

TERMS AND CONDITIONS: TESTING RULES AND POLICIES FOR THE ACT® TEST

These *Terms and Conditions: Testing Rules and Policies for the ACT® Test* (“Terms and Conditions”) are a legal agreement between the person who will take the ACT® test (“you”) and ACT, Inc. (“ACT”). They set out important policies and procedures related to your taking the ACT test, including those relating to test security. By registering for and/or taking the ACT test, you are agreeing to these Terms and Conditions. Please read these Terms and Conditions carefully and discuss them with your parents or guardians if you have any questions. You should carefully review the Terms and Conditions each time you test (available on the ACT website at: www.act.org/the-act/terms.html).

All references to “test” or “tests” in these Terms and Conditions refer to the ACT test and test-related documents in paper or electronic form, including test booklets, test questions, test responses, and responses marked on answer documents.

NOTICE: By registering for and/or taking the ACT test, you represent and affirm the following to ACT:

- (1) The information you have provided to ACT is true;
- (2) You have read, understand, and agree to be bound by these Terms and Conditions and the ACT policies referenced in these Terms and Conditions;
- (3) You are not working for or on behalf of any test preparation provider(s); and
- (4) **All disputes, claims, or controversies (“Disputes”) between you and ACT will be resolved through binding arbitration except as expressly provided in Section 14 below, and you understand that by agreeing to arbitration you are waiving your right to have any such Dispute heard and decided by a judge or jury.**

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1. **Privacy Policy and Notice of Collection of Personally Identifying Information.** ACT collects personally identifying information from you when you register for or take one of our tests. Our processing of such information, including collection, use, transfer, and disclosure, is described in the ACT Privacy Policy found at: www.act.org/privacy. When you register for or take an ACT test, you consent to the collection of your personally identifying information and its use and disclosure as provided in the ACT Privacy Policy.

- a. **Required Personally Identifying Information:** When registering for and taking an ACT test, you provide personally identifying information to us, some of which is mandatory. If you do not provide the mandatory personally identifying information, including but not limited to your name, address, and date of birth, you may not be able to register for or take the ACT test.
- b. **ACT Use of Personally Identifying Information:** We will share your personally identifying information consistent with ACT's Privacy Policy and (where applicable) your choices. For example, we send your score reports to the colleges you choose. Please note that when you ask us to send your score report to a college that is part of a college system, the college may share your scores with other colleges in that system. In addition, ACT provides your score report (including your photo) to your high school. As described in Section 2 below, "Automatic Score Reporting for Scholarship Purposes," ACT will also automatically report your scores for scholarship purposes unless you opt out of this reporting. Your personally identifying information may also be accessible to law enforcement and national security authorities, and as otherwise described in ACT's Privacy Policy.
- c. **Notice to International Examinees:** As noted in ACT's Privacy Policy, your personally identifying information may be transferred outside of your home country to the United States (to ACT or a third-party service provider) for processing and will be subject to use and disclosure under the laws of the United States.
- d. **Questions about Use of Personally Identifying Information:** If you have any questions about the ACT Privacy Policy, please contact our Data Protection Official at DPO@act.org.

2. **Automatic Score Reporting for Scholarship Purposes.*** Some state and federal scholarship programs or education departments use ACT scores as one source of information to recognize student achievement. As set forth below, ACT reports your test scores and other information about you for this purpose without requiring you to use one of your college choices, and at no cost to you. If your mailing address or high school is in one of the states listed in categories (a) and/or (b) below, your test scores and other information about you will be reported automatically for consideration as indicated unless you specifically direct ACT, in writing, not to do so as set forth below.

- a. **States with Scholarship Programs:** Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Washington, and West Virginia. Additional participating programs include the League of Latin American Citizens and the John Gatling Grant Program. NOTE: Participating state and private scholarship programs may change at any time, and these Terms and Conditions may not always reflect the most current list of participants.
- b. **US Presidential Scholars Program:** All states, District of Columbia, US territories, Puerto Rico, and US citizens abroad.
- c. **Opt-Out:** To direct ACT not to automatically report your scores for scholarship purposes, you must send a letter postmarked no later than the late registration deadline for the test date for which you do not want your scores reported for the scholarship purposes described in this section. Address your letter to ACT Customer Care, PO Box 168, Iowa City, IA 52243-0168. NOTE: This will not affect any other uses of your scores, such as the reporting of scores to the colleges you list when you register for the test or to your high school, or the sending of information about you to Educational Opportunity Service recipients if you opted in to that Service.

