

Contract Committee Review Request
MUST BE COMPLETED IN FULL

Date: 6/27/2022

Contract/Agreement Vendor: ACT / WORKKEYS (NANCY BLAKE)
 Name of Vendor & Contact Person
 n.blake@act.org
 Vendor Email Address
 WORKKEYS PROVIDES ONLINE TESTING
 OPPORTUNITIES FOR SPECIAL ED
 SUPPORT STAFF.

Summary
 SPECIAL EDUCATION
 Reason/Audience to benefit
 7/18/2022 \$36 PER TESTER
 BOE Date Amount of agreement

Person Submitting Contract/Agreement for Review: DAYLENE THORNTON

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal **&/or** Director or Administrator: *Daylene Thornton*
Daylene Thornton (Jun 27, 2022 08:50 CDT)

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

Leadership Team Member: *Karla Dyess*

Funding Source: 60/987 987-2140-810-900-0000-000-015
Fund/Project OCAS Coding

- Consent Item: Accept and approve the NEW/RENEWAL agreement between Broken Arrow Public Schools and the vendor listed above. (ie. New fiscal year &/or Renewal services)
- Action Item: Discussion, motion and vote on motion to approve or disapprove the NEW agreement between Broken Arrow Public Schools and the vendor listed above. (ie. Purchase over \$50,000 &/or new service)

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.



MEMORANDUM

To: Mr. Chuck Perry

From: Daylene Thornton

Date: 6/27/2022

Re: NEW Agreement with ACT / Workkeys Testing

SUBJECT

Accept and approve the NEW agreement between Broken Arrow Public Schools and ACT/Workkeys Testing. Workkeys is an online testing portal used for Special Education support staff to meet state qualification requirements. The cost to the district is \$36 per tester, to be billed after testing is completed. Funds will be reimbursed by testing candidates. -D. Thornton

SUMMARY

Workkeys testing is an online testing portal. Special Education administrative staff will serve as test proctors after completing the online proctor training. This testing provides Special Education support staff applicants to meet the state's minimum requirements for employment.

FUNDING

Admin Activity 60 project 987
Funds will be reimbursed by testing candidates

ENCLOSURE/ATTACHMENTS

Online Terms and Agreements
Online Site License and Enrollment Agreement



ACT WorkKeys Enrollment and Agreement

Thank you for choosing ACT® WorkKeys®! Please complete and submit this form to provide the information ACT needs in order to enroll your organization. Your participation in WorkKeys is complete upon execution of this agreement. You can complete the enrollment process by agreeing to the WorkKeys Agreement Terms as indicated below. If you have any questions on the enrollment form below, please contact workkeys@act.org or 1.888.826.1956.

* Field is Required

Enrollment

Section 1: Information About You

First Name*

TIFFANY

Last Name*

ROYAL

Position/Title*

ADMINISTRATIVE ASSISTANT / SPECIAL EDUCATION

Email*

taroyal@baschools.org

Phone Number*

918-259-5757

Section 2: Information About Your Organization

- Our organization is an **Educational** or **Government** entity
- Our organization is a non-educational and non-government **Business** entity

Full Legal Name of the Organization* ?

BROKEN ARROW PUBLIC SCHOOLS

Street Address*

701 S MAIN ST

City*

BROKEN ARROW

State*

Oklahoma

ZIP Code*

74012

- There are additional locations that will be covered by this agreement

Section 3: Billing Information

- The entity listed on the registration form is going to pay the bill with the same contact and address listed above.
- The entity listed on the registration form is going to pay the bill with a different contact or address than what is listed above.
- The entity listed on the registration form is **NOT** the going to pay the bill.

Purchase Order Number (optional)

Section 4: WorkKeys Enrollment Details

I have a Group Code

Estimated Number of Participants through Aug. 31, 2022* ?

15

Which assessments do you expect to administer?*			
<i>* Your responses using the checkboxes in the table below are used for planning purposes only. You will have access to all assessments listed below as part of enrollment.</i>			
Select	Assessment		
<input checked="" type="checkbox"/>	Applied Math - Required for the NCRC		
<input checked="" type="checkbox"/>	Graphic Literacy - Required for the NCRC		
<input checked="" type="checkbox"/>	Workplace Documents - Required for the NCRC		
<input type="checkbox"/>	Applied Technology		
<input type="checkbox"/>	Business Writing		
<input type="checkbox"/>	Workplace Observation		
<input type="checkbox"/>	Fit		
<input type="checkbox"/>	Talent		
Below is the standard pricing per assessment for assessments administered during the time periods listed:			
Start Date	End Date	Price for Education/Government Organizations	Price for Businesses
Sept. 1, 2020	August 31, 2022	\$12 per assessment; except \$20 per Business Writing and Workplace Observation assessment	\$20 per assessment; except \$28 per Business Writing and Workplace Observation assessment
* Please see the terms and conditions for additional details and a complete fee schedule.			

