

Contract Committee Review Request
MUST BE COMPLETED IN FULL

Date: 4/24/24

Contract/Agreement Vendor:
Name of Vendor & Contact Person

Vendor Email Address

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase , any titles, and details for the Board of Education to review.

Reason/Audience to benefit

BOE Date Amount of agreement

Person Submitting Contract/Agreement for Review:

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal **&/or** Director or Administrator:
D23EAE1B28D6C0BCF621A58F055F8AC7 reodysign

Does this Contract/Agreement utilize technology? YES/NO
 If yes, Technology Admin:

Cabinet Team Member:
F2E63BEAAE31AA47112F240E69DA8A9F reodysign

Funding Source:
Fund/Project OCAS Coding

Consent

Action

Accept and approve the RENEWAL Terms and Conditions and Online Site Licensing and Enrollment Agreement between BAPS and ACT/WorkKeys Testing. Test administration is transitioning from the Special Ed department to each site office. Each site will create a unique enrollment account so that testing and invoicing can be done as needed. WorkKeys is an online testing portal used by potential new special education support hires to meet the state qualification requirements. There is no cost to the district. Cost is currently at \$13.00 per section; each test is 3 sections for new testers. Sites will encumber costs using Activity funds and each tester will reimburse the site for his/her test session(s). - D. Thornton

Summary This area must be complete with full explanation of contract

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.

ACT® WorkKeys® Testing Program Terms and Conditions

THESE TERMS AND CONDITIONS GOVERN YOUR USE OF ACT ASSESSMENTS AND SERVICES. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE FOLLOWING TERMS AND CONDITIONS. BY CLICKING THE “ENROLL” BOX YOU ARE AGREEING THAT THESE TERMS WILL APPLY TO YOUR ACCESS OR USE OF ACT ASSESSMENTS AND SERVICES. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, DO NOT CLICK ENROLL OR ORDER ACT ASSESSMENTS AND SERVICES.

These terms and conditions are a binding legal Agreement (“Agreement”) between ACT, Inc., a non-profit corporation having a principal place of business at 500 ACT Drive, Iowa City, IA 52243 (“ACT”) and you, the Customer (“Customer”) enrolling, placing an order, and using the ACT assessments and services including test administration, and score reporting services for the ACT WorkKeys assessment (as applicable, “Assessments” and “Services”).

1. ACT WorkKeys Testing Program. ACT, Inc. will support Customer in administering ACT WorkKeys assessments to its eligible examinees. Under this Agreement, “ACT WorkKeys” is used to refer to online and/or paper-based assessments that include Graphic Literacy, Applied Math, and Workplace Documents (“Qualifying Assessments”) available in English and Spanish, for which an eligible examinee may earn a National Career Readiness Certificate (“NCRC”) credential upon successfully meeting the NCRC requirements determined by ACT. ACT also provides access to additional assessments including Applied Technology, Business Writing, Workplace Observation, Fit, Talent, and WorkKeys Essential Skills. This Agreement governs Customer-sponsored ACT WorkKeys assessment administration and delivery of all ACT WorkKeys data and reports. After earning the ACT NCRC, examinees may receive a digital credential via email from ACT’s service provider, which the examinee may choose to share with third parties via an account established with the service provider. Examinees may also set up an online account at [myworkkeys.com](https://www.act.org/content/act/en/products-and-services/act-workkeys/act-workkeys-assessments.html) that enables employers to verify examinees’ credentials. The WorkKeys Testing Program (“Program”) and all assessments and services are further detailed on the following website: <https://www.act.org/content/act/en/products-and-services/act-workkeys/act-workkeys-assessments.html>

2. Term: This Agreement shall commence on the date Customer enrolls and accepts these terms and conditions for the Assessments and Services and shall remain in effect through August 31, 2027 (“Term”). To the extent Customer is receiving the Assessments and Services as part of a special program sponsored by a state agency or a contract between ACT and a state agency (“Agency Contract”), the Term of this Agreement will expire upon termination of the Agency Contract.

3. Services to be Provided: The Assessments and Services will be provided pursuant to ACT’s standard delivery specifications and requirements, as indicated herein.

