

SKILLPRO LICENSE AGREEMENT

ACT, Inc., hereafter referred to as ACT, in consideration of the terms and conditions of this Agreement and payment of a license fee, does hereby grant a nonexclusive and nontransferable license to

Licensee: _____

Address: _____

City: _____ State: _____ Zip Code: _____

for the WorkKeys® SkillPro® software (hereafter SkillPro) furnished for use by Licensee, according to the terms of this Agreement, and by the ACT-authorized job profiler(s) identified in Attachment A. All references to SkillPro in this Agreement are to the version(s) of the WorkKeys SkillPro software in machine readable form, including any updates and modifications made by ACT, to be used in conjunction with ACT’s job analysis system.

Upon delivery of SkillPro as specified herein, Licensee shall pay to ACT the license fee(s) stated herein for the first term of this license in accordance with the terms of ACT’s invoice.

This license is subject to the Terms and Conditions below. Licensee acknowledges having read the Terms and Conditions and Attachments, understands them fully, and agrees to be bound by them.

ACT, Inc. Licensee Name: _____

By: _____ By: _____
(Authorized Signature)

Name: Helen Palmer Name: _____
(Type or print name of person authorized to sign)

Title: Director, Industrial/Organizational Psychology Title: _____

Date: _____ Date: _____

Accepted and Approved by ACT this _____ day of _____, 20____.

TERMS AND CONDITIONS

Term of License

This Agreement and the grant of license shall become effective on the date of acceptance and approval by ACT and shall remain in force for a period of twelve (12) months (initial term) and shall then be automatically renewed for successive 12 month periods under license terms and conditions then in effect, unless sooner terminated.

ACT may terminate this Agreement (1) by giving written notice at least ninety (90) days prior to the expiration of any term, or (2) without prior written notice at any time the Licensee is in default of this Agreement. Licensee may terminate this Agreement by giving written notice at least thirty (30) days prior

to the expiration of any term.

In the event of termination of this Agreement, Licensee shall return the original and all copies of SkillPro to ACT including the disk labeled “Registration & Data Exchange Diskette,” shall erase SkillPro from the job profiler(s)' computer(s), and return all manuals and skill descriptions.

Annual License Fees

The fee for the initial term of the License is \$1,600.00 per profiler. License fees for each subsequent 12 month renewal period shall be as specified on ACT’s applicable fee schedule then in

effect.

Payments

The initial term license fee will be invoiced when the Agreement is accepted by ACT. License fees for renewal periods will be invoiced at the beginning of each renewal term. All amounts are due thirty (30) days from the date of invoice. All taxes shall be at Licensee's sole expense.

System Updates and Modifications

Payment of the annual license fee will entitle Licensee to receive updates and modifications to SkillPro as may be issued by ACT, at its sole discretion, during the period covered by the fee. Upon receipt of an update or modification, Licensee shall promptly install the same, return the prior versions and destroy any copies of the prior versions. Continued possession and/or use of prior versions without payment of the applicable license fee is strictly prohibited and shall be deemed a violation of this Agreement.

License Modifications

Licensee may elect to expand the number of authorized job profilers. Any expansions shall be in accordance with the terms and conditions of the SkillPro License Agreement then applicable and shall be accomplished by written amendment and payment of required additional fees. The fees for additional software shall be the fees in effect at such time. Fees for mid-term expansion shall be prorated to the Agreement renewal date.

SkillPro Software Ownership

ACT is the owner of the SkillPro software and holds all copyrights, patents and other proprietary interests in the software and in the related documents created by ACT. Licensee's interest is strictly that of a Licensee subject to this Agreement. SkillPro may be used only by ACT-authorized job profilers. Use by others is prohibited.

Licensee shall not in any way modify SkillPro. Licensee shall not sell, disclose, or otherwise make SkillPro available to others and shall take all reasonable steps to ensure that SkillPro is not disclosed, used or duplicated for use, by others.

Licensee's making or allowing any unauthorized use of SkillPro shall be in violation of this Agreement.

ACT shall provide written notice to Licensee and Licensee shall be deemed in default unless Licensee corrects said unauthorized use within thirty (30) days after receipt of notice. ACT, in addition to other rights and remedies for default, shall have the right to recover from Licensee an amount equal to the greater of (1) the sum that ACT would have charged the persons making unauthorized use, or (2) any amount received by Licensee for the unauthorized use.

Responsibility of Parties

ACT agrees to

- A. develop, maintain, and modify the software and its related materials to perform the task for which the software was designed;
- B. provide Licensee with the software and its related materials, and any modifications of each as they may occur; and
- C. provide Licensee with timely technical support for the then-current version of the software via telephone or electronic mail.

Licensee agrees to

- A. ensure that SkillPro software and its related materials are used to conduct WorkKeys job profiling sessions and for that purpose only;
- B. ensure that SkillPro software is used in job profiling sessions only by ACT-authorized WorkKeys job profilers, though the profiler may engage others to assist in entering and editing text into the software;
- C. submit job profiling reports to ACT in a timely manner via electronic data exchange and ensure that the reports meet ACT standards;
- D. be responsible for supervision, management and control of the use of SkillPro including, but not limited to: (1) assuring proper machine configuration, program installation, audit controls, backup and operating methods, (2) implementing security and accuracy of input and output, as well as restart and recovery in the event of malfunctions, (3) providing adequate disk storage, and (4) ensuring that personnel are ACT-trained and ACT-authorized;
- E. conduct business in a highly professional and ethical manner, consistent with generally accepted standards for the performance of job profiling services; and
- F. comply with all federal, state, and local laws.

At such time as SkillPro has been successfully installed and is in working order, Licensee will sign a form confirming that the system(s) is(are) operational. Subsequent to signing said form, Licensee accepts full responsibility for technical support other than technical support by ACT which will be available via telephone or electronic mail for the then-current version of the software. ACT will provide support by telephone for initial installation of updates and modifications.

Limited Warranty

ACT WARRANTS THAT SKILLPRO WILL CONFORM TO PUBLISHED SPECIFICATIONS AND BE IN GOOD WORKING ORDER WHEN DELIVERED. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).

ACT disclaims and shall have no responsibility for (1) the operation of other products that may interfere with SkillPro, (2) technical difficulties that may arise due to the simultaneous operation of other software, (3) any loss of ACT's data that may occur during Licensee's use of SkillPro, and (4) delays or other events beyond its reasonable control.

Representations

ACT represents that it has full power and authority to grant the rights herein granted and that use of SkillPro in accordance with this Agreement will not violate any patent, copyright, trade secret, or other proprietary right of any other party. ACT will indemnify and hold Licensee harmless from and against loss, cost or expense arising out of any breach of this representation.

Limitation of Liability

Licensee agrees that ACT's liability for damages arising out of or in connection with the delivery, use, repair, modification, update, or performance of SkillPro shall not, under any circumstances, exceed the fees paid by licensee for SkillPro. In no event shall ACT be liable for special, indirect, incidental, punitive, exemplary, or consequential damages.

Default

Any of the following shall constitute Licensee's default:

- A. nonpayment of fees when due or violation or failure to perform any other term or condition of this Agreement; or
- B. institution of proceedings under the Federal Bankruptcy Act or any other similar federal or state statute against Licensee, appointment of a receiver or similar officer for the Licensee or any of its property, or attachment or levy on all or any portion of the licensed SkillPro software, if such proceedings, appointment, attachment or levy are not vacated, or fully stayed, within twenty (20) days after institution or occurrence; or
- C. making an Assignment for the benefit of creditors or instituting proceedings under any bankruptcy or similar law (including reorganization or arrangement) or admitting in writing to the inability to pay debts as they become due; or
- D. violation of ACT's copyrights, patents or other proprietary interests.

In the event of Licensee's default, ACT may, without further notice, terminate this Agreement and/or exercise any other right or remedy that it may have under law or in equity, and ACT shall have the right to recover from Licensee the reasonable expenses incurred in doing so, including attorney fees and court costs, to the extent otherwise permitted under Iowa law.

Notices

Notices shall be deemed given upon mailing when mailed by registered or certified mail, return receipt requested, to the other party at the address specified on the cover page to this Agreement or as specified in a notice given in compliance with this provision. Notices given in any other manner shall be effective upon actual receipt.

Assignment/Successors

Licensee may not sublet, lend, assign, transfer or pledge, in whole or in part, this Agreement or SkillPro without the prior written consent of ACT. No permitted assignment shall relieve Licensee hereto of its obligations prior to the assignment. Any assignment in violation of this Paragraph shall be void. Subject to the above restrictions on assignment and transfer, this Agreement shall be binding upon the Licensee's permitted successors and assigns.

General

This Agreement shall be governed by the laws of the state of Iowa and constitutes the entire Agreement and understanding between ACT and the Licensee. Any representation, promise, modification, or amendment to this Agreement shall not be binding upon either party unless in writing and signed by each. If any provision of this Agreement is found to be invalid by any court of competent jurisdiction, the remaining provisions shall continue to be valid and enforceable. Headings are for reference purposes only and are not part of the Agreement.

**SkillPro License Agreement
Attachment A**

Names and job titles of Agency employees to be trained to provide WorkKeys-related job analysis services at the initiation of this Agreement: