice:  
6504 International Parkway, Suite 1500  
Plano, TX 75093

EMMERSON LEARNING, INC.

MASTER SERVICES AGREEMENT

This Master Services Agreement ("**Agreement**") is made and entered into between [ ] ("**Client**"), and Emmersion Learning, Inc., a Delaware corporation ("**Emmersion**" and together with Client, the "**Parties**"), effective as of the Effective Date (defined below). The Parties agree as follows:

**1. SERVICES**

1.1 Engagement of Services. Emmersion agrees to provide certain services to Client (collectively, the "**Services**") during the Term (as defined below), as the parties agree to in writing from time to time. The parties hereby agree that any such agreement between the parties for the provision of Services shall be specified by the attachment of one or more Statements of Work ("**SOW**"), each of which shall be deemed an essential part of this Agreement and each of which shall hereby incorporate the terms of this Agreement by reference. In the event of a conflict between any SOW and this Agreement, the Agreement will prevail unless otherwise expressly provided in the applicable fully-executed SOW. Capitalized but undefined terms used in any SOW will have the meaning first ascribed to them in this Agreement.

1.2 Restrictions on Services. Emmersion shall not, and Client shall not request to be performed, work on any projects that (a) are considered illegal in the United States, (b) contain illegal content/materials, infringing upon the rights of Emmersion or any third party, or (c) promote or facilitate the sale or use of (i) adult entertainment or oriented products or services (including any pornographic materials and escort services), (ii) firearms or other weapons, (iii) alcohol, tobacco, or drugs and any related controlled substances and paraphernalia, (iv) occult materials, (v) gambling and betting (including lottery tickets, online casino gaming, and off-track betting), or (vi) any other products or services that Emmersion may otherwise deem harmful to its business or the business of its customers, in its reasonable discretion.

**2. COMPENSATION**

2.1 Fees. As sole compensation for the performance of the Services during the Initial Term, Client shall provide to Emmersion the consideration as described in the applicable SOW (the "**Fees**").

2.2 Payment Methods. Client may pay any Fees by wire transfer, ACH, credit card (up to \$5,000 USD), and/or check (within the United States). Emmersion reserves the right to alter the acceptable payment methods in its reasonable discretion, and/or require automatic credit card or ACH payment upon written notice to Client.

2.3 Delinquent Payments. **Fees are due and payable as set forth in the SOW.** If Fees remain unpaid for more than three (3) days after written notice (including email or other electronic communication) from Emmersion to Client, Emmersion may suspend the Services. A finance charge of 1.5% per month (or the maximum amount allowed by law, if less) shall accrue on any Fees that remain unpaid for more than ten (10) days after becoming due. If any Fees remain unpaid for more than thirty (30) days after becoming due, Client agrees that Emmersion reserves the right to (i) deem such failure to pay as an effective termination of the applicable SOW and/or (ii) deem such failure to pay as a breach of the Agreement subject to termination set forth in Section 3.3 below. Client further agrees to pay any attorney fees, court costs, or other costs incurred in collection of delinquent accounts.

2.4 Rate Changes. The Fees for each Renewal Term may reflect an increase in pricing to the then current rates offered by

Emmersion; provided that Emmersion shall notify the Client of a price change at least sixty (60) days before the end of the then-current term.

2.5 Taxes. Other than net income taxes imposed on Emmersion, Client will bear all taxes, fees, duties, and other governmental charges (collectively, "**taxes**") resulting from this Agreement and any SOW. Client will pay any additional amounts as are necessary to ensure that the net amounts received by Emmersion after all such taxes are paid are equal to the amounts that Emmersion would have been entitled to in accordance with this Agreement and any applicable SOW as if the taxes did not exist.

**3. TERM AND TERMINATION**

3.1 Term of the Master Services Agreement. This Agreement will commence on the date signed by both parties (the "**Effective Date**") and shall continue for an initial period of one (1) year (the "**Initial Term**"). After the Initial Term, the Agreement shall automatically renew for subsequent twelve (12) month periods (each a "**Renewal Term**" and collectively with the Initial Term, each a "**Term**"), unless either party provides written notice to the other party not to renew no later than thirty (30) days prior to the end of the then current Term.

