



STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES  
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

MANDATORY USE CONTRACT FOR: ADMINISTRATION OF A NATIONALLY RECOGNIZED JOB SKILLS ASSESSMENT

CONTRACT NUMBER: \*CSP906816

EFFECTIVE DATES: 10/16/15 TO 12/31/18

The Department of Administrative Services has accepted Proposals submitted in response to Request for Proposal (RFP) No. CSP905615 that opened on November 3, 2015. The evaluation of the Proposal responses has been completed. The Offeror listed herein has been determined to be the highest ranking Offeror and has been awarded a Contract for the services listed. The respective Proposal response including, Contract Terms & Conditions, any Proposal amendment, special Contract Terms & Conditions, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Services Contract.

This Requirements Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated, or cancelled in accordance with the Contract Terms and Conditions.

This Requirements Contract is available to the Ohio Department of Education as applicable.

The agency is eligible to make purchases of the contracted services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that department will purchase the volume of services as advertised in the Request for Proposal.

Questions regarding this and/or the Services Contract may be directed to:

Therese Gallego, CPPB  
therese.gallego@das.ohio.gov

This Requirements Contract and any Amendments thereto are available from the DAS Web site at the following address:

[www.ohio.gov/procure](http://www.ohio.gov/procure)

\*Contract number was changed from CSP905615 to CSP906816.

This contract is for the following assessments: ACT® WorkKeys® Internet-Based Assessment System, ACT® WorkKeys® Paper-Based Assessment System and ACT® RegiSTAR™ related Products and Services.

#### 1. COMPLETE AGREEMENT

The Contract consists of the RFP including the Terms and Conditions, all forms, written addenda to this RFP, the Contractor's accepted Proposal and written authorized addenda to the Contractor's Proposal. It will also include any materials incorporated by reference in the above documents and any purchase orders and amendments issued under the Contract. The general terms and conditions for the Contract are contained in the following link:

If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. The one-page Contract Signature Page, Form 5.2.2
2. The RFP, as addended, including the Terms and Conditions subject to Contractor's exceptions;
3. The documents and materials incorporated by reference in the RFP;
4. The Executive Order. EO2011-12K incorporated by reference in the RFP;
5. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
6. The documents and materials incorporated by reference in the Contractor's Proposal.

Notwithstanding the order listed above, amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent amendment will take precedence over anything else that is part of the Contract.

#### 2. MUTUALLY AGREED UPON EXCEPTIONS TO THE TERMS AND CONDITIONS

2.1 Products and Services. ACT agrees to provide, subject to the terms and conditions in this Agreement, including, without limitation, all applicable Supplements, the products and services listed above (the "Products and Services").

2.2 Confidentiality. During the term of this Agreement, ACT, Inc. ("ACT" or "Contractor") may disclose certain Confidential Information of a special and unique nature to the Ohio Department of Education ("Customer"). As used in this Agreement, "Confidential Information" means any information (whether in written, verbal, or other format) marked or identified as being confidential or which a reasonable person would understand to be confidential from the nature of the information or the circumstances of the disclosure. Customer agrees that neither it nor its employees shall at any time during or following the Term, without the express written permission of ACT, either directly or indirectly, publish, display or otherwise disclose to any person, organization, or entity in any manner whatsoever any Confidential Information, or use the Confidential Information except as strictly necessary for its intended and authorized purpose under this Agreement. Customer shall protect the Confidential Information using a standard of care it uses to protect its own confidential and proprietary information, but in any event not less than a reasonable standard of care. All Confidential Information shall be and remain the property of ACT notwithstanding the subsequent termination of this Agreement. Customer shall, within ten (10) days of ACT's written request, return the Confidential Information to ACT (including any copies thereof), or if ACT so permits, certify in writing that all Confidential Information (including any copies thereof) has been destroyed using a method designed to ensure confidentiality and permanently deleted from any computer hardware or other equipment. Customer shall immediately notify ACT in writing in the event of any unauthorized use or disclosure of the Confidential Information and assist in remedying such unauthorized use or disclosure, as requested by ACT (which shall not limit other remedies of ACT as provided herein or by applicable law). In the event of a breach or threatened breach of this Section 5, ACT, in addition to and not in limitation of any of the rights, remedies or damages available to it at law or in equity, shall be entitled to a temporary or permanent injunction to prevent or restrain any such breach by the Customer.

#### 2.3 Use of ACT's Trademarks.

- a. Subject to the restrictions set forth in this Agreement, and only during the term of this Agreement, ACT grants to Customer a non-exclusive, non-transferable, non-sublicensable and non-assignable right to use the ACT trademarks as indicated, and subject to the limitations set forth in Trademark Guidelines, as submitted with ACT's proposal.
- b. Restrictions.
  - (i) All of Customer's uses of ACT's trademarks must be preapproved by ACT. Customer must contact ACT by email at [workkeys@act.org](mailto:workkeys@act.org) to initiate the review process for any proposed trademark uses and shall not begin use of the trademarks until Customer has received affirmative written approval from ACT to do so.
  - (ii) Customer shall not use, any of ACT's trademarks in such a way so as to give the impression that they are the property of anyone other than ACT.

- (iii) Customer shall comply with the Trademark Guidelines, and any other reasonable requirements established by ACT concerning the style, design, display, and use of its trademarks. ACT may revise such guidelines and requirements in its sole discretion at any time and from time to time. Customer agrees that it will not change the names of the ACT Products and Services in its administration, offering, marketing or other use of the Products and Services, and that the individual components shall always be known and referred to by their ACT dictated names unless renamed by ACT.
  - c. Trademark Ownership. Except to the extent expressly granted in this Agreement, no rights to ACT's trademarks are granted by ACT under this Agreement. Customer agrees that ownership of the Marks, as defined in the Trademark Guidelines, licensed to the Customer and the goodwill relating thereto shall remain vested in ACT both during the period of this Agreement and thereafter, and Customer further agrees never to challenge, contest or question the validity of ACT's ownership of the Marks or any registrations thereof by ACT. Customer shall not file or prosecute a trademark or service mark application or applications to register the Marks (or any mark containing or similar to the Marks) in connection with any goods or services in any jurisdiction. This section 6(c) shall survive the termination of this Agreement, whether by expiration, termination or for any other reason.
  - d. Term. The trademark license herein shall terminate immediately upon termination of this Agreement, and Customer shall immediately delete or destroy all materials containing the Marks upon termination of this Agreement. ACT also reserves the right to immediately terminate the licenses set forth in this Agreement at will if Customer's use of ACT's trademarks does not, in the judgment and sole discretion of ACT, comply with the requirements set forth in this Agreement.
- 2.4 Warranty and Limitations. Except for warranties expressly set forth in the supplemental terms and conditions, ACT expressly disclaims any and all representations and warranties of any kind or nature, express or implied, including without limitation warranties regarding guaranteed uptime, warranties arising by statute or otherwise in law or from a course of dealing or use of trade, and warranties of merchantability or fitness for purpose. Customer shall have the sole responsibility for assuring that its use of the products or 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.
- 2.5 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.
- 2.6 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, national emergencies, fire, flood, 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 immediately upon notice to the other.
- 2.7 Assignment; Subcontracts. This Agreement may not be assigned by Customer without the express prior written consent of ACT. No permitted assignment shall relieve Customer hereto of its obligations prior to the assignment. Any assignment in violation of this Section shall be void. This Agreement shall be binding upon Customer's permitted successors and assigns. ACT may subcontract all or part of its obligations under this Agreement provided that ACT shall remain responsible for any such subcontractor's performance.
- 2.8 Authorization. Each party 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. Customer represents and warrants that it owns or controls each identified Authorized Customer Location such that it may and hereby does, bind each such Authorized Customer Location to the terms and conditions of this Agreement, including, but not limited to, all Supplements.
- 2.9 General. 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 to 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 the Agreement are for reference purposes only and shall not be deemed a part of the Agreement.
- 2.10 Authorized Customer Locations. The "Authorized Customer Locations" means the list of sites authorized by ODE, incorporated via amendment to this agreement. Authorized Customer Location, details may be updated by use of the form at: <http://act.org/workkeys-private/forms/address.html>, or by notice otherwise duly given. Submission of changes beyond Authorized Customer Location details may require an amendment to this Agreement.

### 3.0 SUPPLEMENTAL TERMS AND CONDITIONS FOR ACT® WORKKEYS® PAPER BASED ASSESSMENT SYSTEM

The WorkKeys® system includes a suite of assessments that link to workplace skills and certain scoring and reporting services that are associated with such assessments. Customers that purchase access to the WorkKeys® paper based assessment system receive the following (collectively the “Paper Based Assessment System”):

- 3.1 Access to the following paper-based Foundational Skills assessments: Applied Mathematics, Reading for Information and Locating Information.
- 3.2 Authorized Customer Locations, will have access (via the mail) to the scoring data for each individual tested by Authorized Customer Locations, and
- 3.3 Authorized Customer Locations will have access (via the mail) to the following reports:
  - 3.3.1 Memo to Examinee – An individual score report for each examinee tested by the Authorized Customer Location.
  - 3.3.2 Examinee Roster Report – A report that shows WorkKeys scores for entire group tested at the Authorized Customer Location.
  - 3.3.3 Summary for Examinee – A summary report including the examinee’s score along with a brief description of the achieved skill level for each assessment administered.

Note: ACT reserves the right to add, delete, and modify reports from time to time in its sole and absolute discretion.

- 3.4 Customer desires to purchase access to the Paper Based Assessment System. Therefore, the parties agree as follows:
  - 3.4.1 Definitions. As used in this Supplement, (a) the term “Assessments” shall refer to ACT’s WorkKeys paper based assessments indicated above, and (b) the term “Materials” shall mean the Assessments and the accompanying materials, written or electronic, including without limitation the Administration Manual, or other similar manuals published from time to time by ACT. The term “Authorized Examinees” means individuals who are employees or prospective employees of the Customer. If the Customer is a school, the term also includes the individuals who are prospective or registered students of that school. If the Customer is a non-profit government funded agency, such as a Workforce Investment Board or a One Stop Center, the term also includes individuals whose Assessments have either been paid for directly by the individual, or whose Assessments have been paid for by such government funding or by an educational institution. The term “individual” means a human being and does not include a partnership, corporation, association, cooperative, or other legal entity.
  - 3.4.2 Grant and Scope of License. Subject to the terms and conditions of this Agreement, ACT hereby grants to the Customer a non-exclusive and non-transferable right during the Term of this Agreement to (a) administer the Assessments to the Authorized Examinees, and (b) use the Materials in connection with the authorized administration of the Assessments.
  - 3.4.3 Restrictions. Except as expressly permitted in this Supplement or otherwise permitted in the Agreement, including, without limitation, in Supplemental Terms and Conditions for ACT Career Solutions Provider License, as and to the extent made a part of the Agreement, Customer may not (a) use the Materials for any other purpose, (b) assign, license, sell, loan, lease, or otherwise transfer the Materials in whole or in part, (c) authorize or allow a third party to use the Materials, (d) copy, or allow anyone else to copy, in whole or in part, the Materials, (e) modify, or disassemble the Materials, (f) store the Materials at, or administer the Assessments from, any location other than the Authorized Customer Location(s), or (g) store excess WorkKeys paper test booklets. Customer is permitted to charge its Authorized Examinees for the cost of the Assessment. Due to statutory requirements, ODE will not have access to the testing realm set up for the districts and/or schools.
  - 3.4.4 ACT’s Responsibilities. Subject to any contrary terms in any other Supplement, ACT will (a) deliver Assessments to the Customer as it orders them, (b) score the Assessments and provide score reports, and (c) make available the results data associated with the Customer’s account during the terms of the Agreement for access by Customer, subject to ACT’s archival schedule as published from time to time.
  - 3.4.5 Customer’s Responsibilities. Customer shall (a) adhere to the Administration Manual and other similar manuals as published and updated from time to time, including administering the Assessments in a proctored environment, (b) restrict access to the Materials to those employees or individuals who have a “need to know”, (c) assure that only Authorized Examinees are tested, (d) Comply with all other terms and conditions of this Agreement, including, but not limited to, paying, when due, all fees owed ACT, (e) assume full responsibility for the selection of the Paper Based Assessment System and

Assessments to achieve its intended purpose (f) order Materials only for scheduled event testing, and return excess WorkKeys test materials to ACT.

Authorized Customer Locations are responsible for monitoring the realms and use of paper based assessments to confirm that the Authorized Customer Locations are testing in proper realms and in compliance with the applicable Pricing Exhibit. ACT will invoice either Customer or the Authorized Customer Location(s) based on the use of the realms or paper based assessments, and Customer and the Authorized Customer Location shall pay ACT in accordance with the respective invoice. Customer and the Authorized Customer Locations shall resolve any fee disputes between each other regarding whether the proper realm was used by the Authorized Customer Locations or the Authorized Customer Locations properly tracked the paper based assessments, and ACT shall have no obligation to reissue invoices, provide credits, issue refunds, or take any other action as a result of a selection decision for a realm or paper based assessment.

- 3.4.6 **Test Security.** Customer shall fully cooperate, and shall 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. The Materials (including without limitation the Assessments) are ACT’s Confidential Information. Customer acknowledges that its 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 the 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.
- 3.4.7 **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 data usage policies, as amended from time to time.
- 3.4.8 **Use after Termination.** Upon termination of this Agreement for any reason, the school/district shall immediately discontinue use of the Paper Based Assessment System and shall immediately return all copies of the Materials in its possession or, upon ACT’s request, shall destroy all copies of the Materials in its possession. The school/district shall certify in writing its compliance with these requirements. The Ohio Department of Education will assist if schools/districts fail to return the materials. All Test Administrators must sign the Test Site Staff ACT WorkKeys Manual Verification.
- 3.4.9 **Updates, and Modifications.** The Paper Based Assessment System may be modified or updated from time to time at ACT’s sole discretion. ACT may make such modifications and updates available to Customer as they are developed; provided however, that ACT reserves the right to charge a fee for any new features.
- 3.4.10 **Ownership.** ACT owns the WorkKeys system and all component parts, modifications, and updates thereto. ACT owns the copyrights on the Materials, and ACT owns the trademark “WorkKeys.” Except as specifically granted in this Agreement, Customer does not acquire any right, title, or interest in or to the WorkKeys system, including the Paper Based Assessment System and Materials, any rights in patents and copyrights applicable thereto, or any right, title or interest in or to the trademark “WorkKeys.” Use of ACT trademarks is governed by the Trademark Guidelines.
- 3.4.11 **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.

#### 4.0 SUPPLEMENTAL TERMS AND CONDITIONS FOR WORKKEYS INTERNET BASED ASSESSMENT SYSTEM

The WorkKeys® system includes a suite of assessments that link to workplace skills and certain scoring and reporting services that are associated with such assessments. Customers that purchase access to the WorkKeys Internet based assessment system receive the following (collectively the “Internet Based Assessment System”):

- 4.1 Access to the following internet-based Foundational Skills assessments: Applied Mathematics, Reading for Information and Locating Information.

- 4.2 Authorized Customer Locations will have access (via the Internet) to the scoring data for each individual tested by Authorized Customer Location.
- 4.3 Authorized Customer Locations will have access (via the Internet) to the following reports:
- 4.3.1 Individuals Registered to Test Report – A report that shows the names of the examinees that have been registered in advance to take the WorkKeys assessments.
  - 4.3.2 Usage Report – A report on the number of assessments launched by the Authorized Customer Location over a specified time period.
  - 4.3.3 Individual Score Report – An individual score report for each examinee tested by the Customer.  
Memo to Examinee – An individual score report for each examinee tested by the Authorized Customer Location.
  - 4.3.4 Data Export Report – A report that includes the name, demographics, and scores for all examinees tested by the Authorized Customer Location.
  - 4.3.5 Examinee Roster Report – A report that shows WorkKeys scores for entire group tested at the Authorized Customer Location.
  - 4.3.6 Individual vs. Profile Report – A report showing examinee scores compared to profile scores set by Customer.
  - 4.3.7 Group vs. Profile Report - A report showing the examinees' WorkKeys scores in a designated group of examinees versus desired identified WorkKeys profile scores

Note: ACT reserves the right to add, delete, and modify reports from time to time in its sole and absolute discretion.

- 4.4 Customer desires to purchase access to the Internet Based Assessment System. Therefore, the parties agree as follows:
- 4.4.1 Definitions. As used in this Supplement, (a) the term "Assessments" shall refer to ACT's WorkKeys internet based assessments indicated above, and (b) the term "Materials" shall mean the Assessments and the accompanying materials, written or electronic, including without limitation the Administration Manual, or other similar manuals published from time to time by ACT. The term "Authorized Examinees" means individuals who are employees or prospective employees of the Customer. If the Customer is a school, the term also includes the individuals who are prospective or registered students of that school. If the Customer is a non-profit government funded agency, such as a Workforce Investment Board or a One Stop Center, the term also includes individuals whose Assessments have either been paid for directly by the individual, or whose Assessments have been paid for by such government funding or by an educational institution. The term "individual" means a human being and does not include a partnership, corporation, association, cooperative, or other legal entity.
  - 4.4.2 Grant and Scope of License. Subject to the terms and conditions of this Agreement, ACT hereby grants to the Customer a non-exclusive and non-transferable right during the Term of this Agreement to (a) access the Internet Based Assessment System for the purpose of assessing the Authorized Examinees, (b) administer the Assessments to the Authorized Examinees, and (c) use the Materials in connection with the authorized administration of the Assessments.
  - 4.4.3 Restrictions. Except as expressly permitted in this Supplement or otherwise permitted in the Agreement, Customer may not (a) use the Materials for any other purpose, (b) assign, license, sell, loan, lease, or otherwise transfer the Internet Based Assessment System or the Materials in whole or in part, (c) authorize or allow a third party to use the Internet Based Assessment System or Materials, (d) copy, or allow anyone else to copy, in whole or in part, the Materials, (e) modify, reverse engineer, decompile, or disassemble the Internet Based Assessment System or Materials, or (f) store the Materials at any location other than the Authorized Customer Location(s). Customer is permitted to charge its Authorized Examinees for the cost of the Assessment. Customer is permitted to charge its Authorized Examinees for the cost of the Assessment. Due to statutory requirements, ODE will not have access to the testing realm set up for the districts and/or schools.
  - 4.4.4 ACT's Responsibilities. Subject to any contrary terms in any other Supplement, ACT will (a) permit the Customer access to the Internet Based Assessment System during the Term of this Agreement, (b) set up the primary administrator upon receipt of the signed Agreement, (c) provide reasonable training if requested upon commencement of this Agreement in the form of a self-paced online training session, (d) provide the Customer reasonable technical support for the Internet Based Assessment System via telephone and electronic mail, (e) score the Assessments and provide score reports through the Internet Based Assessment System, and (f) make available the results data associated with the Customer's account during

the terms of the Agreement for access by Customer, subject to ACT's archival schedule as published from time to time.

- 4.4.5 Customer's Responsibilities. Customer shall (a) appoint an administrator who shall have the sole authority to distribute passwords, and to set up additional administrators, proctors and customer accounts, (b) assure proper machine configuration, a compatible Internet browser, and Internet access, (c) administer the Assessments in conformance with the Administration Manual and other similar manuals as published and updated from time to time, including administering the Assessments in a proctored environment, (d) restrict access to the Materials to those employees or individuals who have a "need to know", (e) control the use of the Internet Based Assessment System, and assure that only Authorized Examinees are provided passwords and are tested, (f) comply with all other terms and conditions of this Agreement, including, but not limited to, paying, when due, all fees owed ACT, and (g) assume full responsibility for the selection of the Internet Based Assessment System and Assessments to achieve its intended purpose.

Authorized Customer Locations are responsible for monitoring the realms and use of paper based assessments to confirm that the Authorized Customer Locations are testing in proper realms and in compliance with the applicable Pricing Exhibit. ACT will invoice either Customer or the Authorized Customer Location(s) based on the use of the realms or paper based assessments, and Customer and the Authorized Customer Location shall pay ACT in accordance with the respective invoice. Customer and the Authorized Customer Locations shall resolve any fee disputes between each other regarding whether the proper realm was used by the Authorized Customer Locations or the Authorized Customer Locations properly tracked the paper based assessments, and ACT shall have no obligation to reissue invoices, provide credits, issue refunds, or take any other action as a result of a selection decision for a realm or paper based assessment.

- 4.4.6 Test Security. Customer shall fully cooperate, and shall 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. The Materials (including without limitation the Assessments) are ACT's Confidential Information. Customer acknowledges that its 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 the 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.
- 4.4.7 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 data usage policies, as amended from time to time.
- 4.4.8 Use after Termination. Upon termination of this Agreement for any reason, the school/district shall immediately discontinue use of the Internet Based Assessment System and shall immediately return all copies of the Materials in its possession or, upon ACT's request, shall destroy all copies of the Materials in its possession. The school/district shall certify in writing its compliance with these requirements. The Ohio Department of Education will assist if schools/districts fail to return the materials. All Test Administrators must sign the Test Site Staff ACT WorkKeys Manual Verification.
- 4.4.9 Updates, and Modifications. The Internet Based Assessment System may be modified or updated from time to time at ACT's sole discretion. ACT shall make such modifications and updates available to Customer as they are developed; provided however, that: (1) ACT reserves the right to charge a fee for any new functionalities available through the Internet Based Assessment System; and (2) to the extent that modifications or updates require revised computer configuration, Customer shall provide such hardware or software that meets the revised computer configuration requirements for the updated Internet Based Assessment System within the time frame set forth in a written (including electronic) notice from ACT detailing the timeframe of such modification or update and the revised computer configuration requirements.
- 4.4.10 Ownership. ACT owns the WorkKeys system and all component parts, modifications, and updates thereto. ACT owns the copyrights on the Materials, and ACT owns the trademark "WorkKeys." Except as specifically granted in this Agreement, Customer does not acquire any right, title, or interest in or to the WorkKeys system, including the Internet Based Assessment System and Materials, any rights in patents and copyrights applicable thereto, or any right, title or interest in or to the trademark "WorkKeys." Use of ACT trademarks is governed by Section 6 of the Standard Agreement Form, and the Trademark Guidelines.

- 4.4.11 U.S. Government Licensees. The Internet Based Assessment System 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 Internet Based Assessment System with only those rights set forth herein.
- 4.4.12 Computer Requirements. Customer acknowledges and agrees that the computer configuration requirements located at <http://www.act.org/workkeys/tech/index.html> are required to properly access and use the Internet Based Assessment System 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.
- 4.4.13 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.

## 5.0 SUPPLEMENTAL TERMS AND CONDITIONS FOR REGISTAR™ RELATED PRODUCTS AND SERVICES

ACT® offers its Customers the option to participate in a credentialing program called the National Career Readiness Certificate program. As part of the National Career Readiness Certificate program, ACT creates a database (known as "RegiSTAR") that includes assessment information on a group of examinees defined by the Customer and which calls out which of those examinees have earned a certificate under ACT's guidelines. ACT creates a RegiSTAR database for a group of examinees. For the creation of National Career Readiness Certificates, Customer may desire ACT to 1) print and mail the National Career Readiness Certificates, or 2) create a data file of registration numbers. ACT makes electronic files available to the Customer using a secure website. Customer may then choose to print those certificates as desired. Accordingly, the parties agree as follows:

### 5.1 Definitions.

- 5.1.1 "Eligible Examinees" are examinees at the Authorized Customer Locations who have received qualifying scores on the Qualifying Assessments.
- 5.1.2 "Qualifying Assessments" means ACT's WorkKeys® assessments in Applied Mathematics, Reading for Information, and Locating Information.

### 5.2 Customer's RegiSTAR™ Account.

- 5.2.1 Establishing the ACT RegiSTAR Access. An ACT RegiSTAR account containing assessment information regarding the performance of the Eligible Examinees on the Qualifying Assessments along with certificate information will be set up by ACT. Customer is prohibited by Ohio Revised Code Section 3301.0714(D)(1) from receiving a student's name, address, and social security number. Therefore, Customer shall not have access to the RegiSTAR account.
- 5.2.2 Match Criteria: ACT requires that certain identification information match and be included on all qualifying test records before those records form the basis for a credential. This process is important to ensure that qualifying 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.
- 5.2.3 Privacy. Typically, the Customer will have access to the assessment and certificate information related to the assessments administered at the Authorized Customer Locations and Authorized Customer Locations will have access to assessment and certificate information related to the assessments delivered at their site; however, along with the restrictions in 4.2.1 above, ACT reserves the right to withhold personally identifiable information and institutionally identifiable information in accordance with ACT's data privacy policy as it may be amended from time to time, and other legal and contractual requirements. ACT's current data privacy policy permits the sharing of personally identifiable information derived from the administration of ACT WorkKeys Assessments with, among others, (1) the individual that is the subject of such information, (2) persons that paid for such individual to take the Assessment or receive a certificate, and (3) persons who administer the Assessments to such individual. If Customer is not among the persons permitted to receive personally or institutionally identifiable information under ACT's data privacy policy or other legal or contractual requirements, Customer may not be able to view personally or institutionally identifiable information.

5.2.4 Dissemination of User Name and Passwords. Each 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 user name and password. Subject to the restrictions in 4.2.1. and the privacy restrictions set forth in Section 4.2.3, Customer may also access an electronic file containing such information from the ACT RegiSTAR account.

### 5.3 Certificate Production and Distribution

5.3.1 ACT will create certificates for both internet and paper assessments.

5.3.2 The National Career Readiness Certificate shall appear identical to the sample provided at <http://www.act.org/certificate/guidelines.html>. ACT reserves the sole right to change the ACT National Career Readiness Certificate requirements, content, data elements, and/or the "look and feel" of the certificate in its sole discretion, at any time. When ACT makes any such change to the ACT National Career Readiness Certificate or co-branding specifications, it will notify Customer of changes at least 30 days prior to implementation.

5.3.3. Only the following certificates will be issued to Customer's examinees:

(i) Platinum Certificates: Examinees receiving a score of 6 or above on all three of the Qualifying Assessments receive the Platinum Certificate.

(ii) Gold Certificates: Examinees receiving a score of 5 or above on all three of the Qualifying Assessments receive the Gold Certificate.

(iii) Silver Certificates: Examinees receiving a score of 4 or above on all three of the Qualifying Assessments receive the Silver Certificate.

(iv) Bronze Certificates: Examinees receiving a score of 3 or above on all three of the Qualifying Assessments receive the Bronze Certificate.

5.3.4 Certificates will only be issued if the Qualifying Assessments used by an individual to achieve a Credential Level were administered to that individual under a proctored, secure environment.

5.3.5 The Credential Level (Platinum, Gold, Silver, or Bronze) will be displayed on the certificate.

5.3.6 The certificate will contain the National Career Readiness Certificate registration number and issue date on the face of the certificate.

5.3.7 ACT sends National Career Readiness Certificates to the Authorized Customer Locations. Authorized Customer Locations will receive only the certificates for the examinees that were assessed by such location.

5.3.8 License of and use of ACT's trademarks is governed by section 2.3 and the Trademark Guidelines.

### 6.0 MUTUALLY AGREED UPON CLARIFICATIONS

6.1 SSID numbers. The state cannot provide a registration file that contains the Statewide Student Identifier System (SSID) numbers. It will be determined at the local level which students take the test and the state will not receive information about students taking the test until test scores are reported.

6.2 ACT will make online WorkKeys testing available online for statewide use at participating locations through the term of the agreement using the ACT online test delivery system. The WorkKeys Paper Based Assessment System will be available for accommodation testing only during the term of the Agreement. If testing occurs late in the term of this Agreement, some deliverables may be fulfilled after the term of the Agreement.

6.3 Test registration will be done by the Test Coordinator. The WorkKeys Internet Based Assessment System allows for the full SSID to be captured. For the 2015-2016 school year, the paper and pencil assessments will only capture the numeric characters of the SSID. The test coordinator will be responsible for aligning the numeric registration number with the alpha/numeric SSID. Beginning with the 2016-2017 school year, the full SSID will be captured on paper and pencil assessments.

6.4 ACT will send reports to the Authorized Customer Locations containing both SSID and personal identifying information. ACT will send reports to ODE with a full numeric SSID numbers for any testing that occurs in FY16 (Sept. 1, 2015 – August 31, 2016). In following years (starting Sept. 1, 2016) ACT will send reports to ODE with full alpha/numeric SSID numbers.

#### 6.5 ACT Areas of Responsibility:

1. Name a designated staff person who will serve as the primary operational contact and will coordinate all aspects of program delivery.
2. Provide file format and layouts including supporting instructions and schedules.
3. Communicate directly with Authorized Customer Location testing staff.
4. Provide online training opportunities for test administration.
5. Provide customer support service.
6. Upon request and pursuant to a separate executed agreement between ACT and the specific Authorized Customer Location, set up an additional testing realm for the Authorized Customer Location to provide for testing outside of the scope of this contract.
7. Provide Authorized Customer Locations access to the downloadable examinee reports and aggregate score data for WorkKeys as specified in Section 4. Provide Authorized Customer Locations paper examinee reports and aggregate score data for WorkKeys paper-based assessments as specified in Section 3.
8. At ACT's discretion, unannounced observers from ACT may visit testing sites on the designated test dates.

#### 6.7 Ohio Department of Education Responsibilities:

1. Define Authorized Customer Locations, including name and email for authorized test coordinator(s) at each location.
2. Communicate the Customer's policy regarding participation in this program to the Authorized Customer Locations.
3. The Customer and Authorized Customer Locations must remain in strict compliance with ACT administration policies and procedures that are required to ensure a standardized testing environment and test security for all ACT assessments described in this DOS.
4. Assist with the collection and return of all WorkKeys test materials.
5. Pay ACT invoices in a timely manner.
6. Remain ultimately responsible for Authorized Customer Locations' fulfillment of the following "Authorized Customer Location(s)" requirements below.

#### 6.8 Authorized Customer Locations Responsibilities:

1. All Authorized Customer Locations (including alternative schools) must have active ACT site codes prior to being established as test sites.
2. All Authorized Customer Locations must appoint a minimum of one (1) Test Coordinator (TC) to fulfill duties necessary to ensure a successful and standardized testing experience.
3. Authorized Customer Locations will register the examinees in ACT's registration system.
4. All Authorized Customer Locations that will administer the assessments under this Agreement must be approved by the Ohio Department of Education.
5. All Authorized Customer Locations must meet the testing requirements for ACT WorkKeys assessments described in this contract.
6. Appointed testing staff must meet all of ACT's guidelines for serving in the appointed role.
7. All test administration staff must confirm that they have completed Test Administration training available online before administering any WorkKeys assessments.
8. All testing materials must be securely maintained while at the Authorized Customer Location and must be returned to ACT by registered carrier immediately after the test date.
9. Authorized Customer Locations will include state-assigned examinee ID number with each WorkKeys Interent Based Assessment registration. These state-assigned examinee ID numbers are alpha-numeric that are unique from student social security numbers.
10. Test coordinators at each Authorized Customer Location will fill in the examinee ID number (SSID) for each WorkKeys Paper Based Assessment registration. For school year 2015-2016, the examinee ID number shall be the numeric portion only of the state assigned student ID with each WorkKeys Paper Based Assessment registration. Test coordinators will work the State to confirm examinee data.

6.9 Customer Service. ACT shall staff the toll-free number Monday through Friday, from 7:00 a.m. to 5:00 p.m. Central Time. Phones will not be staffed on ACT holidays (regardless of whether they coincide with state holidays).

6.10 Invoices. ACT shall provide invoices for test fees. Billing detail shall include a list of examinees tested as identified by their state-assigned examinee ID. Names of test takers shall not be included in invoice files

6.11 Test Accommodations for ACT WorkKeys. Accommodations on ACT WorkKeys are determined and documented by personnel responsible for accommodations at the district and/or school level. In most cases, a current Individual Educational Plan (IEP) prepared by appropriate academic/psychological staff for a student will be acceptable documentation supporting an accommodation. Accommodations available for ACT WorkKeys for students with disabilities include extended time for online testing. As special accommodations ACT currently requires the use of hard copy materials for testing with use of reader/signer when appropriate: Audio DVDs, large-print assessment materials, Braille assessment materials, and assistance in recording responses.

Accommodations defined in the Test Administration manual result in ACT WorkKeys scores that are fully reportable. All testing materials must be securely maintained while at the Authorized Customer Location and must be returned to ACT by registered carrier immediately after the test date.

Authorized Customer Locations shall determine material quantities for ACT WorkKeys including alternate formats and extended time testing and must arrange with ACT for delivery of these materials. Optional State-allowed accommodations beyond those defined in standard WorkKeys documentation will result in ACT WorkKeys scores that may be used for state accountability purposes only and will not qualify examinees for an ACT NCRC.

- 6.13 ACT NCRC Database for Individual Use. ACT will create an account in the ACT NCRC national database for each examinee eligible for a certificate. Per the details in the Supplemental Terms and Conditions for RegiSTAR Related Products and Services, ACT will produce National Career Readiness Certificates to the Authorized Customer Locations. Authorized Customer Locations will receive only the certificates for the examinees that are reportable to their location.

Examinees may access their information at no additional charge on [www.myworkkeys.com](http://www.myworkkeys.com) and will be able to make their account active and visible to employers. The information pre-populated into their account is their first name, last name, month of birth, day of birth, and Examinee ID number.

Administration of a Nationally Recognized Job Skills Assessment  
 CSP906816  
 UNSPSC CATEGORY CODE: 86000000

Description	Cost 2016-2017 School Year	Cost 2017-2018 School Year
OAKS Item No.: 27742 Cost per assessment, both internet-based and paper-based.	\$ 8.33	\$ 8.33
<b>Estimated Total</b>	<b>\$ 1,048,950</b>	<b>\$ 1,048,950</b>

ACT Item Number <i>(Internal ACT Use Only. Item Numbers Subject to Change)</i>	Item	Item Fee
<b>WorkKeys Internet Based Assessment System</b>		
N/A	Initial Set-Up Fee	Free
N/A (multiple)	Assessment Fees (each individual examinee is only eligible for one of each of the following Assessments*: <ul style="list-style-type: none"> <li>• Applied Mathematics</li> <li>• Reading for Information</li> <li>• Locating Information</li> </ul> *All other assessments, if contracted for in the future, will be billed at prevailing rates.	\$8.33
N/A	Training Fee	Free unlimited access to on line training Pricing for all other training will be as negotiated
<b>WorkKeys Paper Based System</b>		
N/A (multiple)	Assessment Fees (each individual examinee is only eligible for one of each of the following Assessments* (no retesting): <ul style="list-style-type: none"> <li>• Applied Mathematics</li> <li>• Reading for Information</li> <li>• Locating Information</li> </ul> *All other assessments, if contracted for in the future, will be billed at prevailing rates.	\$8.33

<b>Optional Additional Products and Services</b>		
N/A	RegiSTAR Set-up and Maintenance Fees	Free
04121216FE	NCRC Certificate Registration/Account Creation and NCRC Certificate Print Fee for 2017-18	\$6.25 per printed certificate
0411ND08FE	NCRC Certificate Mailed to Authorized Customer Locations	Free
0411NB08FE	RegiSTAR Express Data Search	\$120.00 per search plus \$3.50 per name included in file
N/A	Training Fee	Free unlimited access to online training Pricing for all other training will be as negotiated
04130015FE	Customer Requested Database Updates	\$100.00 per hour (to be used at ACT's discretion with prior customer notification)

CONTRACTOR INDEXCONTRACTOR AND TERMS:

102679  
 ACT, Inc.  
 500 ACT Drive  
 Iowa City, IA 52243

CSP CONTRACT NO.: CSP906816-1

TERMS: Net 30

CONTRACTOR'S CONTACT:

Victoria Thompson-Campbell

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