4. Fees and Invoicing.

1. Customer Enrollment Determination: ACT will charge Customer the applicable unit price for the Assessments and Services provided in the applicable year, pursuant to the table below. If Customer is an entity organized under the laws of a State government agency, the “Education or Government Entity” unit rate shall apply. If Customer is a for profit or non-profit business entity, the “Business Entity” unit rate shall apply. To the extent Customer’s enrollment form included an inaccurate representation regarding Customer’s entity type, ACT reserves the right to request evidence of Customer’s entity type, and otherwise charge Customer the applicable unit rate for the accurate entity type.
2. Fee Calculation: Customer will be charged fees owed by Customer for the Assessments and Services provided equal to applicable unit rates for the total number of paper Assessments scored plus the applicable unit rates for the total number of online Assessments launched by Customer’s examinees during the prior month. Customer will be charged for each online Assessment launched if an examinee starts an Assessment regardless of whether the Assessment is completed in full. Any additional or optional Services requested by Customer will be invoiced by ACT at the rates set forth in the table below. The table includes ACT’s unit rates and fees applicable

through August 31, 2027. To the extent Customer continues using the Assessments and Services after August 31, 2027, ACT will charge Customer, based on their entity type, according to the unit rates in effect as of the date the fee is incurred. ACT may revise its fee schedule annually after the below unit rates expire.

3. **Agency Contract:** To the extent Customer is receiving the Assessments and Services pursuant to an Agency Contract, the applicable prices and pricing terms set forth in the Agency Contract and provided in Customer's enrollment confirmation email shall apply to Customer. For example, the unit rates, effective dates for the unit rates, and other pricing terms of the applicable Agency Contract, shall apply to Customer rather than the table below. Please refer to your applicable Agency Contract and enrollment confirmation email for applicable pricing terms.

ACT WorkKeys Assessments and Service Options	Educational or Government Entity								Business Entity							
	Unit Rate								Unit Rate							
	9/1/2023 to 8/31/2024		9/1/2024 to 8/31/2025		9/1/2025 to 8/31/2026		9/1/2026 to 8/31/2027		9/1/2023 to 8/31/2024		9/1/2024 to 8/31/2025		9/1/2025 to 8/31/2026		9/1/2026 to 8/31/2027	
	Online	Paper	Online	Paper	Online	Paper	Online	Paper	Online	Paper	Online	Paper	Online	Paper	Online	Paper
Applied Math*	\$13.00	\$13.50	\$13.50	\$14.50	\$13.50	\$14.50	\$13.75	\$15.00	\$21.00	\$21.50	\$21.50	\$22.50	\$21.50	\$22.50	\$21.75	\$23
Graphic Literacy*	\$13.00	\$13.50	\$13.50	\$14.50	\$13.50	\$14.50	\$13.75	\$15.00	\$21.00	\$21.50	\$21.50	\$22.50	\$21.50	\$22.50	\$21.75	\$23
Workplace Documents*	\$13.00	\$13.50	\$13.50	\$14.50	\$13.50	\$14.50	\$13.75	\$15.00	\$21.00	\$21.50	\$21.50	\$22.50	\$21.50	\$22.50	\$21.75	\$23
Fit (Online Only)	\$13.00	N/A	\$13.50	N/A	\$13.50	N/A	\$13.75	N/A	\$21.00	N/A	\$21.50	N/A	\$21.50	N/A	\$21.75	N/A
Talent (Online Only)	\$13.00	N/A	\$13.50	N/A	\$13.50	N/A	\$13.75	N/A	\$21.00	N/A	\$21.50	N/A	\$21.50	N/A	\$21.75	N/A
Applied Technology	\$13.00	\$13.50	\$13.50	\$14.50	\$13.50	\$14.50	\$13.75	\$15.00	\$21.00	\$21.50	\$21.50	\$22.50	\$21.50	\$22.50	\$21.75	\$23
WorkKeys Essential Skills (Online Only)	\$13.00	N/A	\$13.50	N/A	\$13.50	N/A	\$13.75	N/A	\$21.00	N/A	\$21.50	N/A	\$21.50	N/A	\$21.75	N/A
Business Writing (Online Only)	\$21.00	N/A	\$21.50	N/A	\$21.50	N/A	\$21.75	N/A	\$29.00	N/A	\$29.50	N/A	\$29.50	N/A	\$29.75	N/A
Workplace Observation (Online Only)	\$21.00	N/A	\$21.50	N/A	\$21.50	N/A	\$21.75	N/A	\$29.00	N/A	\$29.50	N/A	\$29.50	N/A	\$29.75	N/A
Local Scan - Annual License Fee (Payable at the start of the annual Contract Year)	\$1,950.00 per site (effective 9/1/2023 – 8/31/2024) \$2,100.00 per site (effective 9/1/2024 – 8/31/2027)															
Certificates Printed by ACT (price per certificate)	\$6.50 (effective 9/1/2023 – 8/31/2024) \$7.00 (effective 9/1/2024 – 8/31/2026) \$7.50 (effective 9/1/2026 – 8/31/2027)															
Certificate(s) Mailed to Authorized Customer Locations by ACT (Price per Mailing per Authorized Customer Location)	\$18.50 (effective 9/1/2023 – 8/31/2024) \$19.00 (effective 9/1/2024 – 8/31/2027)															
Customer Requested Database/System	\$100.00 per Hour															

Updates (as applicable)

(To be invoiced at ACT's discretion, with prior Customer notification of the estimated hours required to complete the request)

*Indicates an assessment required for an examinee to receive a NCRC.

5. **Payment Terms:** Customer agrees to pay ACT the amounts set forth herein for the delivery of the Assessments and Services. Customer shall make all payments within thirty (30) days of receipt of an invoice from ACT. Customer will pay a service fee of one percent (1%) per month or the maximum rate allowed by law, whichever is less, on any fees not paid when due under this Agreement. All invoices shall be sent to the billing address provided by Customer. Customer shall be responsible for any sales, use, or other taxes due as a result of any fees paid to ACT under this Agreement, unless Customer is exempt from tax as evidenced by a valid tax exemption certificate provided to ACT. Customer shall promptly provide ACT with Customer-required purchase order, as applicable, prior to the scheduled delivery of Assessments and Services. ACT reserves the right to discontinue access to the electronic systems for Assessments and Services if payments are delinquent. ACT has no obligation to re-issue invoices, provide credits, or issue refunds.

6. **Grant and Scope of License.** Subject to the terms and conditions of this Agreement, ACT hereby grants to Customer a revocable, non-exclusive, and non-transferable license during the Term to (a) access the Assessments and Services for the purpose of assessing the eligible examinees, (b) administer the Assessments to the eligible examinees, (c) resell the Assessments to eligible examinees, and (d) use the ACT materials presented to Customer by ACT pursuant to this Agreement, including but not limited to Assessments and Services and other materials as described herein (the "ACT Materials") in connection with the authorized administration of the Assessments and Services. Customer may administer the Assessments at Customer-authorized schools, campuses, facilities, or training or administrative locations ("Authorized Customer Locations") or other sites of its own choosing that provide for a proper assessment environment (as set forth in administration manuals provided by ACT), provided that the ACT Materials are stored and secured at the Authorized Customer Location(s) when they are not being administered, and provided that Customer abides by the terms and conditions set forth in this Agreement. ACT must receive any applicable site participation list (listing Authorized Customer Locations) before testing can occur at Customer's Authorized Customer Locations.

7. **Ownership of Materials:** ACT owns or has license for the Assessments and Services, including but not limited to, the skill definitions on which assessments are based; paper-based or online assessment documents, paper-based or online testing materials; test questions, answer choice; administration and registration materials; publications; data; text, images, graphics, button icons, illustrations, graphics, photographs, audio clips, music, sounds, pictures, videos; software, code; look-and-feel, design, layout, organization, presentation, user interface, navigation, trade dress, and stylistic convention thereof or contained therein; the score resulting from an assessment; reports; documentation; training materials, course materials; related materials; and all intellectual property rights therein, including any and all derivatives or modifications thereof (collectively included within "ACT Materials"). ACT owns copyrights in the ACT Materials. The ACT Materials are licensed on a limited, revocable, non-exclusive and non-sublicensable manner, not sold to Customer. Except as expressly granted in this Agreement, Customer does not acquire any right, title, or interest in or to the ACT Materials. Customer shall not and shall not assist or permit any third party to (a) use the ACT Materials for any purpose other than as expressly permitted, (b) assign, license, sell, loan, lease, or otherwise transfer the ACT Materials in whole or in part, (c) authorize or allow a third party to use, sell, loan or lease the ACT Materials, (d) copy, reproduce, distribute, email, post, scan, make available, display publicly, transfer, sell, modify, enhance, reverse engineer, decompile, disassemble, make derivative works from, remove information from or make any addition to the ACT Materials, in whole or in part, or allow anyone else to do so, except as permitted in writing by ACT, (e) seek to register or protect, anywhere in the world, the ACT Materials (or seek to register or protect any designation confusingly similar to the ACT Materials), (f) challenge ACT's ownership in or the validity of the ACT Materials, or (g) modify, reverse engineer, decompile, or disassemble any ACT online system. Customer shall promptly notify ACT, in writing, of any known, threatened, or suspected infringement or unauthorized use of the ACT Materials by any third party. Customer's rights to the ACT Materials expressly terminate upon the termination of this Agreement. Customer may not sell, provide access to, or otherwise transfer the ACT Materials to any other person, provided however that Customer may provide the Assessments and Services to its designated personnel, Authorized Customer Locations, and examinees solely for testing and interpretation purposes consistent with the terms of this Agreement and any related agreement for the use of the Assessments and Services.

8. Trademarks. ACT owns trademarks including, but not limited to, "ACT," "WorkKeys," "NCRC," "National Career Readiness Certificate," and the certification marks, "Platinum," "Gold," "Silver" and "Bronze" (collectively the "Trademarks.") Except as specifically granted in this Agreement, Customer does not acquire any right, title, or interest in or to the Trademarks. The Trademarks may not be used without ACT's prior written consent, and any authorized use of the Trademarks shall be governed by ACT's Trademark Use Guidelines.

9. Confidentiality: Customer agrees that neither it nor its employees, representatives, or agents shall at any time during or following the Term of the Agreement, 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 use the ACT Materials as part of the Assessments and Services provided hereunder. Customer shall protect the ACT Materials in accordance with ACT's policies and procedures and using a standard of care appropriate for secure test materials, but in no event less than a reasonable standard of care. All ACT Materials are and remain the property of ACT notwithstanding the subsequent termination of this Agreement. Customer shall not store and must return any unused ACT Materials (and all copies, if any) as directed by ACT and in accordance with ACT's policies and procedures. In the event Customer receives a Freedom of Information Act, public record, or open record request for any confidential information covered by this Agreement, Customer agrees to immediately notify ACT of such request in writing. Customer shall immediately notify ACT in writing in the event of any unauthorized use or disclosure of the ACT Materials and assist in remedying such unauthorized use or disclosure, as requested by ACT (which shall not limit other remedies of ACT as provided in this Agreement or by applicable law). Customer acknowledges and agrees that damages may not be adequate to compensate for the breach of this section and accordingly, Customer agrees that, in addition to any and all other remedies available, ACT is entitled to obtain relief by way of a temporary or permanent injunction to enforce the obligations described in this section.

10. U.S. Government Licenses. The online components of the Assessments, Products, and Services are "commercial items," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire Assessments, Products, and Services with only those rights set forth herein.

11. Testing Procedures: All Customer-sponsored WorkKeys test administrators are required to comply with ACT test administration requirements and shall complete a training program in preparation for test center operations. ACT provides online training at no additional cost to Customer. Detailed requirements for WorkKeys test administration, including administration manuals, users guides, and quick start guides are available at: <https://www.act.org/content/act/en/products-and-services/act-workkeys/act-workkeys-assessments/administration>. Customer and its Authorized Customer Locations agree to administer the Assessments in accordance with all policies and procedures established by ACT, as may be updated from time to time. Customer agrees to store ACT Materials in secure location(s) defined and described by ACT. Customer agrees that all used and unused ACT Materials (and copies, if any) will be returned to ACT, in accordance with the policies and procedures established by ACT. In the event of a test security incident or use of the ACT Materials that conflicts with the requirements of this Agreement or ACT policies and procedures, Customer and its Authorized Customer Locations agree to fully cooperate with ACT, and shall cause those individuals involved in the preparation, administration, or the return of the Assessments to fully cooperate with ACT. In the event ACT identifies testing irregularities, which may include but are not limited to the use of a compromised test form, falsification by an examinee of their 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, ACT reserves the right, in its sole and absolute discretion, to cancel all related or impacted test scores and notify Customer of that cancellation.

12. WorkKeys Online Testing Realm. ACT will establish a testing realm in the testing platform for new customers and their Authorized Customer Locations. Any returning customer must use its previously established testing realm for online administration of WorkKeys assessments under this Agreement. ACT is unable to move testing data if the incorrect testing realm is chosen.

13. Computer Requirements, Compatible Platforms and Hardware, and System Maintenance. ACT will provide Customer with computer configuration and other requirements as applicable. Customer acknowledges and agrees that the computer configuration requirements are required to properly access and use the Assessments and Services and that ACT shall have no liability for matters relating to the failure to comply with these computer requirements. ACT may, in its sole discretion, revise these configuration requirements from time to time. Customer is responsible for obtaining and maintaining an appropriate operating environment with the necessary hardware, operating system software, network configurations, and other items required to use and access Assessments and Services. ACT is not responsible for any incompatibility between Assessments and Services and any versions of operating systems, hardware, browsers, inadequate network configurations, or other products not specifically approved by ACT for Customer's use with the Assessments and Services. Customer's use of outdated versions of ACT WorkKeys shall be deemed a default of this Agreement. The Assessments and Services are subject to recurring maintenance windows, and occasionally unscheduled maintenance, during which servers may be taken offline. ACT shall not be responsible for any damages or costs incurred by Customer, if any, for such downtime. ACT may charge a fee for new or optional services made available through the online assessment system, subject to written agreement of Customer.

14. Username and Passwords. Each of Customer's eligible examinees who has provided ACT a valid email address in accordance with ACT's instructions will receive an email from ACT providing them with their individual username and password. Access to the Assessments and/or Services shall be granted to only those Customer and Authorized Customer Location staff and examinees that have been authorized to use the Assessments and/or Services by Customer. Staff and examinees may not share with or otherwise divulge their password to any other person. Access to the online platform is personal to the individual authorized staff member or examinee. Customer and Authorized Customer Location staff accessing the online platforms must log in using an email address having a domain affiliated with Customer or Authorized Customer Location and may not impersonate any person or entity or falsely state or otherwise misrepresent to ACT their identity or affiliation with a person or entity.

15. Use of Third Parties. In the event Assessments and Services are administered by a third party on behalf of Customer ("Third Party"), Customer enters into this Agreement on its own behalf and on behalf of the Third Party. Customer represents and warrants that it has the authority to bind the Third Party to this Agreement and that such Third Party is hereby bound by the terms and conditions of this Agreement as if it were Customer. Customer agrees that it shall be jointly and severally liable for all obligations of the Third Party.

16. Local Scan. To the extent Customer orders Local Scan services, ACT will provide software to enable Customer to scan completed paper answer documents into the online reports portal, from which Customer can generate examinee score reports.

17. RegiSTAR. RegiSTAR is an online system provided by ACT at no additional charge, to issue, report on and manage NCRC certificates for applicable examinees at their Authorized Customer Location(s). ACT will establish and provide to Customer a RegiSTAR account containing assessment and certificate information regarding the performance of eligible examinees on the Qualifying Assessments. Subject to any applicable privacy restrictions, Customer will retrieve an electronic file containing the login names of the eligible examinees and their related passwords which will allow such examinees to release their certificate information electronically. ACT requires that certain identifying information for the eligible examinee match and be included on all Qualifying Assessment records before those records may form the basis for issuance of an NCRC. This process is important to ensure that Qualifying Assessment scores are attributed to the correct examinee. If multiple test administrations are considered, the information must be identical on all records in the identification match fields. The five critical fields are: First Name; Last Name; Month of Birth; Day of Birth; Examinee ID.

18. NCRC Details. NCRC certificates will only be issued if the Qualifying Assessments used by an eligible examinee to achieve a NCRC Credential Level were administered to that eligible examinee under a proctored, secure environment. ACT reserves the sole right to change the ACT WorkKeys National Career Readiness Certificate requirements, content, data elements, and/or the "look and feel" of the certificate in its sole discretion, at any time. The Credential Level (Platinum, Gold, Silver, or Bronze) will be displayed on the certificate. The certificate will contain the ACT WorkKeys National Career Readiness Certificate registration number and issue date on the face of the certificate.

19. Certificate Sweep and Printing. A sweep, or data sweep, is the process wherein test score data is collected. In RegiSTAR, sweeps are scheduled and occur automatically. Data collected during sweeps is stored in the RegiSTAR system and is used in the creation of NCRCs. Any sweep for certificates pursuant to this Agreement will include information for all eligible examinees who tested at the Authorized Customer Location(s) authorized by Customer that are part of the account created for Customer, during the term of this Agreement. Customer may print certificates. If Customer requests ACT to print certificates for additional fees, ACT will print and ship the certificates to the address(es) provided by Customer.