3.2 Effect of Termination on SOW. Termination of this Agreement alone will not result in the termination of any previously entered into SOW, the term of which will be detailed in the applicable SOW, and the terms of this Agreement will continue in effect for purposes of such SOW, and terminating this Agreement will terminate the ability of the parties to enter into subsequent SOW(s) that incorporate the terms of this Agreement.

3.3 Termination. Either Party may terminate this Agreement at any time (i) upon the other Party's breach of any material provision of this Agreement that remains uncured for thirty (30) days after receiving written notice of such breach; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. For the avoidance of doubt, Client's failure to pay any Service Fees when due shall be deemed a breach of a material provision of this Agreement.

3.4 Survival. Upon termination, all rights and duties of the Parties toward each other cease except that:

(a) Within fifteen (15) days of the effective date of termination, Client will pay all amounts owing to Emmersion; and

(b) Sections 3.4, 3.5, 4, 5, 6, 7, and 8 will survive termination or expiration of this Agreement.

3.5 Return of Materials. Upon the termination of this Agreement and upon a Disclosing Party's written request, each Recipient will deliver to the Disclosing Party or destroy all copies of all Confidential Information that are in the Recipient's possession or control.

#### 4. CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

4.1 Definition. “**Confidential Information**” means any non-public information that relates to the actual or anticipated business, research or development of a Party and any proprietary information, trade secrets, and know-how of a Party that are disclosed by one Party (the “**Disclosing Party**”) to another Party (the “**Recipient**”) directly or indirectly, in writing, orally or by inspection or observation of tangible items. Confidential Information includes (a) trade secrets, inventions, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques (hereinafter collectively referred to as “**Inventions**”); (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (c) information regarding the skills and compensation of employees of the other party. Confidential Information also includes information that is defined as “Confidential Information” under any other agreement between the Parties, as well as confidential information of third parties that has been provided to the Recipient hereto. Confidential Information is the sole property of the Disclosing Party.

4.2 Exceptions. Confidential Information does not include any information that the Recipient can demonstrate: was publicly known and made generally available in the public domain before the Disclosing Party disclosed the information to the Recipient, became publicly known and made generally available, after disclosure to Recipient by Disclosing Party, through no wrongful action or inaction of Recipient or others who were under confidentiality obligations, was in Recipient’s possession, without confidentiality restrictions, at the time of disclosure by Disclosing Party, as shown by Recipient’s files and records, or was independently developed by Recipient without use of or reference to the Confidential Information.

4.3 Nondisclosure and Nonuse. Recipient will not, during and after the term of this Agreement, disclose the Confidential Information to any third party or use the Confidential Information for any purpose other than pursuant to this Agreement. Recipient will take all reasonable precautions to prevent any unauthorized disclosure of the Confidential Information including, but not limited to, requiring each employee and independent contractor with access to Confidential Information, to execute a nondisclosure agreement containing terms that are substantially similar to the terms contained in this Agreement. Recipient will not, during and after the term of this Agreement, reverse engineer the Confidential Information. The obligations in this Section 4.3 are in addition to, and supplement, each party’s obligations of confidentiality and nondisclosure under the terms of any confidentiality or nondisclosure agreement between the parties (referred to herein, collectively, as the “**NDA**”).

4.4 Emmersion Inventions; Rights to Use. The parties hereto hereby agree that Emmersion shall retain all right, title, and interest worldwide in and to Inventions and all applicable intellectual property rights related to such Inventions owned by Emmersion as of the Effective Date or discovered, conceived or reduced to practice by Emmersion during the Term (the “**Proprietary Rights**”); provided, however, that Client shall have a perpetual, worldwide, royalty-free, and unlimited right to use the results of the Services as delivered in tangible form to Client. This Section 4.4 shall survive termination of this Agreement and any SOW.

4.5 Feedback. Emmersion is hereby granted a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable, sublicensable license to use, copy, modify, or distribute, **Master Services Agreement**

including by incorporating into Emmersion’s Inventions, any suggestions, enhancement requests, recommendations or other feedback provided by Client. Included in such license is the right for Emmersion to (i) orally reference Client as a client of Emmersion, and (ii) reference Client and use its logo (y) in connection with internal communications, including but not limited to communications with Emmersion’s board of directors and (z) on Emmersion’s website and in connection with Emmersion’s sales materials.

