



CUSTOMER TERMS AND CONDITIONS

IMPORTANT – READ CAREFULLY.

BY LOGGING INTO AND USING THE QUALITYCORE SYSTEM,
CUSTOMER IS AGREEING TO THE FOLLOWING TERMS AND CONDITIONS:

ACT, Inc. (“ACT”) has developed an end of course assessment program known as the QualityCore™ program. Customers using the QualityCore program gain access to certain materials (referred to herein as the “Program Materials”), including end of course assessments (“Assessments”). Program Materials are organized by course and are available for the courses listed on the order form provided by ACT. ACT’s QualityCore program also includes the scoring of the Assessments and the provision of standard reports (collectively referred to herein as the “Scoring & Reporting Services”). Customers have access to a website made available by ACT (the “Website”) which is designed to facilitate the dissemination of the Program Materials, provide for on-line administration of the Assessments (unless customer has opted for paper and pencil Assessments), and provide other features related to the Scoring and Reporting Services.

Customer desires to order certain QualityCore products and services. Accordingly, the parties agree as follows:

1. Additional Definitions:

- a. “*Agreement*” means the Order Form(s) and these Terms and Conditions.
- b. “*Authorized Purpose*” means educating and assessing the individuals enrolled in the Participating Locations.
- c. “*Authorized Users*” mean the individuals enrolled in the Participating Locations and other individuals for whom the Customer is responsible that need to access the Program Materials or the Website in connection with the Authorized Purpose.
- d. “*Customer*” means the entity indicated as such on the Order Form.
- e. “*Order Form*” shall mean ACT’s approved order form for ordering QualityCore products and services.
- f. “*Participating Locations*” shall mean the Customer’s locations indicated on the Order Form.

2. Term. This Agreement shall become effective as of the date that ACT activates the Customer’s online account and shall remain in effect until 18 months after Customer last places an order with ACT for an Assessment, subject to earlier termination as set forth in Sections 12 or 13.

3. Orders. In order to receive QualityCore products and services, Customer must complete and submit to ACT an Order Form. Nothing in this Agreement shall require the Customer to order any QualityCore products and services; however, all such products and services ordered by the Customer during the term of this Agreement shall be subject exclusively to the terms and conditions of this Agreement.

4. ACT’s Obligations. Subject to the terms and conditions provided in this Agreement, and once ACT accepts a completed Order Form, ACT agrees to provide to the Customer the products and services indicated on the completed Order Form and, during the term of this Agreement, permit Authorized Users limited access to the Website as appropriate.

5. Prices and Payment Terms. Customer agrees to pay ACT for the products and services according to the prices set forth in ACT’s price list in effect at the time that ACT accepts Customer’s order for such products and services. ACT shall invoice the Customer upon acceptance of Customer’s order. Customer shall make all payments to ACT within thirty (30) days of date of an invoice from ACT. All invoices shall be sent to the Customer at the address listed on the Order Form. All taxes shall be at the Customer’s expense.

6. Ownership. ACT owns or is otherwise permitted to deliver the products and services. ACT also owns the trademark *QualityCore*. Customer does not acquire any right, title, or interest in or to the trademark *QualityCore* or the Program Materials other than the limited right to use the Program Materials subject to the terms and conditions of this Agreement.

7. Customer’s Use of the Program Materials and Website. Customer shall only permit Authorized Users access to the Program Materials and the Website, and limit access to the extent necessary to carry out the Authorized Purpose. Authorized Users will be required to abide by ACT’s Conditions of Use pertaining to the Website before accessing the Website. ACT may revise the Conditions of Use from time to time in its sole discretion. Customer may not, and Customer shall not permit the Authorized Users to: (i) use, or allow any unauthorized person to use, the Program Materials or the Website for any purpose other than the Authorized Purpose, (ii) use the Program Materials or the Website in a manner not contemplated by the Program Materials, (iii) assign, license, sell, loan, lease, copy or otherwise transfer the Program Materials or the Website content to unauthorized individuals or allow anyone else to do so; (iv) modify, enhance, decompile, disassemble, reverse engineer, or make any addition to the Program Materials or the Website; or (v) use the Program Materials or the Website after the termination or expiration of this Agreement.

8. Confidentiality of Program Materials. As used in this Section 8, “Confidential Information” means the Program Materials and any other information designated by ACT as confidential. Customer agrees that neither it nor its Authorized Users shall at any time during or following the Term, either directly or indirectly, publish, display or otherwise disclose to any person, organization, or entity in any manner whatsoever any Confidential Information, except as strictly necessary for Customer to use the Confidential Information for the Authorized Purpose. Customer shall protect the Confidential Information in accordance with ACT’s procedures and using a standard of care appropriate for secure test materials. All Confidential Information shall be and remain the property of ACT notwithstanding the subsequent termination of this Agreement. The Confidential Information shall, within ten (10) days of ACT’s written request, be returned to ACT (including any copies thereof).

9. Testing Procedures. Customer agrees to (a) abide by, and instruct Authorized Users to abide by as applicable, the QualityCore User manual, the QualityCore Test Administration manual, the QualityCore Test Coordinator manual and similar manuals published by ACT from time to time; (b) fully cooperate with ACT in the event of a test security incident; and (c) access the Websites only through machines meeting the configuration requirements set in the Minimum Requirements section of the QualityCore Users’ manual.

10. Updates and Modifications. The Program Materials and the Website may be modified or updated from time to time in ACT’s sole discretion. ACT may make such modifications and updates available to Customer as they are developed; provided however, that: (1) ACT reserves the right to charge a fee for any updates or modifications; and (2) to the extent that updates to the Website require revised computer configuration, Customer shall provide such hardware or software that meets the revised computer configuration

requirements for the updated Website within the time frame set forth in a written (including e-mail) notice from ACT detailing the timeframe of such update and the revised computer configuration requirements.

ACT has established recurring maintenance windows (“Maintenance Windows”), during which ACT may take down servers and conduct routine maintenance checks. ACT also reserves the right to provide unscheduled maintenance periodically. ACT shall not be responsible for any damages or costs incurred by Customer, if any, for such down time.

ACT may, upon six (6) months prior written notice, discontinue the Scoring and Reporting Services as it relates to certain Program Materials.

11. Data. The parties acknowledge and agree that ACT may use and disclose the data collected from the administration of the Assessments in accordance with ACT’s Data Use Policy as amended by ACT from time to time.

12. Termination. This Agreement may be terminated at any time without cause by either party giving thirty (30) days written notice to the other. Customer may terminate this Agreement upon thirty (30) days written notice to ACT in the event that ACT breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. In the event of Customer’s breach of this Agreement, ACT shall have the right to immediately terminate this Agreement upon written notice and exercise any other right or remedy which may be available to it under law.

13. Effect of Termination. Customer shall pay ACT for all products and services ordered through the date of termination. Except as otherwise provided herein, ACT will complete the Scoring and Reporting Services subject to the terms and conditions of this Agreement for all Assessments submitted to ACT for scoring prior to expiration or termination of this Agreement. ACT shall not be obligated to complete the Scoring and Reporting Services for Assessments submitted to ACT for scoring after expiration or termination of this Agreement. If ACT has terminated this Agreement for cause, ACT shall not be obligated to complete any Scoring and Reporting Services regardless of when the related Assessments were submitted to ACT. Upon expiration or termination of this Agreement, Customer shall discontinue use of the Program Materials and the Website and shall destroy all copies of the Program Materials in its possession. Upon the expiration or termination of this Agreement, terms and conditions which by their nature are intended to survive, shall survive, including without limitation, Sections 5,6,7,8,9,11,12,13,14,15, 18 and 20.

14. WARRANTY AND LIMITATIONS.

ACT WARRANTS THAT THE PROGRAM MATERIALS HAVE BEEN DEVELOPED IN ACCORDANCE WITH INDUSTRY STANDARDS, AND THAT THE SCORING & REPORTING SERVICES WILL BE PERFORMED IN A MANNER CONSISTENT WITH INDUSTRY STANDARDS. EXCEPT AS SET FORTH IN THIS SECTION, THE PRODUCTS AND SERVICES ARE PROVIDED “AS IS” AND ACT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY THAT THE OPERATION OF THE WEBSITE WILL BE INTERRUPTION OR ERROR FREE. THE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, AND ACT’S ENTIRE LIABILITY, FOR A BREACH OF THE ABOVE WARRANTIES SHALL BE, IN ACT’S SOLE AND ABSOLUTE DISCRETION, EITHER (A) REPLACEMENT OF THE NON-CONFORMING PROGRAM MATERIALS (OR IN THE CASE OF NON-CONFORMING SCORING & REPORTING SERVICES, RE-PERFORMANCE OF THE NONCONFORMING SCORING & REPORTING SERVICES), OR (B) REFUND OF THE FEES PAID TO ACT FOR THE NON-CONFORMING PROGRAM MATERIALS OR SCORING & REPORTING SERVICES (SUBJECT TO THE LIMITATIONS IN SECTION 15). THE CUSTOMER MUST NOTIFY ACT OF ANY WARRANTY DEFICIENCIES WITHIN 90 DAYS FROM DELIVERY OF THE PROGRAM MATERIALS (OR IN

THE CASE OF SCORING & REPORTING SERVICES, WITHIN 90 DAYS OF DELIVERY OF THE NON-CONFORMING REPORT). THIS LIMITED WARRANTY IS VOID IF THE FAILURE HAS RESULTED FROM CUSTOMER ACCIDENT, ABUSE, NEGLIGENCE, MISAPPLICATION, OR FAILURE TO USE THE PROGRAM MATERIALS IN ACCORDANCE WITH THE MANUALS REFERENCED IN SECTION 9.

15. LIMITATION ON DAMAGES.

IN NO EVENT SHALL ACT OR ITS SUBCONTRACTORS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.

NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, THE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, AND THE ENTIRE LIABILITY OF ACT AND ITS SUBCONTRACTORS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF (A) THE FEES THAT THE CUSTOMER HAS PAID ACT UNDER THE ORDER GIVING RISE TO SUCH DAMAGES, OR (B) \$100,000.00.

16. Relationship of the Parties. The parties to this Agreement are independent contractors. Neither party shall have the right or authority or shall hold itself out to have the right or authority to bind the other party, nor shall either party be responsible for the acts or omissions of the other.

17. Force Majeure. ACT shall not be liable to Customer for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its reasonable control, including, without limitation, national emergencies, fire, flood, epidemics, or catastrophe, acts of God, governmental authorities, or parties not under the reasonable control of ACT (including its subcontractors), insurrection, war, riots, or failure of transportation, communication, or power supply. Should any such delay or failure continue for more than sixty (60) days, the Agreement may be terminated without liability by either the party upon notice to the other party.

18. Assignment. Customer may not assign nor transfer its obligations or interest in this Agreement without the express written agreement of the ACT.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all other prior agreements and understandings, both written and oral. ACT expressly objects to and rejects any different or additional terms included in Customer’s request for proposal, quotation, purchase order, acknowledgment form, or other documents that purport to bind the parties. No waiver under this Agreement shall be binding unless in writing and signed by both parties. ACT may amend this Agreement as it relates to orders not yet placed by the Customer (“Updates”) by sending a written notice to the Customer outlining the Updates. Updates shall become effective upon Customer’s receipt of such notice. All other amendments and modifications shall not be binding unless in writing and signed by both parties.

20. Notices. Notices under this Agreement shall be deemed to be adequate and sufficient notice 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. All notices shall be sent to Customer at the address set forth in the order form.

21. Authorization. Each party represents and warrants (a) that it has the requisite authority to enter into this Agreement; and (b) that the individual(s) entering into this Agreement on behalf of such party is (are) authorized to do so.