*This section does not apply to ACT On-Campus testing, which is a special testing program utilized by authorized institutions of higher education.

3. **Photo Submission Requirement for Registration.** During test registration, ACT may require you to submit a photo that meets the ACT Photo Submission Requirements found at www.act.org/the-act/photo-requirements.html. Your photo may be used for test security and other identification purposes. For example, ACT may place your photo on your admission ticket, provide it to testing staff, and/or include it on the score report that is sent to your high school. You must have the right to submit the photo to ACT, either because you own it or because you have permission to submit it from the person who owns it, and you agree that ACT may use your photo for all of the purposes described in this paragraph, the Privacy Policy, and in the ACT Photo Submission Requirements.

- a. **Consequences for Failure to Provide Photo:** Photos must be submitted by the Photo Upload Deadline, found at www.act.org/the-act/photo-requirements.html. If you fail to provide a required photo by the deadline for a given test, ACT may cancel your test registration and release your seat, and you will be subject to all test date change policies and fees. You must then provide a photo by the photo deadline for any new test date. If you miss the deadline and

do not request a test date change, your original registration fee will not be refunded.

- b. Examinees Age 12 or Under: Examinees who are 12 years old or younger do not have to submit a photo for registration but must bring acceptable identification to be admitted to the test, as set forth in Section 4 below.

4. **Verifying Your Identity**. You are responsible for understanding ACT requirements for acceptable identification, found at www.act.org/the-act/id, and having acceptable identification with you on test day. **ACT policies on acceptable forms of identification are updated from time to time, so make sure that you check for any updates to our identification requirements before the day of testing. You agree to be bound by the identification requirements in effect on the day you test.** For State and District testing, Special testing, Arranged testing, and On-Campus testing, ACT requires that you show acceptable identification on the test day, unless testing staff personally recognize you. You should contact ACT Customer Care at 319.337.1270 or through email or chat at www.actstudent.org/contactus before the day of testing with any questions about acceptable identification. Testing staff has sole discretion on test day to deny admission to the test if they conclude that you do not have an acceptable form of identification. Any such decision by testing staff is final.

5. **Items Brought to the Test**. ACT may restrict the items you bring to the test. All items you bring, such as hats, glasses, purses, backpacks, cell phones, calculators, other electronic devices, pre-approved medications or personal aids, and watches, may be searched or inspected at the discretion of ACT and testing staff. Searches may include the use of tools, such as handheld metal detectors, that detect prohibited items. ACT may confiscate and retain for a reasonable period any item suspected of having been used, or capable of being used, in violation of these Terms and Conditions. ACT may also provide such items to, and permit searches of such items by, third parties in connection with an investigation conducted by ACT or others. Neither ACT nor testing staff shall be responsible for loss or damage to any items that you bring to a test center.

6. **Prohibited Behaviors**. You may not engage in any of the following behaviors in connection with taking the ACT test:

- Filling in or altering responses to any multiple-choice questions or continuing to write or alter the essay after time has been called. This means that you cannot make any changes to a test section outside of the designated time for that section, even to fix a stray mark or accidental keystroke.
- Looking back at a test section on which time has already been called.
- Looking ahead in the test.
- Looking at another person's test or answers.
- Giving or receiving assistance by any means.
- Discussing or sharing test questions, answers, or test form identification numbers at any time, including during test administration, during breaks, or after the test.
- Attempting to photograph, copy, or memorize test-related information or remove test materials, including questions or answers, from the test room in any way or at any time.
- Disclosing test questions or answers, in whole or in part, in any way or at any time, including through social media.
- Using a prohibited calculator (www.act.org/calculator-policy.html).
- Using a calculator on any test section other than mathematics.
- Sharing a calculator with another person.
- Wearing a watch during test administration. All watches must be removed and placed face up on the desk.
- Using a watch with recording, internet, communication, or calculator capabilities (e.g., a smart watch or fitness band).
- Accessing any electronic device other than an approved calculator or watch. **All** other electronic devices, including cell phones and other wearable devices, must be powered off and stored out of sight from the time you are admitted to test until you leave the test center.
- Using highlighter pens, colored pens or pencils, notes, dictionaries, or other aids.
- Using scratch paper. **
- Not following instructions or abiding by the rules of the test center.
- Not following the rules of the test administration.
- Exhibiting confrontational, threatening, or unruly behavior.
- Violating any laws. (If ACT suspects you have engaged in criminal activities in connection with a test, such activities may be reported to law enforcement agencies.)
- Allowing an alarm on a personal item to sound in the test room or creating any other disturbance.