4.6 White Label License. In the event that Client provides any logos, trademarks, service marks, or other intellectual property (collectively, the “**Client Marks**”) in connection with Client’s request for any customized white label or branding to the Services, Client hereby grants Emmersion a non-exclusive, worldwide, royalty-free license to use, copy, transmit, store, and display the Client Marks as required to provide or perform the Services. Client represents and warrants that any Client Marks provided to Emmersion for use in the Services will not infringe or constitute a misappropriation of any right of any third party, including any copyrights, mask work rights, patent rights, trademark rights, trade secret rights or confidentiality rights.

#### 5. WARRANTIES

As an inducement to each Party entering into and consummating this Agreement, the Parties represent, warrant and covenant as follows:

5.1 Organization Representations; Enforceability. Each Party is duly organized, validly existing, and in good standing in the jurisdiction stated in the preamble to this Agreement. The execution and delivery of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of such Party. This Agreement constitutes a valid and binding obligation of such Party that is enforceable in accordance with its terms.

5.2 No Conflict. The entering into and performance of this Agreement does not and will not violate, conflict with, or result in a material default under any other contract, agreement, indenture, decree, judgment, undertaking, conveyance, lien, or encumbrance to which such Party is a party or by which it or any of such Party’s property is or may become subject or bound.

5.3 Emmersion Warranties. Emmersion represents and warrants that the Services will be performed in a timely, competent, professional and workmanlike manner by qualified personnel. Emmersion will comply with all applicable laws of the United States and possess and maintain all applicable licenses for operation in the United States.

5.4 Limitations. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ANY SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT BEARS ALL RISK RELATING TO QUALITY, ACCURACY AND USE OF THE RESULTS OF THE SERVICES. Emmersion furthermore makes no representations or warranties with respect to compliance with any international law or regulation other than as expressly stated herein.

#### 6. INDEMNIFICATION

6.1 Client Indemnification. Client will indemnify, defend, and hold harmless Emmersion and its directors, officers, and employees

**Confidential**

from and against all third-party taxes, losses, damages, liabilities, costs, and expenses, including attorneys' fees and other legal expenses, arising directly or indirectly from or in connection with: (a) any negligent, reckless, or intentionally wrongful act of Client or Client's assistants, employees, or agents, (b) any breach by Client or Client's assistants, employees, or agents of any of the covenants, warranties, or representations contained in this Agreement or any SOW, (c) any claim resulting from Client's or Client's employees use of the work product or deliverables of Emmersion pursuant to this Agreement or any SOW, or (d) any actual or alleged infringement of any patent, copyright, or any actual or alleged trade secret disclosure, arising from or related to the content of Client pursuant to this Agreement or any SOW.

6.2 Emmersion Indemnification. Emmersion will indemnify, defend, and hold harmless Client and its directors, officers, and employees from and against all third-party taxes, losses, damages, liabilities, costs, and expenses, including attorneys' fees and other legal expenses, arising directly or indirectly from or in connection with: any grossly negligent, reckless, or intentionally wrongful act of Emmersion or Emmersion's assistants, employees, or agents; any material breach by Emmersion or Emmersion's assistants, employees, or agents of any of the covenants, warranties, or representations contained in this Agreement; or any claim, proceeding, or suit brought by a third party against Client alleging that Client's use of the Services and/or Emmersion's Inventions infringes or misappropriates any patent, copyright, trade secret, trademark, or intellectual property right.

## 7. REMEDIES AND DAMAGES

7.1 Limitation of Remedies. EXCEPT FOR BREACHES OF SECTIONS 4, 5 OR 8, EACH PARTY WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING DAMAGES DUE TO LOSS OF DATA OR GOODWILL, ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT, ANY SOW, OR THE USE OR RELIANCE UPON THE SERVICES OR RESULTING INFORMATION, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THIS LIMITATION WILL APPLY EVEN IF THE REMEDIES AVAILABLE IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

7.2 Total Liability. IN NO EVENT SHALL EMMERSION BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE SERVICES. UNDER NO CIRCUMSTANCES WILL EMMERSION'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY SOW (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO EMMERSION DURING THE IMMEDIATELY PRECEDING THREE MONTH PERIOD (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION). THE PARTIES AGREE THAT THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PRICES HAVE BEEN SET AND THE AGREEMENT ENTERED INTO IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

7.3 Force Majeure. Neither Party shall be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including fire, flood, strikes, accident, freight embargoes, earthquakes, electrical outages, internet interruptions or outages, computer or communications failures, terrorist acts or any acts of God.

## 8. MISCELLANEOUS

8.1 Independent Contractor. It is the express intention of the Parties that Emmersion perform the Services as an independent contractor. Without limiting the generality of the foregoing, neither Party is authorized to bind the other Party to any liability or obligation or to represent that such Party has any authority. Client will indemnify and hold Emmersion harmless to the extent of any obligation imposed on Emmersion resulting from a determination that Emmersion is not an independent contractor.

8.2 Governing Law. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Utah, U.S.A., without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Except as specified in Section 10.3, the Parties agree that any action arising out of or in connection with this Agreement will be heard in the federal, state, or local courts in Salt Lake County, Utah, U.S.A., and each Party hereby irrevocably consents to the exclusive jurisdiction and venue of these courts.

8.3 Arbitration. Except for the right of either Party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any dispute as to the interpretation, enforcement, breach, or termination of this Agreement will be settled by binding arbitration in Salt Lake County, Utah, U.S.A. under the Rules of the American Arbitration Association by three arbitrators appointed in accordance with such rules. All other disputes (excluding the right of either Party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm) will be resolved by a court specified above. Judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The prevailing Party will be entitled to receive from the other Party its attorneys' fees and costs incurred in connection with any arbitration or litigation instituted in connection with this Agreement.

8.4 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: delivered in person, sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address as set forth below, or sent via email or facsimile as may be indicated below. Either Party may change its address for notices by notice to the other Party given in accordance with this Section. Notices will be deemed given at the time of actual delivery in person or by email or facsimile, or one (1) day after delivery to an overnight air courier service.

8.5 Publicity. Except as otherwise stated herein, each party hereto shall be free to advertise and publicize the existence of this Agreement and the general nature of the parties' relationship with the prior approval of the other. With Client's prior written consent, Emmersion may develop and publish a case study based upon Client's use of the Services.

8.6 Waiver. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the

provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the Party's right to take subsequent action. Exercise or enforcement by either party of any right or remedy under this Agreement will not preclude the enforcement by the Party of any other right or remedy under this Agreement or that the Party is entitled by law to enforce.

8.7 Assignment. This Agreement shall be binding on the Parties hereto and their respective successors and permitted assigns. Neither Party may, or shall have the power to, assign this Agreement, and/or any rights and/or obligations hereunder, without the prior written consent of the other Party and any such attempted assignment shall be void; *provided, however*, that either Party may assign this Agreement, and/or any of its rights and/or obligations hereunder, without the approval of the other Party to (i) any affiliate of the assigning Party, (ii) any entity which acquires all or substantially all of the Party's assets, or (iii) the successor in a merger or acquisition of the Party.

8.8 Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the Parties will endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on an amendment, the invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law.

8.9 Confidentiality of Agreement. Client will not disclose any terms of this Agreement to any third party without the consent of Emmersion, except as required by applicable laws.

8.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000) and such execution and delivery will have the same force and effect of an original document with original signatures.

8.11 Headings. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement.

8.12 Integration. This Agreement, together with any exhibits or schedules attached hereto, contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter hereof, except that the NDA will remain in effect in accordance with its terms. No terms, provisions, or conditions of any purchase order, acknowledgement, or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to these terms, provisions, or conditions. This Agreement may not be amended, except by a writing signed by both parties.

"CLIENT"

[\_\_\_\_\_]

Signed: \_\_\_\_\_

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

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

Address for Notice: \_\_\_\_\_

\_\_\_\_\_

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

"EMMERSON"

Emmersion Learning, Inc.

Signed: \_\_\_\_\_

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

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

Address for Notice:

210 N 1200 E Ste 50

Lehi, UT 84043

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