

**STANDARD TERMS AND CONDITIONS
FOR LICENSE OF ACT, INC.'S PAPER-BASED THE ACT® TEST
MATERIALS AND RELATED SERVICES**

Any of the following acts constitute Customer's acceptance of the terms and conditions contained herein: (a) Customer's placing of an order for the products and services, (b) Customer's use of the products and services, (c) Customer's payment for the products and services ordered. If Customer does not agree, it should not use the products. ACT will only report scores earned through the Residual administration of the ACT to the administering college. ACT will not share scores with other colleges, scholarship agencies, or any other entities. The test coordinator must agree to and comply with the Residual Test Coordinator Agreement, and notify examinees that scores are for internal use at the administering institution only. Students must read and agree to the terms and conditions of testing provided in the Taking the ACT® test booklet and attest to them on the test materials provided during the administration.

1. Term. This Agreement shall become effective as of the date that ACT accepts the Customer's order and shall remain in effect until ACT completes the scoring and reporting services that have been ordered, subject to earlier termination as set forth in Sections 10 and 12.
2. Payment Terms. Customer agrees to pay ACT for the products and services at ACT's prevailing rate. Customer shall make all payments within thirty (30) days of receipt of an invoice from ACT.
3. License. Subject to the terms of this Agreement, ACT grants you a limited, revocable, non-exclusive, non-sublicensable right to use the assessments and all related materials, and all intellectual property rights therein (collectively, the "ACT Materials") in connection with the testing policies and procedures provided by ACT.
4. Ownership of Materials. ACT is the owner of the ACT Materials and all intellectual property rights to it, including but not limited to, copyright and trademark. Customer's interest is strictly that of a licensee subject to the terms of this Agreement. Customer does not acquire any right, title, or interest in or to the ACT Materials. Customer shall not copy, modify, enhance, reverse engineer, or make any addition to the ACT Materials without the prior written consent of ACT.
5. Confidentiality. Customer agrees that neither it nor its employees shall at any time, either directly or indirectly, publish, display or otherwise disclose to any person, organization, or entity in any manner whatsoever any ACT Materials, except as strictly necessary for Customer to administer the assessments to the Authorized Examinees. The term "Authorized Examinees" means individuals who are employees or prospective employees of the Customer. If the Customer is a school, the term also includes the individuals who are prospective or registered students of that school. If the Customer is a non-profit government funded agency, such as a Workforce Investment Board or a One Stop Center, the term also includes individuals whose Assessments have either been paid for directly by the individual, or whose Assessments have been paid for by such government funding or by an educational institution. The term "individual" means a human being and does not include a partnership, corporation, association, cooperative, or other legal entity. Customer shall protect the ACT Materials in accordance with ACT's procedures and use a standard of care appropriate for secure test materials. All ACT Materials shall be and remain the property of ACT. The ACT Materials shall, within ten (10) days of ACT's written request, be returned to ACT (including any copies thereof).
6. Testing Procedures. Customer agrees to administer the Assessments in accordance with all policies and procedures provided by ACT. Customer shall store the ACT Materials at secure location(s) approved by ACT. Customer agrees that all used and unused ACT Materials will be returned to ACT, in accordance with the policies and procedures provided by ACT, for scoring and/or processing. Customer agrees to fully cooperate with ACT, and cause those individuals involved in the administration of or preparation for the Assessments ("Administration Staff") to fully cooperate with ACT in the event of a test security incident. Customer acknowledges that failure to maintain the confidentiality of the Assessments will result in damages to ACT and may require ACT to develop a replacement form. Accordingly, if through the fault of Customer or Administration Staff, the security of an Assessment is compromised, Customer agrees to pay ACT the costs of developing a new form in addition to any other remedies under the law. ACT may, in its sole and absolute discretion, cancel scores in cases of testing irregularities, which may include without limitation, use of a compromised test form, falsification by an examinee of his/her identity, impersonation of another examinee (surrogate testing), unusual similarities in the answers of examinees at the same test center, or other indicators that the test scores may not accurately reflect the examinee's level of educational development.
7. Data. The parties acknowledge and agree that ACT may use and disclose the data collected from the administration of the Assessments, as set forth in ACT's Privacy Policy available at www.act.org/privacy, as amended from time to time.
8. Limitation on Damages. ACT's liability for damages arising out of or in connection with this Agreement shall not exceed the amount Customer has paid ACT for the products and services. In no event shall ACT be liable to Customer for special, indirect, incidental, punitive, exemplary, or consequential damages. In no event shall ACT be liable to Customer for special, indirect, incidental, punitive, exemplary, or consequential damages.

9. **Warranty and Limitations.** ACT WARRANTS THAT THE ASSESSMENTS HAVE BEEN DEVELOPED IN ACCORDANCE WITH AND THE SERVICES WILL BE PERFORMED IN A MANNER CONSISTENT WITH INDUSTRY STANDARDS. EXCEPT AS SET FORTH IN THIS SECTION, ACT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE.
10. **Termination.** Either party may terminate this Agreement upon written notice to the other party in the event that other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. This Agreement may also be terminated without cause at any time by either party giving thirty (30) days written notice to the other. Customer shall pay ACT for all products delivered and services performed through the date of termination. Upon the expiration or termination of this Agreement, the obligations which by their nature are intended to survive shall survive including without limitation, those set forth in Sections 2, 4, 5, 7, 8, 9, 10, 15.
11. **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.
12. **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 control, including, without limitation, national emergencies, fire, flood, epidemics, inclement weather, catastrophe, acts of God, governmental authorities, or parties not under the control of ACT, 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 by either the party upon notice to the other.
13. **Assignment: Subcontracts.** Customer may not assign or transfer its obligations or interest in this Agreement without the express written agreement of ACT. ACT may subcontract all or part of its obligations under this Agreement provided that ACT shall remain responsible for any such subcontractor's performance.
14. **Entire Agreement.** This Agreement consists of these terms and conditions and ACT's order form completed by the customer. It constitutes the entire agreement between the parties with respect to the products and services ordered by the Customer indicated on such order form and supersedes all other prior agreements and understandings, both written and oral, regarding such products and services. The terms and conditions contained in this Agreement are the only conditions applying to the delivery of the products and services. 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, consent, modification, or amendment to this Agreement shall be binding unless in writing and signed by both parties.
15. **Notices.** Notices under this Agreement shall be deemed to be adequate and sufficient notice if given in writing and (a) delivered via 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; (b) delivered via 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, (c) delivered via fax in which case notice shall be deemed to have been received upon transmittal; or (d) if to Customer, delivered via e-mail or fax. All notices shall be sent to ACT at the following address: ACT, Inc., 500 ACT Drive, PO Box 168, Iowa City, Iowa 52243-0168, Attention: CFO, Fax: 319.341.2760. All notices shall be sent to Customer according to the contact information set forth in the order form.
16. **Authorization.** Each party represents and warrants (a) that it has the requisite authority to enter into this Agreement; and (b) that the individual(s) signing this Agreement on behalf of such party is (are) authorized to do so.