** If you are taking the ACT online, some use of ACT-provided scratch paper or dry erase surface may be permitted; all such use must be in accordance with ACT policies and procedures.

7. **Capturing Images, Video, or Audio Recordings.** ACT may capture and use images, video, or audio recordings of you and your testing environment immediately before, during, or immediately after the testing process for the purpose of protecting the integrity and security of the test, improving services, or other purposes as allowed under ACT's Privacy Policy and/or applicable law, and you consent to such capture and to use of the recording at any time.

8. **Prohibited Behavior Observed or Suspected by Testing Staff.** Testing staff may monitor you and others during the testing process. If they observe or suspect you of engaging in a prohibited behavior, they have the right to immediately discontinue your exam and the right to direct you to leave the test center, if applicable. Any such decision by testing staff is final.

In some cases, testing staff decide to not discontinue your exam but log their observations on an irregularity report and submit it to ACT. ACT reserves the right to review those irregularity reports and, in its sole discretion, take action in response, which may include not scoring your exam or cancelling a previously reported score. Any such decision by ACT is final.

If your exam is cancelled pursuant to this Section 8, you forfeit your registration and no refund will be issued. Testing staff are not required to notify you or give you a warning of any observed or suspected prohibited behavior.

9. **Individual Score Reviews.** In some cases, testing staff do not suspect, observe, or report prohibited behavior in the testing process, but other information comes to the attention of ACT that raises questions about the validity of an examinee's test scores. For example, ACT may find unusual similarities in an examinee's answers and the answers of another examinee, indicators that an examinee may have falsified his or her identity or impersonated someone else, indicators of possible advance access to test questions or answers, or other indicators that an examinee's test scores may not be valid. In these cases, ACT may choose to conduct an Individual Score Review.

a. **Objective of an Individual Score Review:** The objective of an Individual Score Review is to determine whether your scores should be considered valid ACT scores – not whether you engaged in misconduct. If ACT has a good faith reason to believe that your scores are invalid, ACT reserves the right to cancel your scores. Proof of misconduct is not required to cancel scores. ACT conducts Individual Score Reviews to protect the fairness of the testing process and the integrity of ACT scores. This benefits examinees, colleges, universities, and other score recipients.

b. **Scope of an Individual Score Review:** Individual Score Reviews may apply to all sections of the ACT delivered during a single test administration or to individual test sections. For example, if you take all four multiple-choice sections in a single test administration, ACT may conduct an Individual Score Review as to all scores received from such administration. If you take individual test sections through ACT's section retest program, ACT may initiate an Individual Score Review as to those individual test sections.

c. **Notification of an Individual Score Review and Responding to ACT Correspondence:** Except as otherwise stated in this section, ACT will initiate the Individual Score Review process by sending you a certified letter. The letter will include information about why ACT has opened the Individual Score Review and options available to you in response. If your mailing address is outside of the United States, ACT will send a letter to the email address you provided to ACT. Email is used to avoid delays caused by international mailing, and if your mailing address is outside the United States, you agree to receive unencrypted emails from ACT regarding Individual Score Reviews. You agree to maintain accurate and up-to-date contact information with ACT and to respond to ACT's correspondence regarding Individual Score Reviews in a timely manner. Failure to respond in a timely manner can result in the cancellation of your scores under review. You can update your mailing address by contacting ACT Customer Care at 319.337.1270 or through email or chat at www.actstudent.org/contactus, or by updating your ACT Student web account.

d. **Timing of Individual Score Reviews:** Your scores may become the subject of an Individual Score Review at any time they are on file with ACT as valid and reportable ACT scores. While Individual Score Reviews are typically initiated within a year after the applicable test date, this is not always the case. Information may come to ACT's attention at any time that causes a review of your scores. For example, investigations into recently reported scores or activities may cause ACT to reevaluate older scores; ACT may receive inquiries at any time from high schools, colleges, and other score recipients questioning scores they believe to be inconsistent with their observations of academic performance; or ACT may receive information through its Test Security hotline or from external investigations causing ACT to reexamine past scores. You acknowledge that your ACT scores have ongoing value even after they have been reported and agree that ACT has the right to review, and if warranted, cancel them at any time.

10. Individual Score Review Process: If your ACT scores become the subject of an Individual Score Review, ACT will send you a letter that gives you three options: (1) submit written information to ACT in support of your scores; (2) take a private retest at ACT's expense to confirm the validity of your scores; or (3) voluntarily cancel your scores. Additional details regarding these options will be provided in ACT's correspondence to you. ACT's letter will include a "Score Review Option Sheet" that outlines your options. You must sign and return the Option Sheet to ACT with only one option selected.

- a. **Submit Written Information:** If you choose to submit written information to ACT in support of your scores, this information is provided to a Test Security Review Panel, which will consider the totality of the evidence from you and ACT and will determine whether to recommend cancellation of the scores. If the Test Security Review Panel recommends that your scores be cancelled, you will again be given several options, including: (1) take a private retest at ACT's expense to confirm the validity of your scores; (2) voluntarily cancel your scores; or (3) challenge the Review Panel's cancellation decision in binding arbitration through written submissions to the American Arbitration Association (AAA) pursuant to the AAA Consumer Arbitration Rules, as discussed in Section 14 below. Additional details regarding these options will be provided in ACT's correspondence to you.
- b. **Private Retest or Voluntary Cancellation:** If you select either the private retest or voluntary score cancellation option at any point in the Individual Score Review process, you waive the right to any other resolution option that may have been available to you, and you release and forever discharge ACT from any and all claims relating to taking the ACT test(s) under review, ACT's review of the scores on that test (or those tests), and any score cancellation by ACT based on the results of your retest or your voluntary score cancellation.
- c. **Failure to Participate in the Individual Score Review Process:** If you do not respond in a timely manner to ACT's correspondence regarding the Individual Score Review or do not participate in, or unreasonably delay, the Individual Score Review process, ACT may cancel your scores if it has a good faith reason to believe that your scores are not valid. Once your scores have been cancelled, ACT will not reinstate them absent exceptional circumstances and in ACT's sole discretion.
- d. **Score Reporting while Scores Are Under Review:** ACT reserves the right to hold scores and not issue score reports pending the outcome of the Individual Score Review process.
- e. **Notification to Score Recipients of Pending Individual Score Review and Cancellation of Scores:** ACT reserves the right to notify official score recipients that an Individual Score Review is pending at any time. ACT also reserves the right to cancel your scores that are under review if you do not timely exercise one of the options offered by ACT or if you otherwise unreasonably delay resolution of the Individual Score Review process. You hereby agree and authorize ACT to make such a disclosure or cancellation.
- f. **Score Cancellation Notices:** If your scores are cancelled for any reason relating to an Individual Score Review, ACT sends a letter to all entities that received the scores directly from ACT informing them that the scores have been cancelled. ACT generally does not inform official score recipients of the reason for cancellation but may do so in exceptional circumstances (including but not limited to instances in which there is a Misconduct Finding as defined in Section 12(c) below).

11. Compromises in the Registration, Testing, Scoring, or Score Reporting Processes, and Group Irregularities.

ACT takes steps that are intended to provide you a standardized testing process. However, circumstances may prevent this from occurring in some cases. Those circumstances include, but are not limited to:

- Deviations from standard testing procedures such as events that cause testing to be cancelled or interrupted, or a mistiming on any part of the test;
- Errors, delays, or other non-standard circumstances in (a) processing test registrations; (b) delivering tests, (c) administering tests, (d) uploading test responses, (e) preparing, handling, shipping, receiving, processing, or scoring tests; or (f) reporting scores;
- Disruptions at the test location; Circumstances that raise concerns about the possibility of prohibited behavior that may have affected a group of examinees (e.g., examinees who tested in the same room or center where the prohibited behavior occurred); such circumstances include but are not limited to evidence of advance access to or disclosure of test content or inappropriate conduct during an exam administration; or
- Any other events that disrupt or compromise any part of the testing process (i.e., registration, test distribution, testing, scoring, and score reporting).

