

JOB PROFILING AGREEMENT

This Job Profiling Agreement (“Agreement”) is made by and between ACT, Inc. (ACT) and _____, an individual or organization that provides job profiling services, designated below and hereafter known as Agency, as of the effective date stated below.

In consideration of the mutual promises made herein, ACT and Agency agree as follows:

IDENTIFICATION OF THE PARTIES

ACT is a nonprofit educational assessment and services organization. Agency desires to use ACT's SkillPro[®] software (“SkillPro”) and job analysis system, to provide job profiling services to third party clients. In order to provide such services, Agency employees must be ACT-trained and ACT-authorized. A list of Agency employees to be trained at the initiation of this Agreement is attached (see Attachment A). Those Agency employees authorized by ACT to provide job profiling services shall be referred to as “Job Profilers.”

TERM

This Agreement will be effective upon the date of its execution and acceptance by ACT, and shall remain in effect in perpetuity, unless otherwise terminated as contemplated in this Agreement.

AUTHORIZATION STATUS

Job Profilers must maintain their authorized status by:

- A. attending and satisfactorily completing, as determined in ACT’s sole discretion, all required job profiling training;
- B. conducting, completing, and submitting to ACT at least four profiles in a 12-month period or satisfactorily completing, as determined in ACT’s sole discretion, refresher requirements as dictated by ACT;
- C. and engaging in post-training coaching with ACT, as determined in ACT’s sole discretion.

If these conditions are not met, ACT may, at its sole discretion, de-authorize any Job Profiler(s) upon written notice to the Agency, or terminate this Agreement after providing agency with written notice and thirty (30) days opportunity to meet these conditions.

TERMINATION

In addition to the termination rights set forth above, either party may terminate this Agreement for any reason upon providing the other party at least thirty (30) days prior written notice. Further, ACT may terminate this Agreement as further set forth in the **Default By Agency** paragraph of this Agreement. Finally, ACT may terminate this Agreement upon written notice if the SkillPro License Agreement ultimately executed between the parties is terminated.

Upon the termination of this Agreement for any reason, Agency shall immediately discontinue all job profiling activities and the use of SkillPro including, but not limited to, holding job profiling sessions, preparing job profiling reports, and representing its employees as Job Profilers.

RELATIONSHIP OF THE PARTIES

The parties acknowledge and agree that an independent contractor relationship has been created by this Agreement. Neither party nor any of its employees or agents is, or will hold themselves out to be, an agent or employee of the other party. Accordingly, neither party makes representations regarding, and is in no way responsible or accountable for, the activities and conduct of the other party.

JOB PROFILING SERVICES

During the term of this Agreement, Agency may provide ACT job profiling services for third party clients including any clients which may be referred to Agency by ACT. However, ACT makes no representations regarding the market for

job profiling services, nor does ACT guarantee to make any referrals to Agency.

TRAINING OF JOB PROFILERS

Job Profilers will attend and satisfactorily complete all training or refresher requirements, as applicable, necessary to become and remain authorized as Job Profilers. The ACT training will include instruction in profiling skill areas and in how to use the most current version of SkillPro. Job Profilers will also stay up-to-date on changes and enhancements to the job profiling procedures by periodically accessing the job profiling resources website identified by ACT and incorporating the revised material or procedures into their job profiling activities.

SOFTWARE LICENSES

Agency shall use SkillPro to conduct job analyses and shall adhere to the provisions of the ACT SkillPro License Agreement ultimately executed between the parties during the term of this Agreement.

RESPONSIBILITIES OF THE PARTIES

ACT agrees to:

- A. provide Agency employees with ACT job profiling training and, upon satisfactory completion of such training, verify and authorize, in writing, that such employees have received ACT training;
- B. periodically review Agency's final job profile reports prior to delivery to clients and provide guidance and feedback regarding consistency with ACT standards as specified in the Job Profiling training, notebooks, and resources website;
- C. provide limited technical support to Agency employees by telephone or electronic mail for the job profiling process; and
- D. license SkillPro to Agency for purposes of this Agreement, based on the terms of the SkillPro License Agreement, as ultimately entered into by the parties.

Agency agrees to

- A. provide job analysis services for third party clients in a professional manner consistent with ACT standards as specified in the job profiling training notebooks, resources website, and direct feedback from ACT, whether given to Job Profiler or Agency;
- B. provide each organization for which a job profile is conducted with a written report for each profile conducted by Agency using the then current ACT job profiling report template;
- C. provide ACT with the electronic data for each profile conducted by Agency in accordance with the standards and procedures specified by ACT in the job profiling training notebooks and resource website;
- D. upon request and in a timely manner, but in any event not more than thirty (30) days following such request provide to ACT: written profile reports (or example reports) performed by one or more Agency employees, draft reports, initial task lists, or other such documentation as ACT may request;
- E. respond in a timely manner to client and ACT questions regarding any job profiling session, and provide interpretation of any related profile upon request;
- F. refrain from providing SkillPro to any third party, from authorizing or knowingly allowing others to use SkillPro, and from training or allowing any third party or any employee (who is not a Job Profiler) to use SkillPro; provided, however, that others may be engaged to enter and edit text in SkillPro to support job profiling sessions under the Agency's supervision as defined in the job profiling training materials; and
- G. accurately represent the nature of Agency's relationship to ACT.