Our organization wishes to be a reseller of ACT WorkKeys assessments.

Add **WorkKeys Local Scan** to this enrollment - Software that enables local scanning of the WorkKeys Answer Folder. **There is a \$1,950 annual fee for the Local Scan option** and it is the customer's responsibility to supply the scanner and any other equipment and/or supplies that may be needed.

Test Administrator ?

I am the Test Administrator

First Name*	Last Name*
TIFFANY	ROYAL
Position/Title*	
ADMINISTRATIVE ASSISTANT / SPECIAL EDUCATION	
Work Email Address*	Work Phone Number*
taroyal@baschools.org	918-259-5757

RegiSTAR Contact ?

I am the RegiSTAR contact

First Name*	Last Name*
TIFFANY	ROYAL
Position/Title*	
ADMINISTRATIVE ASSISTANT / SPECIAL EDUCATION	
Work Email Address*	Work Phone Number*
taroyal@baschools.org	918-259-5757

Section 5: Agreement

In order to participate in ACT WorkKeys, your Organization must agree to Terms and Conditions. You, or the individual authorized bind your Organization should carefully read the ACT WorkKeys Terms in the box below. If your Organization agrees to the terms the ACT WorkKeys Agreement, please indicate your agreement by checking the first box below and clicking the "Enroll" button. If your Organization is unable to agree to the ACT WorkKeys through this form, please check the second box to indicate you would to receive an Agreement through DocuSign.

WorkKeys Agreement(s)

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 TERMS AND CONDITIONS BELOW. 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 SERVICES AND DO NOT USE THE SERVICE.

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 submitting an Enrollment Form or placing an Order for ACT products and/or

- By clicking the box to the left, and clicking the Enroll button below, the Organization listed in Section 2, agrees to the WorkKeys Agreement above. I understand that by submitting this form, the Organization is bound by and will comply with the WorkKeys Agreement. The person clicking the Enroll button is authorized to bind the Organization to the terms of the WorkKeys Agreement.

- Our Organization cannot agree to the WorkKeys Agreement through this form. Please send my Organization the agreement for eSignature.

Authorized Signatory for the Organization ?

First Name*

Last Name*

Position/Title*

Work Email Address*

Work Phone Number*

Section 6: Related Product

Please have an ACT Representative contact me about:

- ACT District Testing**, a solution that brings the ACT to students in the classroom on a school day.

ENROLL >

**ACT® WorkKeys® Testing Program
Terms and Conditions**

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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 submitting an Enrollment Form or placing an Order for ACT products and/or services (“Customer”). ACT provides a variety of products and services to help individuals achieve education and career success (“Assessments and Services”). This Agreement provides the terms and conditions pursuant to which the Assessments and Services are offered to Customer by ACT. Each Assessment and Service ordered by Customer will also be subject to Supplemental Terms and Conditions applicable to such product or service, which follow these Terms and Conditions. By Enrolling, Ordering, and/or using ACT Assessments and Services, Customer expressly agrees to these Terms and Conditions, and the Supplemental Terms and Conditions for each applicable Assessment and Service.

1. **Term:** This Agreement shall commence on the date an Enrollment Form or Order for Assessments and Services is placed by Customer and shall remain in effect through August 31, 2024 (“Term”). To the extent Customer continues using the Assessments and Services after the expiration of the Term, ACT will charge Customer according to the ACT’s standard unit rates in effect as of the date the fee is incurred, and Customer agrees to pay such standard unit rate. ACT may revise its fee schedule annually after the below unit rates expire. 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 the State Agency (“Agency Contract”), the Term of this Agreement will expire upon termination of the Agency Contract.

2. **Services to be Provided:** The Assessments and Services will be provided pursuant to ACT’s standard delivery specifications and requirements, as indicated in the Supplemental Terms and Conditions for each Assessment and Service ordered, which follow these Terms and Conditions and are incorporated herein.