In the unlikely event such a circumstance occurs, ACT will examine the situation and determine whether it needs to take any action, including but not limited to not scoring tests or cancelling scores. If ACT determines that it needs to take action, ACT will in its sole discretion: (a) correct the error (if an error occurred and ACT believes correction is feasible); (b) cancel the test, not score tests, or cancel scores, including all completed sections of the test ("Discontinue the Testing Process"), (c) Discontinue the Testing Process and offer each affected person the option to retest at no additional fee (normally on a future National test date); or (d) Discontinue the Testing Process and offer a refund. If the

impacted test event is a State testing event (i.e., one where a state or district has paid for your exam), ACT may offer the option to retest you at no additional fee or it may cancel the test event without an option for retest.

The remedies listed in this Section 11 are the exclusive remedies available to examinees for the circumstances described in this Section 11.

ACT shall not be required to conduct Individual Score Reviews for each impacted group member or demonstrate the invalidity of specific scores in the circumstances described in this Section 11. Decisions made by ACT pursuant to this section are final.

12. Test Security Investigations. As part of its efforts to protect the fairness of the ACT exam and the integrity of ACT scores, ACT may conduct investigations into the security of its test materials and the testing process (collectively “Test Security Investigations”). You agree to cooperate with any Test Security Investigation. ACT reserves the right to hold and not report scores pending the outcome of a Test Security Investigation. Test Security Investigations may produce evidence that calls into question the validity of individual examinee scores and causes ACT to initiate one or more Individual Score Reviews as outlined in Section 9, above. In other cases, Test Security Investigations may produce evidence that calls into question the validity of a group of examinee scores (e.g., all scores achieved from a specific room, school, or district on a specific test date) and results in ACT taking action under Section 11, above.

In addition to taking action regarding examinee scores, ACT may, in its sole discretion, decide as part of a Test Security Investigation that additional steps are appropriate, such as when prohibited behavior is or might be ongoing or rises to the level of an infringement of ACT’s intellectual property rights or a criminal act (e.g., coordinated group efforts to steal and disseminate ACT’s secure test content; activities involving someone else taking the test for another person or altering test responses; theft, disclosure of, or access to test content or responses to secure test questions; or other serious or potentially ongoing misconduct). Those additional steps may include, but are not limited to, the following:

- a. **Prohibiting You from Taking the ACT:** ACT may prohibit you from taking the ACT test, even if you have already registered, if ACT has reason to believe (1) you engaged in prohibited behavior in connection with a prior or future administration of the ACT test, (2) you intend to engage in prohibited behaviors in the future, (3) you have provided false or misleading information to ACT or to others relating to your taking the ACT test, or (4) you are working for a test preparation provider. This prohibition may be temporary or permanent.
- b. **Disclosure of Investigative Information:** ACT reserves the right to disclose details of a Test Security Investigation to anyone who may be able to assist ACT in the investigation or who may have an interest in their own independent investigation, such as law enforcement, state departments of education, local school officials, and score recipients. Such disclosures help protect the integrity and fairness of the examination process and benefit examinees who properly obtain their ACT scores, as well as score recipients. You authorize and consent to these disclosures.
- c. **Disclosure of Misconduct Finding:** If you are found by a court or arbitrator to have engaged in any action prohibited under these Terms and Conditions that affected the validity of your scores on the ACT test or the scores of any other examinee(s) (“Misconduct Finding”), ACT may disclose that fact to any schools or scholarship entities that received your ACT scores and to other third-parties with a legitimate reason for knowing that information.

13. Voluntary Cancellation of Scores by You. Unless you test under a State, District, or On-Campus testing program, ACT will cancel your scores upon your request. If scores have already been sent to score recipients, ACT will notify the score recipients that the scores have been cancelled. ACT will not be required to reinstate voluntarily cancelled scores, even if you later change your mind.

14. ARBITRATION AGREEMENT FOR DISPUTES WITH ACT. Arbitration is an alternative dispute-resolution procedure intended to allow the parties to resolve issues without the formality of going to court. As described in this Section 14, certain Disputes between you and ACT will be submitted to an arbitrator, not a judge or jury, for resolution. Arbitration is frequently a more efficient method for resolving Disputes, for both you and ACT.

- a. **You and ACT agree that any and all Disputes (other than Disputes that solely involve infringement of ACT’s intellectual property rights) that may arise between you and ACT -- including but not limited to Disputes that relate in any way to these Terms and Conditions, registering for the ACT test, taking the ACT test, requesting or receiving accommodations or supports on the ACT test, the reporting of ACT test scores, the use or disclosure of personal information by ACT, Individual Score Reviews, or the cancellation of ACT test scores -- shall be resolved by a single arbitrator through binding arbitration.**

By agreeing to arbitration, both parties are waiving their right to have Disputes subject to this arbitration agreement (including Disputes regarding statutory rights) brought before or decided by a judge or jury in state or federal court and are agreeing that any such Dispute will instead be resolved through binding

arbitration.

- b. The arbitration will be administered by the American Arbitration Association (“AAA”), under the AAA Consumer Arbitration Rules (“AAA Rules”) in effect at the time a request for arbitration is filed with the AAA, unless the parties agree in writing to an alternate arbitration forum and/or different arbitration rules, or a substitute arbitration forum is agreed to or ordered pursuant to subsection (c) below. Both you and ACT agree to promptly comply with the AAA’s filing requirements. This includes your obligation to pay AAA a non-refundable \$200 filing fee (unless AAA agrees to waive the fee for you) and ACT’s obligation to pay the remainder of the filing fee. Your share of the filing fee will be reimbursed by ACT if you prevail in arbitration. Copies of the AAA Consumer Rules can be located on AAA’s website, currently found at: www.adr.org/sites/default/files/Consumer_Rules_Web_0.pdf.

Any issues regarding the enforceability of this arbitration agreement or whether a Dispute is subject to this arbitration agreement will be decided solely by the arbitrator, except in the case of Disputes that solely involve infringement of ACT’s intellectual property rights. Unless both parties agree, or a court so orders for good cause shown, no arbitration may be brought or maintained as a class action, and the arbitrator shall not have the authority to combine or aggregate the Disputes of more than one individual, conduct any class proceeding, make any class award, or make an award to any person or entity not a party to the arbitration. Each party will be responsible for its own attorney’s fees and expenses incurred in connection with the arbitration, regardless of the outcome of the arbitration, except as required by applicable law.

- c. Substitute Arbitration Forum: If for any reason AAA is not available as an arbitration forum, you and ACT agree to reasonably confer regarding a substitute arbitration forum or arbitrator. In the event you and ACT are not able to reach agreement on a substitute arbitration forum or arbitrator within 14 days of the first communication on the topic between the parties, either party or both parties may submit the issue to the U.S. District Court for the Southern District of Iowa or a state court located in Johnson County, Iowa for the sole purpose of seeking a declaratory judgment naming a substitute arbitration forum or arbitrator.
- d. Additional Provisions Applicable to Individual Score Review Disputes: In all Disputes related to score cancellation decisions made as part of an Individual Score Review, the issue for the arbitrator to decide is whether ACT has a good faith reason to believe that your scores are invalid. Arbitration will be conducted as a documents-only arbitration (i.e., there will be no in-person or telephonic hearing and both you and ACT will be limited to submission of written arguments and evidence to the arbitrator), unless otherwise agreed by you and ACT or ordered by the arbitrator. If the arbitrator finds that ACT had a good-faith reason for deciding to cancel your scores, your scores will be cancelled (or will remain cancelled if cancelled previously). If the arbitrator finds that ACT did not have a good faith reason for deciding to cancel your scores, your scores will not be cancelled (or they will be reinstated, if applicable). Your share of the \$200 AAA filing fee will be reimbursed by ACT if you prevail in arbitration and your scores are not cancelled. If you ask the arbitrator to decide any other issues or you assert any claims against ACT in the arbitration other than a request to have your challenged scores upheld, ACT may assert one or more counterclaims against you and may ask the arbitrator to make a Misconduct Finding against you (see Paragraph 12(c), above) if supported by the evidence.
- e. Small Claims Court: Notwithstanding the arbitration agreement set forth in this Section 14, either you or ACT may take a claim to small claims court instead of arbitration if the claim is within the jurisdiction of the small claims court, but only if and as permitted in the AAA Rules. If an action in small claims court is instituted by you or ACT pursuant to the AAA Rules, and such action is within the jurisdiction of the small claims court, you and ACT agree to accept the findings of the small claims court as a final resolution of the parties’ Dispute and not to appeal the small claims court’s decision or pursue any other claim relating to that Dispute in court or arbitration. PLEASE NOTE: If you initiate a small claims court action, ACT will have the right to assert a counterclaim against you and may ask the court to make a Misconduct Finding against you (see Paragraph 12(c) above) if supported by the evidence. Also, small claims courts often do not have the authority to award declaratory and/or injunctive relief and thus -- unlike an arbitrator -- may not have the authority to declare whether ACT had a good faith reason for deciding to cancel your scores and/or to order ACT not to cancel a challenged ACT test score. Each party will be responsible for its own attorney’s fees and expenses incurred in connection with the small claims proceeding, regardless of the outcome, except as required by applicable law
- f. Applicable Law: The Federal Arbitration Act (“FAA”) governs enforcement of this arbitration agreement. Iowa law otherwise applies to these Terms and Conditions and governs resolution of any Dispute in arbitration or small claims court, to the extent that it is not inconsistent with the FAA.