PAYMENTS TO ACT

Agency shall pay fees to ACT, for initial training and/or any subsequent training of Agency employees, according to ACT's applicable fee schedule in effect at the time of training. All amounts are due thirty (30) days from the date of invoice.

Agency shall pay fees to ACT for the SkillPro license as specified in the SkillPro License Agreement ultimately executed between the parties.

All taxes assessed on the provision of services to Agency hereunder by ACT shall be at Agency's expense and in addition to the fees provided for herein.

AGENCY EXPENSES

All expenses incurred by Agency pertaining to this Agreement or to any job profiling services provided by Agency, shall be paid by Agency. ACT is not responsible for and will not reimburse Agency for any travel, per diem, business costs, or any other expenses which may be incurred by Agency.

NONDELEGATION OF JOB PROFILING SERVICES

Job Profilers shall personally perform all actual job profiling services using SkillPro and its related materials. Agency may engage other employees to perform incidental services to support the job profiling sessions. Agency shall not attempt to directly or indirectly hire or employ any ACT employee to perform any job profiling services.

PROPRIETARY INTERESTS

ACT represents that it owns copyright and all other rights to and SkillPro necessary for performance under this Agreement. ACT will defend, at its expense, any and all claims that are asserted against Agency, to the extent sub claims are based on ACT's lack of such rights.

Agency acknowledges that SkillPro and all related materials supplied by ACT are owned by and proprietary to ACT, are copyrighted, and are confidential in nature. Agency shall take all steps necessary to not disclose these to any third party. In the event that any part of SkillPro or job profiling documentation may be subject to disclosure, Agency will notify ACT prior to any such disclosure and shall not make any disclosure until ACT has had a reasonable opportunity to respond and take all necessary actions to protect its interests.

Subject to the responsibilities itemized above, Agency shall protect the proprietary and confidential information of any client obtained during, after, and as the result of any job profiles. This includes any job profile which is conducted for any client, and its related materials and reports.

If Agency breaches the confidentiality requirements of this Agreement or any part of the SkillPro License Agreement ultimately executed between the parties, ACT may pursue any remedies available at law or in equity that it deems necessary to protect its interests. ACT shall be entitled to both a temporary and a permanent injunction to prevent Agency and/or its employees from committing or continuing any such breach of confidentiality, and may also seek monetary damages and any other relief provided for by law.

DEFAULT BY AGENCY

Any of the following shall constitute a default of this Agreement by Agency. Upon such default, ACT may terminate this Agreement after giving written notice and ten (10) days to cure the default and ACT, in addition to its right to terminate, may seek any legal remedy which, may also be available.

- A. Agency's failure to pay the fees as specified above when invoiced in accordance with the terms of the invoice.
- B. Agency becomes insolvent or involved in any bankruptcy proceedings.
- C. Agency misrepresents facts or data to ACT.
- D. Agency violates the ACT SkillPro License Agreement.

E. Agency breaches any other term or condition of this Agreement.

F. Agency no longer has at least one authorized Job Profiler, or person training to become a Job Profiler, as determined in ACT sole discretion

NONASSIGNMENT

Agency may not assign or transfer its obligations or interest in this Agreement without the express prior written agreement of ACT. No permitted assignment shall relieve Agency 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 Agency's permitted successors and assigns.

ATTORNEY'S FEES

Each party to this Agreement agrees to reimburse the other party for any legal fees and expenses reasonably incurred by the other party because of any breach of this Agreement by the other party.

APPLICABLE LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa, without regard for conflicts of laws principles.

AMENDMENT

This Agreement may be amended only by written mutual agreement of ACT and Agency. Any representation, promise, modification, or amendment to this Agreement shall not be binding upon either party unless in writing and signed by each.

GENERAL PROVISIONS

This Agreement constitutes the entire Agreement and understanding between ACT and the Licensee and upon entry into this Agreement, any previous Job Profiling Agreement between the parties is superseded and terminated. If any provision of this Agreement is found to be invalid or unenforceable by a final decision of court of competent jurisdiction, it is deemed omitted, but the remainder of this Agreement shall remain in effect. The paragraph headings used in this Agreement are for reference purposes only, and shall not be used to interpret the meaning of this Agreement.

ACT, Inc.

By: _____

By: _____

Name:

Name: Helen Palmer

Title:

Title: Director, Industrial/Organizational Psychology

Date: _____

Date: _____

Street Address:

City, State and Zip Code:

Phone Number:

Fax Number:

**ACT Job Profiling Agreement
Attachment A**

Names and job titles of Agency employees to be trained as Job Profilers: