ACT ITEM WRITER AND REVIEWER TERMS AND CONDITIONS

IMPORTANT – BY PLACING A CHECKMARK IN THE BOX NEXT TO “I ACCEPT THE ACT TERMS AND CONDITIONS APPLICABLE FOR ITEM WRITERS AND REVIEWERS”, YOU INDICATE YOUR ACKNOWLEDGEMENT AND ACCEPTANCE OF THESE TERMS AND CONDITIONS.

The purpose of this agreement (the “Agreement”) is to document the terms and conditions between you and ACT, Inc. (“ACT”) regarding the materials and services you provide to ACT relating to item writing and item review. Unless you are bound by a fully executed (in ink) written agreement with ACT covering the item writer and/or reviewer materials and services you provide to ACT, the following terms and conditions shall apply.

A. Services. From time to time, ACT may offer you the opportunity to perform item writing and/or item reviewing services (collectively the “Services”) at a rate established by ACT (“Compensation”). The test items, analyses, changes, additions, comments, and any other materials and information developed by you in connection with the Services (the “Materials”) must conform to the standards detailed in the applicable ACT item writer and/or item reviewer guides (the “Guides”). You agree to deliver the Materials, in final form, to ACT no later than the dates established by ACT in its offer.

B. Compensation. Provided the Materials are timely delivered to ACT and deemed acceptable by ACT in its sole and absolute discretion, ACT agrees to pay you the Compensation within thirty days of final acceptance of the Materials. Such payment shall be in full and complete payment for the services performed and Materials provided pursuant to this Agreement. ACT is not obligated to pay any compensation for services performed hereunder, or for Materials that are not accepted by ACT. ACT may in its sole and absolute discretion determine whether to accept the Materials.

C. Miscellaneous Terms and Conditions.

1. Confidentiality. You agree that you will not (a) disclose or in any way convey any information or materials relating to the Services or this Agreement (the “Confidential Information”) to anyone outside of ACT or (b) use any Confidential Information for any purpose whatsoever, except as strictly necessary to perform the Services. The term “Confidential Information” shall include, without limitation, the Guides, item stimulus, test items, the Materials, and any other examination materials and guides provided to you by ACT. You agree to keep all Confidential Information strictly confidential and secure and work with all Confidential Information in a secure private environment, e.g. ACT monitored meeting site, private office (but not in airplanes, restaurants, or other public sites). All Confidential Information should be placed in secure storage such as a locked desk or file to prevent unauthorized access to such material. You also agree not to copy or reproduce the Confidential Information in any manner. You shall immediately notify ACT in writing in the event of any unauthorized use or disclosure of the Confidential Information and assist in remedying such unauthorized use or disclosure, as requested by ACT (which shall not limit other remedies of ACT as provided herein or by applicable law). You agree to immediately return, or destroy if ACT so directs, all Confidential Information to ACT at any time upon the request of ACT.

2. Ownership. You agree to clearly identify within the Materials submitted to ACT any and all information and/or materials that are the copyrighted materials of another, or that would otherwise violate or infringe on any copyright, proprietary interest, or other right of any person or entity (such information and/or materials identified by you in the Materials referred to herein as the “Third Party Intellectual Property”). The Materials other than the Third Party Intellectual
Property (the “Work Product”) shall be the sole property of ACT and shall be considered specially ordered for ACT as a “work made for hire,” or, if for any reason the Work Product is held not to be a work made for hire, you hereby assign, without any further consideration, all of your right, title and interest in the Work Product to ACT. ACT shall own all right, title and interest in the Work Product, including, without limitation, the exclusive right to copyright the Work Product worldwide. ACT may use, assign, edit or dispose of the Work Product in any manner. ACT’s rights in the Work Product shall include, but are not limited to: (a) the unrestricted and exclusive reproduction rights throughout the world, without name credit, for any lawful purpose; (b) the exclusive right throughout the world to protect the Work Product by copyright(s) in ACT’s name and for its benefit, including the right to secure extensions and renewals of such copyright(s) in ACT’s name and for its benefit; (c) the right to alter, retouch, or crop the Work Product in any way; (d) the right to license, distribute, assign, or transfer any right, title, interest, or copyright in the Work Product or otherwise dispose of the Work Product or any portion thereof for any purpose and in any manner; and (e) all subsidiary rights. You represent and warrant that ACT’s use of the Work Product you submit will not violate or infringe any copyright, proprietary interest, or other right of any person or entity. You shall indemnify ACT against any and all claims, actions, damages, loss and/or liabilities (including but not limited to attorney’s fees and court costs) based upon or arising out of any claim that any Work Product infringes upon the intellectual property rights of any third party.