15. Termination of Agreement (in Whole or in Part). If you repudiate, disaffirm, disavow, rescind, or otherwise cancel your agreement to all or any part of these Terms and Conditions at any time, ACT may – in addition to taking other action, and without conceding the validity of your actions – refund your test registration fee(s), cancel your score(s), and notify official score recipients that the score(s) have been cancelled, in its sole discretion.

16. LIMITATION OF LIABILITY AND DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACT'S TOTAL LIABILITY TO YOU, OR ANYONE CLAIMING BY OR THROUGH YOU OR ON YOUR BEHALF, FOR ANY CLAIMS, LOSSES, COSTS, OR DAMAGES ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED TO THE ACT TEST, FROM ANY CAUSE, SHALL NOT EXCEED THE TEST REGISTRATION FEES YOU PAID TO ACT, OR \$500, WHICHEVER IS GREATER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ACT BE LIABLE TO YOU, OR ANYONE CLAIMING BY OR THROUGH YOU OR ON YOUR BEHALF, FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, SPECULATIVE, INCIDENTAL, LOSS OF OPPORTUNITY (REGARDLESS OF WHETHER OR HOW THESE ARE CLASSIFIED AS DAMAGES), EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR ATTORNEYS' FEES, EXPENSES, EXPERT WITNESS FEES, OR COSTS, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR OTHERWISE AND REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

17. ACT Intellectual Property Rights and Confidentiality.

- a. Intellectual Property: All ACT tests, test-related documents and materials, and test preparation materials ("ACT Materials") are copyrighted works owned by ACT and protected by the laws of the United States and other countries. Outside of the protection granted by United States copyright law, ACT considers the ACT tests to be trade secrets. The test questions and answers, test-related secure documents and other materials constitute highly confidential, proprietary testing information that ACT takes every precaution to protect from disclosure beyond what is absolutely necessary for the purpose of administering a test.
- b. Confidentiality: You agree to maintain the confidentiality of the ACT Materials. Secure ACT tests and test questions (i.e., tests and test questions that are not made available by ACT to the general public) may not be copied, shared, discussed, or disclosed at any time or in any manner whatsoever. Test-related materials that ACT has made available to the general public, such as materials designated by ACT as practice or sample tests, may not be copied, duplicated, or used in any other works, in whole or in part, without the prior written approval of ACT.
- c. Consequences for Violation of ACT Rights: ACT may pursue all available civil and criminal remedies if its intellectual property rights are violated, including seeking damages and injunctive relief in a court of law and referring such violations to law enforcement authorities for criminal prosecution.
- d. ACT Ownership of Answer Documents and Use of Score Reports: ACT owns all answers and answer documents you submit, including all essay responses, as well as all score-related data maintained by ACT. Score reports ACT provides you may not be altered, and, if ACT cancels the scores reflected on such score reports, you may not provide those scores or score reports to third parties.

