

**ACT® Aspire Assessment System®**  
**Terms and Conditions**

**THESE TERMS AND CONDITIONS GOVERN YOUR USE OF ACT ASPIRE ASSESSMENT SYSTEM SERVICES. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE FOLLOWING TERMS. BY CLICKING THE “ENROLL” BOX YOU ARE AGREEING THAT THESE TERMS WILL APPLY TO YOUR ACCESS OR USE OF ACT SERVICES. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF USE, 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 52242 (“ACT”) and you, the Customer 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. By ordering and using ACT Assessments and Services, Customer expressly agrees to these Terms and Conditions, and the Supplemental Terms and Conditions for each 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 July 30, 2021.

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.

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”). 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, registered 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 the ACT online test 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 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 their intended 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' provision requires the public release of ACT Materials, Customer will provide ACT with 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 be returned to ACT (including all copies) upon request, or pursuant to Testing Procedures.

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(s). 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](http://www.act.org/privacy), as amended from time to time.

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 APPLICABLE CONTRACT 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 FOR THE DELIVERY OF ASSESSMENT SERVICES AND THE ASSESSMENTS AND THAT CUSTOMER WILL USE, DELIVER, AND HANDLE DATA FROM THE ASSESSMENT 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, 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 the 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 FOLLOWING TERMS. BY CLICKING THE "ENROLL" BOX YOU ARE AGREEING THAT THESE TERMS WILL APPLY TO YOUR ACCESS OR USE OF ACT SERVICES. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF USE, DO NOT CLICK ENROLL OR ORDER ACT SERVICES AND DO NOT USE THE SERVICE.**

## ACT® Aspire Assessment System® Supplemental Terms and Conditions

1. ACT Aspire Assessment System. ACT, Inc. will support the Customer in administering ACT Aspire assessments in the United States and U.S. Territories. Under this Agreement, "ACT Aspire" is used to refer to Summative and/or Periodic assessments. Customer may elect to order (a) Summative and/or (b) Periodic assessments and services. The ACT Aspire Summative Assessments are available in online or paper-based formats that include English, Mathematics, Reading, Science and Writing assessments. The ACT Aspire Periodic Assessments are comprised of two components: Interim Assessments and Classroom Assessments. Periodic Assessments include English, Mathematics, Reading, and Science assessments and are available online, and Braille accommodated versions are also available. The Agreement and these Supplemental Terms and Conditions will govern Customer's use of all ACT Aspire products or services which Customer receives. Customer may administer the ACT Aspire Assessments during the Testing Windows made available by ACT and as selected by Customer, or otherwise noted on the ACT Aspire Testing Knowledge Hub site available at: <https://success.act.org/s/topic/OTO1B000000P3VIWAK/act-aspire> ("Knowledge Hub"). The Knowledge Hub is periodically updated to provide information for each Testing Window. Customer is required to check the Knowledge Hub regularly for updates regarding the Assessments and Services.

2. Term. ACT will provide ACT Aspire Assessment Services for Customer for each Assessment and Test Window selected by Customer in the online registration system, conditioned upon Customer providing all required information and completing all required actions by the deadlines in the Schedule indicated on the Knowledge Hub. In the event Customer fails to provide required information and data by the Key Dates and Deadlines, ACT will be unable to provide services, and may terminate this Agreement or require Customer to reschedule for an alternate standard Test Window.

3. Services and Customer Required Actions. ACT will provide Customer with standard ACT Aspire Testing Services, as described on the Knowledge Hub, which may be updated from time to time. The Services will include training resources, test administration, scoring, and reporting services for ACT Aspire. Customer is responsible for regularly reviewing the Knowledge Hub and communications from ACT to identify any changes to the schedule, deadlines, and other customer required actions. To the extent Customer fails to complete any required actions by the deadlines indicated in the schedule by ACT, ACT may not provide the Services to Customer for the selected Test Window.

#### 4. Fees and Invoicing.

a. Pricing. The per student online and paper based assessment fees and optional pricing applicable for the ACT Aspire Assessment Services ordered by Customer is provided on Customer's Enrollment Form ("Applicable Price"). A link to the Agreement and the data from the completed Enrollment Form is emailed to the person completing the Enrollment Form upon submission. Additional copies of the Agreement and the Enrollment data may be provided upon request by contacting ACT Customer Care at 319-337-1270. ACT Aspire standard pricing is also available at <https://www.act.org/content/act/en/products-and-services/act-aspire.html> ("Website"). To the extent Customer entered a Group Code on the Enrollment Form, applicable pricing is automatically applied and memorialized on the Enrollment Form. Optional Services, such as score labels and printed reports, may be available for the additional fee indicated on the Website. In the event that ACT is required to expedite the delivery of paper materials, ACT may charge the Customer an expedited shipping fee of \$75 per box.

b. Fee Calculation and Invoicing. The Customer shall pay ACT the Applicable Price for the actual number of: (i) paper ACT Aspire Summative Assessments shipped to Customer; (ii) online ACT Aspire Summative Assessments launched by Customer; (iii) ACT Periodic Assessments launched by Customer, plus any accommodated Assessments provided by ACT; and (iv) Optional Services

provided. An online assessment is considered “launched” if a student starts the online assessment. ACT will invoice Customer for the Services provided on a periodic basis.

5. Computer Requirements. In the event Customer administers the online assessment, Customer will comply with the computer configuration requirements located at: <https://support.assessment.pearson.com/display/TN/TestNav+System+Requirements>. Compliant computer configuration is required to properly access and use the ACT Online Assessment System. ACT shall have no liability relating to Customer’s failure to comply with ACT’s computer requirements. ACT may revise these configuration requirements from time to time in its sole discretion. Customer shall be responsible for implementing any hardware or software updates or changes necessary to meet the revised computer configuration requirements for the Online Assessment System within the time frame set forth in the written or electronic notice from ACT. If Customer cannot implement the required configuration updates, Customer may (a) request paper-based testing (available at Applicable Price for paper assessments), if timely (b) provide ACT with notice of cancellation of the Services.

6. Data. The parties acknowledge and agree that ACT and its affiliates may use and disclose the data collected from the administration of the Assessments, as set forth in ACT Aspire Privacy Statement, and the ACT Privacy Policy, as amended from time to time, available at: [www.act.org/privacy](http://www.act.org/privacy) and <https://www.act.org/content/dam/act/unsecured/documents/2019/aspire/ACT-Aspire-Privacy-Statement.pdf>.

- a. FERPA. Without limiting the foregoing, to the extent that information collected in connection with the administration of the Assessments is subject to the Family Educational Rights and Privacy Act, 12 U.S.C. § 1232g et. seq. (“FERPA”) and its implementing regulations or similar state law, Customer agrees that ACT and its affiliates may use and disclose such information for the provision of Assessment Services. Customer further agrees that ACT and its affiliates, to the extent permitted by FERPA, may use such information for research purposes, including longitudinal research, in identifiable, de-identified, aggregated, and/or coded form. Customer further agrees that ACT and its affiliates may create and disclose coded information, consistent with FERPA requirements for educational research, and that de-identified information, including aggregate information, may be created and disclosed for any purpose.
- b. COPPA. Without limiting the foregoing, to the extent that personal information collected in connection with the administration of the Assessments is subject to the Children’s Online Privacy Protection Act, 5 U.S.C. § 6501 et. seq. (“COPPA”) and its implementing regulations or similar state law, Customer consents to the use and disclosure of such information by ACT and its affiliates for educational purposes, including the research purposes described above in the preceding subsection, by ACT and its affiliates.
- c. Retention. Customer understands and agrees that among the purposes of the Assessments are facilitating the ability to assess the effectiveness of the Assessments and the progress of students, individually and collectively, over time. To facilitate the ability to research and assess the progress of students over time, Customer agrees that ACT and its affiliates may retain information collected through the Assessments in identifiable form, for a period of seventy-five years from the end of the year in which the Assessment was administered and that such retention is consistent with the purposes for which such information originally will be collected. Customer understands and agrees that de-identified information is not subject to the above retention limitation.
- d. Opt-In. If Customer selected a Contract Code for an organization or association to which Customer is a member during completion of the online Enrollment Form, Customer opts-in for ACT to provide that organization or association with Customer’s student level and aggregate data resulting from the ACT Assessment Services. If Customer does not want such organization or association to

receive Customer's student level and aggregate data, Customer must contact ACT to request a modification of the Contract Code.

7. Limited Use of Assessments and Services. Subject to this Agreement, ACT hereby grants to the Customer a limited, revocable, non-exclusive, non-transferable, and non-sublicensable right during the term of this Agreement to use the Assessments and Services. All Assessments and Services made available under this Agreement are licensed, not sold, by ACT to the Customer. Except to the extent expressly granted in this Agreement, no rights are granted by ACT under this Agreement.

8. U.S. Government End Users. The ACT taken online is a "commercial item," 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 ACT online system with only those rights set forth herein.

9. Passwords. Each user identification, access code, and password are personal to the authorized user to which it is issued. Customer and the authorized users of Customer are responsible for maintaining the confidentiality and security of all user identifications, access codes, and passwords issued, and ensuring that each such user identification, access code, and password is only used by its identified authorized users. To the extent ACT assigns Customer with administrative rights to create user identifications, access codes, and passwords for its authorized users, Customer shall be wholly responsible for each such issuance.