3. Test Preparation and Workshops. For purposes of this Section C(3), a “Program Test” means any assessment for which you are or will be performing services, including without limitation assessments owned by ACT or developed by ACT for a third party. A “Program Owner” means the owner of the Program Test (e.g. ACT for ACT-owned programs or a third party owner for whom ACT develops the Program Test).

You represent and warrant that you are not involved with either test preparation courses/workshops or the development of test preparation materials for any Program Test, and that you have not been involved in such activities for the two years prior to the date of this Agreement. You further agree not to engage in any such activities for a minimum of three years following the completion of the services provided by you under this Agreement.

You also agree that your work pursuant to this Agreement may limit your ability to take the Program Test in the future. You agree to notify the Program Owner if you intend to take the Program Test at any time during or after the term of this Agreement. Program Owner will determine whether or not you are at that time eligible to take the Program Test and, if you are not yet eligible, at what date in the future you will become eligible to take the Program Test. Failure to provide such notice may result in the cancellation of your Program Test scores with notices to appropriate score recipient, and possible further disciplinary actions.

You agree that, for purposes of this Agreement, the Program Owner is a third party beneficiary with rights of enforcement.

4. Expenses. All expenses incurred by you in performing the Services, including, but not limited to, supplies, materials, equipment, and clerical services shall be your obligation. ACT shall have no responsibility to pay or reimburse you for any such expenses.

5. Relationship of the Parties. The parties acknowledge and agree that an independent contractor relationship has been created by this Agreement. Neither you nor any of your employees, agents or representatives (if applicable) shall be deemed to be an employee, agent or representative of ACT for any purpose. None of the compensation or benefits provided by ACT to its employees is available from ACT to you or your employees, agents and representatives. You will be solely and entirely responsible for your acts and the acts of your agents, employees and representatives during the performance of this Agreement. The Services will be performed entirely
6. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Iowa without giving effect to conflict of law principles. The parties hereby consent to jurisdiction in the State of Iowa and agree that the courts within Iowa shall have exclusive jurisdiction over any issues regarding the interpretation or enforcement of this Agreement.

7. **Assignment.** ACT may assign its interest in this Agreement. You may not assign or subcontract your interest in or any of your responsibilities under this Agreement.

8. **Termination.** ACT may terminate this Agreement at any time, with or without cause, by giving written notice to you. ACT’s sole obligation upon termination shall be limited to payment only for the Materials that have been accepted by ACT.

9. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL ACT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

10. **Waiver, Modification, and Entire Agreement.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of both you and ACT.

11. **Severability.** If any term, condition or provision herein is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same will not affect the other terms, conditions and provisions hereof or the whole of this agreement, but such term, condition or provision will be deemed modified to the extent necessary in the court's opinion to render such term, condition or provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the parties' intent and agreements set forth herein.

12. **Notices.** Notices to ACT shall be deemed to be adequate and sufficient if given in writing and delivered via (a) registered or certified mail, postage prepaid, in which case notice shall be deemed to have been received three business days following deposit to U.S. mail; or (b) a nationally recognized overnight air courier, next day delivery, prepaid, in which case such notice shall be deemed to have been received one business day following delivery to such nationally recognized overnight air courier. All notices shall be sent to ACT at the following address: ACT, Inc. 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243-0168, Attention: CFO