20. Data: The parties acknowledge and agree that ACT may use and disclose the data collected from the administration of the Assessments and Services as set forth in ACT's Privacy Policy available at www.act.org/privacy, as amended from time to time. To the extent Customer is receiving Assessments and Services as part of Customer's participation under an Agency Contract, Customer authorizes ACT to share NCRC and WorkKeys assessment data of Customer's examinees with the State Agency. ACT also provides additional optional services for the benefit of the examinee, including a certificate sharing service. An examinee may choose to share their WorkKeys Assessment results or NCRC certificate with third party entities (such as employers or colleges) through an online account maintained by ACT or its service providers. Examinees may activate their online account after completion of the testing process and select their data privacy preferences in such account. ACT will honor the data sharing and privacy requests of such examinee.

21. 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 DURING EACH ANNUAL TERM. IN NO EVENT SHALL ACT BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.

22. Warranty and Limitations: EXCEPT FOR WARRANTIES EXPRESSLY SET FORTH HEREIN, ACT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES REGARDING UPTIME, AND WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE, AND THOSE 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 THE ASSESSMENTS AND SERVICES COMPLIES WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AND ALL LABOR, EMPLOYEE, OR OTHER CONTRACTS OR PRACTICES TO WHICH IT IS A PARTY.

23. Termination and Cancellation: 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 Assessments and Services delivered through the date of termination. Upon termination of this Agreement for any reason, Customer shall immediately discontinue use of the ACT Materials and shall immediately return all copies of the ACT Materials in its possession. Upon the expiration or termination of this Agreement, the obligations set forth in the following provisions of the Agreement shall survive: Payment, Ownership of Materials, Confidentiality, Testing Procedures, Data, Limitation on Damages and Warranty and Limitations.

24. 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, the actions of Customer, national emergencies, fire, flood, inclement weather, pandemics or epidemics, or 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. ACT shall exercise commercially reasonable efforts to mitigate the extent of the excusable delay or failure and its adverse consequences; provided, however, that should any such delay or failure continue for more than sixty (60) days, this Agreement may be terminated by either party upon notice to the other.

25. Assignment: This Agreement may not be assigned by Customer without the express prior written consent of ACT. No permitted assignment shall relieve Customer of its obligations under the Agreement.

26. 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.

27. No Third-Party Beneficiaries: The parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of the parties based upon this Agreement.

28. Severability; Headings; Governing Law: Should any provision of this Agreement be held by a court to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect. Headings used in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be governed by the laws of the State of Iowa.

29. Entire Agreement: This Agreement, including Customer enrollment form, constitutes the entire agreement between the parties with respect to the Assessments and Services, as applicable, and supersedes all other prior agreements and understandings, both written and oral. The terms and conditions contained in this Agreement are the only conditions applying to the delivery of the Assessments and Services. Except as may be incorporated in this Agreement, ACT expressly objects to and rejects any different or additional terms included in any request for proposal, quotation, purchase order, acknowledgment form, or other documents provided by Customer 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.

30. Notices: Notices under this Agreement shall be deemed to be adequate and sufficient notice if given in writing and delivered via (a) 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; or (b) 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. All notices shall be sent to ACT at the following address: ACT, Inc. 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243-0168, Attention: General Counsel. All notices to Customer shall be sent to the address provided by Customer in the enrollment form.

31. Customer Authorization: Customer's named representative placing this order, and agreeing to the terms and conditions, represents and warrants (a) it has the requisite authority to enter into this Agreement; and (b) the individual(s) signing this Agreement on behalf of such party is (are) authorized to do so.

THESE TERMS AND CONDITIONS GOVERN YOUR USE OF ACT SERVICES. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE TERMS. BY CLICKING THE "ENROLL" BOX YOU ARE AGREEING THAT THESE TERMS WILL APPLY TO YOUR ACCESS OR USE OF ACT ASSESSMENTS AND SERVICES. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF USE, DO NOT CLICK ENROLL OR ORDER ACT ASSESSMENTS AND SERVICES, AND DO NOT USE THE SERVICE.