3. **Payment Terms:** Customer agrees to pay ACT the amounts set forth in the Supplemental Terms and Conditions 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. Please note that ACT may place your order on hold for issues related to credit or outstanding invoices. All invoices shall be sent to the “Bill-To” address identified by Customer on the Enrollment Form. Customer warrants and represents that the Bill-To entity and address identified in the Enrollment Form is responsible for making payment on Customer’s account. To the extent the Bill-To address/entity identified in the Enrollment Form fails to make payment, ACT shall send the invoice to Customer’s address and Customer shall be obligated to make payment immediately. 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.

4. **Ownership of Materials:** ACT owns the Assessments, including but not limited to, paper-based or online assessment documents, testing materials, administration and registration materials, publications, data, reports, documentation, related materials, trademarks and all associated intellectual property rights, including any and all derivatives or modifications created during the term of this Agreement (collectively, the “ACT Materials”). Except as expressly granted in a Supplemental Terms and Conditions, 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. Customer may not sell or otherwise transfer the ACT Materials to any other person, provided however that Customer may provide the Assessments to authorized, Eligible Examinees and its personnel solely for testing and interpretation purposes. Customer may not (a) use the ACT Materials for any other purpose, (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 Assessments and Services or ACT Materials, (d) copy, or allow anyone else to copy, in whole or in part, the ACT Materials, or (e) modify, reverse engineer, decompile, or disassemble the ACT online system or ACT Materials.

5. **Confidentiality:** Customer agrees that neither it nor its employees shall at any time during or following the Term, 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 for the authorized purpose under this Agreement. Customer shall protect the ACT Materials in accordance with ACT’s procedures and using a standard of care

appropriate for secure test materials. To the extent Customer believes a statutory 'Freedom of Information Act' or analogous state statute requires the public release of ACT Materials, Customer will provide ACT with prior advance written notice of such request and allow ACT a reasonable time to petition for an exemption to the public release. All ACT Materials shall be and remain the property of ACT notwithstanding the subsequent termination of this Agreement. The ACT Materials shall, within ten (10) days of ACT's written request, be returned to ACT (including all copies), and Customer may be required to provide a certificate of compliance with this requirement.

6. **Testing Procedures:** Customer agrees to administer the Assessments and Services 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. **Online Assessment System:** Some Assessments and Services are provided through an Online Assessment System. ACT will provide Customer with access to the Online Assessment System solely for the purpose of assessing Examinees at authorized test centers and using the ACT Materials solely in connection with the authorized administration of the Assessments. ACT has scheduled maintenance windows during which the Online Assessment System may be unavailable to Customer to allow for routine updates and maintenance. ACT publishes the times of the maintenance windows periodically on its website. ACT also reserves the right to make the Online Assessment System unavailable for unscheduled maintenance. ACT shall not be responsible for any damages or costs incurred by Customer, if any, for such downtime. The Online Assessment System may be modified or updated from time to time at ACT's sole discretion. ACT may charge a fee for new or optional services made available through the Online Assessment System, subject to written agreement of the Customer. Additional requirements regarding the Online Assessment System applicable to specific Assessments and Services may be included in each applicable Supplemental Terms and Conditions.

8. **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. 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.

9. **Limitation on Damages:** THE LIABILITY OF ACT AND ANY ACT AFFILIATE OR LICENSOR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT CUSTOMER HAS PAID HEREUNDER DURING THE PRECEDING TWELVE MONTH PERIOD OF THE AGREEMENT TERM. IN NO EVENT SHALL ACT OR ANY ACT AFFILIATE OR LICENSOR BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.

10. **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. CUSTOMER WARRANTS THAT CUSTOMER HAS OBTAINED ALL NECESSARY PERMISSIONS AND CONSENTS REQUIRED FOR THE DELIVERY OF ASSESSMENTS AND SERVICES. CUSTOMER WARRANTS IT WILL USE AND DELIVER THE ASSESSMENTS AND SERVICES PURSUANT TO ACT POLICIES AND PROCEDURES. CUSTOMER WARRANTS IT WILL RESTRICT ACCESS TO DATA FROM THE ASSESSMENTS AND SERVICES, AND WILL TAKE NECESSARY STEPS TO ASSIST ACT OR ITS AFFILIATES OR LICENSORS TO USE, DELIVER, AND HANDLE DATA FROM THE ASSESSMENT SERVICES, CONSISTENT WITH APPLICABLE LAWS, RULES, AND REGULATIONS.

11. **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's participation in the Assessments and Services designated in a Supplemental Terms and Conditions will be automatically cancelled, and this Agreement will be deemed terminated without further notice if Customer fails to meet the Key Deadlines and provide the required information necessary for ACT to provide the Assessments

and Services, as indicated in the Supplemental Terms and Conditions. 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.

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, 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, the Agreement may be terminated by either party upon notice to the other.

13. 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.

14. 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.

15. 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.

16. 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 the Agreement shall remain in full force and effect. Headings used in the 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.

17. Entire Agreement: This Agreement, including all incorporated or referenced Supplemental Terms and Conditions, constitutes the entire agreement between the parties with respect to the Assessments and Services 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 a Supplemental Terms and Conditions, 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. Certain Assessments and Services may be subject to additional or different terms and conditions, which are set forth in the Supplemental Terms and Conditions. No waiver, consent, modification, or amendment to this Agreement shall be binding unless in writing and signed by both parties.

18. 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.

19. Customer Authorization: The Customer's named representative placing this Order, and agreeing to the terms and conditions, 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.

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.

ACT® WorkKeys® Testing Program Supplemental Terms and Conditions

- ACT WorkKeys Testing Program.** ACT, Inc. will support the Customer in administering ACT WorkKeys assessments to its Eligible Examinees (“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, and Talent. This Agreement governs the Customer-sponsored ACT WorkKeys assessment administration and delivery of all ACT WorkKeys data and reports. After earning the ACT NCRC, examinees may set up an online account at myworkkeys.com that enables employers to verify the examinee 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/workkeys-for-educators/assessments.html>.
- Test Administration Requirements.** 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/workkeys-for-educators/assessments/administration.html>.
- RegiSTAR.** RegiSTAR is an online system provided at no additional charge, to issue, report on and manage NCRC certificates for applicable examinees at their location(s). ACT will establish a RegiSTAR account for Customer containing assessment and certificate information regarding the performance of the Eligible Examinees on the Qualifying Assessments and will be provided to the Customer. 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.
- WorkKeys Online Testing Realm.** ACT will establish a testing realm in the testing platform for new customers. Any returning Customer will maintain any previously established testing realm which will be used for the online administration of the WorkKeys assessments under this Agreement. ACT is unable to move testing data if the incorrect testing realm is chosen.
- Username and Passwords.** Each of Customer’s Eligible Examinee that 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. Customer, and its agents is solely responsible for maintaining the security of its username and password.
- 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.
- NCRC Details.** 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.
- 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 Locations (“Authorized Customer Locations”) that are part of the account created for the Customer, during the term of the 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 the Customer.
- Standard Fees and Invoicing.**

- a. **Customer Enrollment Determination:** ACT will invoice the Customer at unit rates 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 for the accurate entity type the applicable unit rate.
- b. **Fee Calculation:** The fees owed by Customer for the Assessments provided shall be 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. 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, 2024. To the extent Customer continues using the Assessments and Services after August 31, 2024, 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.
- c. **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 the 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 Unit Rate					Business Entity Unit Rate				
	9/1/2021 to 8/31/2022	9/1/2022 to 8/31/2023		9/1/2023 to 8/31/2024		9/1/2021 to 8/31/2022	9/1/2022 to 8/31/2023		9/1/2023 to 8/31/2024	
	Online and Paper	Online	Paper	Online	Paper	Online and Paper	Online	Paper	Online	Paper
Applied Math*	\$12.00	\$12.50	\$13.00	\$13.00	\$13.50	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50
Graphic Literacy*	\$12.00	\$12.50	\$13.00	\$13.00	\$13.50	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50
Workplace Documents*	\$12.00	\$12.50	\$13.00	\$13.00	\$13.50	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50
Fit	\$12.00	\$12.50	\$13.00	\$13.00	\$13.50	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50
Talent	\$12.00	\$12.50	\$13.00	\$13.00	\$13.50	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50
Applied Technology	\$12.00	\$12.50	\$13.00	\$13.00	\$13.50	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50
Business Writing (Online Only)	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50	\$28.00	\$28.50	\$29.00	\$29.00	29.50
Workplace Observation (Online Only)	\$20.00	\$20.50	\$21.00	\$21.00	\$21.50	\$28.00	\$28.50	\$29.00	\$29.00	\$29.50
Local Scan - Annual License Fee (Payable at the start of the Contract Year)	\$1,950.00 per site									
Certificates Printed by ACT (price per certificate)	\$4.50 (effective 9/1/2021 – 8/31/2022) \$10.00 (effective 9/1/2022 – 8/31/2023)									
Certificate(s) Mailed to Authorized Customer Locations by ACT (Price per Mailing per Authorized Customer Location)	\$16.50 (effective 9/1/2021 – 8/31/2022) \$20.00 (effective 9/1/2022 – 8/31/2023)									
RegiSTAR Express Data Search	\$130.00 per Search plus \$4.00 per Name Included in File									
Customer Requested Database/System Updates (as applicable)	\$100.00 per Hour (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.

10. **Grant and Scope of License.** Subject to the terms and conditions of this Agreement, ACT hereby grants to the Customer a revocable, non-exclusive, and non-transferable license during the Term of this Agreement 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 in connection with the authorized administration of the Assessments. Customer may administer the Assessments at Authorized Customer Locations or sites of its own choosing

that provide for a proper assessment environment (as set forth in the Manuals), provided that the ACT Materials are stored and secured at the Authorized Customer Location(s) when they are not being administered, and provided that the 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.

11. Ownership of Materials. ACT owns or has license rights in the Assessments and Services, including all testing materials, documentation, related materials, and all intellectual property rights therein (collectively, the "ACT Materials"), and the trademarks "ACT," "NCRC," "National Career Readiness Certificate," and "WorkKeys". Except as specifically granted in this Agreement, Customer does not acquire any right, title, or interest in or to the ACT Materials or ACT owned trademarks. Customer shall not copy, modify, enhance, reverse engineer, or make any addition to the ACT Materials. The ACT Materials are licensed, not sold. Customer may not sell or otherwise transfer the ACT Materials to any other person, provided however that Customer may provide the Assessments and Services to Eligible Examinees and its personnel solely for testing and interpretation purposes. ACT trademarks may not be used without written consent, and any authorized use of ACT trademarks is governed by ACT's Trademark Use Guidelines.

12. Updates and Modifications. The Assessments and Services may be modified or updated from time to time at ACT's sole discretion. ACT shall make such modification and updates available to Customer as they are developed; provided however, that (1) ACT reserves the right to charge a fee for the new functionalities available through the Assessments and Services; and (2) to the extent that such modifications or updates require revised computer configuration, Customer shall provide such hardware or software that meets the revised computer configuration requirements for the updated Assessments within the time frame set forth in a written (or electronic) notice from ACT detailing the time frame of such modification or update and the revised computer configuration requirements. Customer's use of outdated versions of ACT WorkKeys shall be deemed a default of this Agreement.

13. U.S. Government End Users. The online components of the Assessments 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 the Assessments and Services with only those rights set forth herein.

14. Computer Requirements. Customer acknowledges and agrees that the computer configuration requirements located at <http://www.act.org/content/act/en/products-and-services/workkeys-for-educators/assessments/administration/technical.html> are required to properly access some components of the Assessments 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.

15. Use of Third Parties. In the event that a third party is listed among the Authorized Customer Location(s) ("Third Party"), the Customer enters into this Agreement on its own behalf and on behalf of the Third Party. The 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 the Customer. The Customer agrees that it shall be jointly and severally liable for all obligations of the Third Party.

16. Privacy. The Customer may have access to the assessment and certificate information related to the assessments administered at the Authorized Customer Locations, and Authorized Customer Locations may have access to assessment and certificate information related to the assessments delivered at their sites. However, ACT reserves the right to withhold personally identifiable information and institutionally identifiable information in accordance with ACT's Privacy Policy available at www.act.org/privacy as it may be amended from time to time, and other legal and contractual requirements. ACT's current Privacy Policy permits the sharing of personally identifiable information of a participant of ACT's assessments, programs or services to (1) the individual that is the subject of such information, and others that the individual chooses or authorizes ACT to provide the personally identifiable information, (2) others that pay for such individual to take the Assessment or receive a certificate, and (3) others who provide services to ACT or as necessary to deliver ACT's assessments, programs and services to such individual. If Customer is not among the persons permitted to receive personally or institutionally identifiable information under ACT's Privacy Policy or other legal or contractual requirements, Customer shall notify ACT, and/or ACT may restrict Customer's ability to view personally or institutionally identifiable information.