18. ACT Policies and Rules. The ACT policies and rules referenced in these Terms and Conditions and other rules applicable to the administration of the ACT test are available for your review at www.act.org/the-act/terms/rules, and are specifically incorporated into these Terms and Conditions. ACT policies and rules are periodically updated, and subject to change until 48 hours prior to your test date. Except to the extent you are testing under a State, District, Arranged, or On-Campus testing Program, ACT will send you a notification approximately 48 hours before the test date, reminding you to review the policies and rules on the website, and you have an obligation to read the policies and rules before you take the test. If you do not agree to comply with the policies and rules, or applicable changes made to the policies or rules 48 hours prior to your test date, you must notify ACT prior to the test of your intent to cancel your registration pursuant to this provision. ACT may provide a refund in the event of such cancellation in its sole discretion. Any questions should be directed to ACT Customer Care at 319.337.1270 or through email or chat at www.actstudent.org/contactus in advance of the applicable test date. Notification of your intent to cancel your registration pursuant to this provision should likewise be directed to ACT Customer Care.

19. Governing Law and Venue. These Terms and Conditions shall be governed by the laws of the state of Iowa, without giving effect to conflict of law principles and excluding the United Nations Convention for the International Sale of Goods, and subject to the applicability of the Federal Arbitration Act to arbitration matters as discussed in Section 14, above. Pursuant to Section 14, you and ACT have agreed to participate in binding arbitration to resolve any Disputes between you and ACT, other than Disputes that solely involve infringement of ACT's intellectual property rights. You agree that any Disputes that are not resolved in arbitration (or small claims actions allowed under the AAA Rules), will be resolved exclusively in the US District Court for the Southern District of Iowa or a state court located in Johnson County, Iowa.

You agree to submit to the personal jurisdiction of either of these courts for the purpose of litigating any claim related to such Dispute, and you waive any objection that you may have to the location of such courts (including, but not limited to, any objection to venue in such courts).

- 20. Waiver and Severability.** Any failure to insist upon strict performance of any of these Terms and Conditions shall not be deemed a waiver of its rights unless such waiver is in writing signed by the party against whom it is asserted. Any waiver of any right hereunder at any time shall not be deemed a waiver of any other right. If any provision or part of these Terms and Conditions is held by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way; and, to the greatest extent possible, the invalid, illegal, or unenforceable provision shall be modified so that it is valid, legal, and enforceable and, to the fullest extent possible, reflects the intention of the parties as originally set forth in these Terms and Conditions.
- 21. Force Majeure.** ACT shall not be liable for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control, including, without limitation, your actions or failure to comply with the requirements of ACT; national emergencies, fire, flood, inclement weather, epidemics, pandemics, or catastrophes; acts of God, governmental authorities, or parties not under the control of ACT; or insurrection, war, riots, or failure of transportation, communication, or power supply. ACT will exercise commercially reasonable efforts to mitigate the extent of the excusable delay or failure to perform and any adverse consequences.
- 22. No Third-Party Beneficiary.** These Terms and Conditions do not create a third-party beneficiary relationship between ACT and any individual or entity other than you.
- 23. Understanding These Terms and Conditions.** You must agree to these Terms and Conditions, including the provisions regarding score cancellation and binding arbitration, as a condition to registering for the ACT. IF YOU HAVE ANY QUESTIONS ABOUT OR DIFFICULTY UNDERSTANDING THESE TERMS AND CONDITIONS, YOU SHOULD DISCUSS THEM WITH YOUR PARENTS OR GUARDIANS BEFORE REGISTERING FOR THE ACT TEST.
- 24. Accessibility of these Terms and Conditions.** If you have difficulty accessing these Terms and Conditions and/or any of the ACT Policies referred to in the Terms and Conditions, please contact ACT Customer Care at 319.337.1270 or through email or chat at www.actstudent.org/contactus in advance of registering for or taking the ACT test. ACT will be happy to provide these Terms and Conditions in an alternative format, or to assist you in some other manner as reasonably necessary to enable you to access these Terms and Conditions.

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