

SKILLPRO LICENSE AGREEMENT

ACT, Inc., (“ACT”), in consideration of the terms and conditions of this SkillPro License Agreement (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 SkillPro[®] software (“SkillPro”) furnished for use by Licensee, according to the terms of this Agreement, and by the ACT-authorized job profiler(s) (“Job Profilers”) identified in Attachment A. All references to SkillPro in this Agreement are to the version(s) of the 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.

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: _____

For purposes of this Agreement, “Anniversary Date” means _____.
(to be filled in by ACT)

TERMS AND CONDITIONS

Term of License

This Agreement shall become effective on the date of the last signature to this Agreement and shall remain in force until the next occurrence of the Anniversary Date (initial term) and shall then be automatically renewed for successive 12 month periods, unless sooner terminated for any reason.

ACT may terminate this Agreement (1) upon thirty (30) days prior written notice, (2) immediately upon written notice at any time the Licensee is in default of this Agreement, or (3) immediately upon written notice in the event of a termination of Licensee’s Job Profiling Agreement.

Licensee may terminate this Agreement upon thirty (30) days prior written notice.

In the event of termination of this Agreement and at ACT’s request, Licensee shall erase SkillPro from the Job Profiler(s)’ computer(s), and destroy all ACT job profiling material, including 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, provided that, if payment for the initial term of this Agreement was made under a prior agreement between ACT and Licensee, no further payment for the initial term will be required. 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.

Computer Requirements

Licensee acknowledges and agrees that the computer configuration requirements located at <http://www.act.org/workkeys/jptrain/> are required to properly access and use SkillPro and that ACT shall have no liability for matters relating to the failure to comply with these computer requirements. ACT may revise these configuration requirements from time to time in its sole discretion.

License Modifications

Licensee may elect to expand the number of Job Profilers. Any expansions shall be in accordance with the terms and conditions of this Agreement. The fees for additional software for such Job Profilers 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 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 Job Profilers. Use by others is prohibited.

Licensee may not (a) use SkillPro for any other purpose not permitted herein, (b) assign, license, sell, loan, lease, or otherwise transfer SkillPro in whole or in part, (c) authorize or allow a third party to use SkillPro, (d) copy, or allow anyone else to copy, in whole or in part, SkillPro, (e) or modify, reverse engineer, decompile, or disassemble SkillPro.

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

ACT, in addition to other rights and remedies for default, including termination of this Agreement, shall have the right to recover from Licensee, at a minimum, 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. provide Licensee with SkillPro and its related materials, and any modifications of each as they may occur;
- B. provide Licensee with technical support for the then-current version of SkillPro via telephone or electronic mail; and
- C. provide support by telephone for initial installation and updates and modifications.

Licensee agrees to

- A. ensure that SkillPro and its related materials are used to conduct job profiling sessions and for that purpose only;
- B. ensure that SkillPro is used in job profiling sessions only by ACT-authorized 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, and (3) 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.

Limited Warranty

ACT WARRANTS THAT SKILLPRO WILL CONFORM TO PUBLISHED SPECIFICATIONS AND BE IN GOOD WORKING ORDER WHEN DELIVERED. ACT EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, OF ANY KIND OR NATURE, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES REGARDING GUARANTEED UPTIME, OR WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE.

CUSTOMER SHALL HAVE THE SOLE RESPONSIBILITY FOR ASSURING THAT ITS USE OF SKILLPRO COMPLIES WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AND ALL LABOR, EMPLOYEE, OR OTHER CONTRACTS OR PRACTICES TO WHICH IT IS A PARTY.

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 profile 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 to the extent it arises 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 during the current term of the Agreement. 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. Licensee's failure to pay the fees as specified above when invoiced in accordance with the terms of the invoice.
- B. Licensee becomes insolvent or involved in any bankruptcy proceedings.
- C. Licensee knowingly misrepresents facts or data to ACT.
- D. Licensee violates the Job Profiling Agreement.
- E. Licensee breaches any other term or condition of this Agreement.
- F. Licensee no longer has at least one authorized Job Profiler, or person training to become a Job Profiler, as determined in ACT sole discretion.

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 sublicense, 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, without regard to conflicts of laws principles, and constitutes the entire Agreement and understanding between ACT and the Licensee and upon entry into this Agreement, any previous SkillPro License Agreement between the parties is superseded and terminated except for any credit of payment for the initial term contemplated in the Payments section of this Agreement. 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 Licensee Job Profilers: