



June 17, 2024

Boone County Schools
8330 US Highway 42
Florence, KY 41042-9286
859.283.1003

RE: Price Quote

Company Address:

ACT Education Corp.
500 ACT Drive
Iowa City, IA
52243

Created Date: June 17, 2024
Expiration Date: June 30, 2025
Quote Number: 007721

Prepared by Lynn Hunley
Phone 704.880.4409
Email lynn.hunley@act.org

Contact Name: Stephanie Younger
Phone Number: 859.282.1003
Email: stephanie.younger@kyschools.us

Product	Grade	List Price	Anticipated FY25 KY State Match Rate	Quantity	Total Price
ACT District Optional Testing without Writing (Online)*	10 th grade	\$68.00	\$38.00**	1,610 students	\$61,180.00

* ACT only charges for the actual number of students processed. Therefore, the formula for more or less students would be X students times \$38. Same formula applies for paper, without writing for \$39 per student.

** The FY25 Kentucky State Rate has not been finalized yet. The 2024-2025 price for the ACT without writing is \$38 for online and \$39 for paper. The rate listed above is subject to change based on the final signed agreement between KDE and ACT.

Subtotal

\$ 61,180.00

Grand Total

\$ 61,180.00

Thank you for your interest in our education and workforce solutions. If you have any questions or need additional information, please do not hesitate to contact **Lynn Hunley**, Account Executive, at [704.880.4409] or by email at [lynn.hunley@act.org].

Regards,

C. Blake Curwen, MBA
Vice President
Client Relations
500 ACT Dr. | Iowa City, Iowa 52243-0168
319.359.9968
blake.curwen@act.org | www.act.org

This Quote is not a contract or invoice. It is provided for informational purposes only, does not constitute an offer, expires on the date set forth in the Quote, and may be reinstated after expiration only by written confirmation of ACT. Stenographic and clerical errors are subject to correction. Any order or purchase of the products or services set forth in this Quote shall be subject to execution of a written agreement between ACT and Customer. Any terms proposed by Customer in response to this Quote are rejected unless otherwise set forth in the written agreement between the parties.

ACT Privacy Policy

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Scope of this Notice

At ACT Education Corp. ("ACT," "we," "us") we recognize the importance of protecting the privacy of your personal information.

This Notice explains how ACT collects, uses, maintains, and shares your information when you:

- Visit ACT websites that reference or link to this Privacy Notice (collectively, the "Site");
- Provide your personal information to us through use of the Site; and/or
- Register for or participate in ACT's assessments, programs, and services (collectively, "Products" or "ACT Products").

Please note that when your information is shared with others as described in this notice, it may be subject to the additional privacy terms of those third-parties with whom the information is shared.

Main Notice

Information ACT Collects

Personal information is information that can identify you, or that could be used in combination with other available data to identify you. ACT collects personal information from different sources as described in this notice, and the categories of personal information ACT collects include the following:

- Contact information, such as your name, home address, email address, telephone number, date of birth, and gender.
- Education and job information, such as year of high school graduation or equivalent grade in school, high school academic information, intended college major and occupation, college plans, extracurricular plans, and job title.
- Test administration information, such as photograph, disability information, and whether you are right- or left-handed.
- Payment information, such as credit card number, bank account information, and tax identification number.
- Device information, such as internet protocol address, device geolocation information, and information from cookies and web beacons.
- Sensitive information, including your race/ethnicity and personal information from children under 13.

Personal Information Provided by You

In connection with collecting this information, ACT will indicate information that is mandatory and information that is optional. If you do not provide mandatory personal information, such as your contact information, you may not be able to use, access or benefit from ACT's Products.

- **Use of ACT Products.** When you register for or use an ACT Product, we ask you to provide certain personal information, including contact information, education and job information, test administration information, sensitive information and payment information.
 - **International:** If you are taking an assessment outside the United States, some of the information ACT requests could be classified in your home country as sensitive or special personal information according to your country's data protection laws. This may include your age, gender, biometric data, race, ethnicity, health data such as a physical or learning disability, credit card information, and/or information related to your background, including political and religious affiliations.
- **Site visitors.** When you visit the Site, ACT may collect and store your device information. Additionally, if you request materials or information from ACT, we may ask you to provide your contact information and education and job information, as well as an explanation of your need for the requested materials or information. If you are purchasing a Product, ACT may ask for your payment information.
- **Test Security.** During administration of a secure ACT assessment, you may be asked to provide personal information including test administration information, and your test session may be captured by video and/or audio to ensure test security.
- **Suppliers of services and goods to ACT.** If you are a supplier of services or goods to ACT, such as a test proctor, ACT may request a variety of personal information, including contact information and payment information.
- **Job applicants.** If you are applying for employment with ACT, we will request a variety of personal information, including your contact information and education and job information.

Personal Information Provided by Other Sources

- **Schools, school districts, and educational institutions.** When you use an ACT Product through your school or educational institution, ACT may receive personal information from that school or educational institution, including your contact information, education and job information, test administration information, and sensitive information.

- **Automated means.** ACT uses the following automated means to collect personal device information about you:
 - **Cookies.** Cookies are small text files that a website can send to a user's browser and store on the user's hard drive. Cookies can make your use of the Site easier by saving user information such as status and preferences. You may refuse to accept browser cookies by activating the appropriate setting on your browser. However, if you select this setting you may be unable to access certain parts of the Site. Unless you have adjusted your browser setting so that it will refuse cookies, ACT will issue cookies when you use your browser to visit the Site.
 - **Web Beacons.** The Site also uses Web beacons, which are small strings of code that deliver a graphic image on a Web page or in an email message for the purpose of transferring data. ACT may use Web beacons to count users who have visited a page or opened an email, or for other similar website statistics (for example, recording the popularity of certain website content and verifying system and server integrity). You can disable Web beacons from capturing information by blocking cookies.
 - **Third-party Analytics Services.** The Site uses third-party service providers for analytics purposes. These providers collect information about you and report website trends that may be linked to you. These providers use their own cookies to track site visitor interactions. ACT does not control the cookies used by these third-party service providers and their use may be governed by the service providers' own privacy policies. These service providers create reports for ACT that contain aggregate information about visitor interactions with ACT's website, in order to help ACT improve the website. To learn more about your choices regarding online tracking, please visit these sites:
<http://www.aboutads.info/choices/> (<http://www.aboutads.info/choices/>);
<https://www.usa.gov/optout-instructions> (<https://www.usa.gov/optout-instructions>).
 - **Tracking Technologies.** ACT.org and MyACT.org conduct conversion tracking with other websites, such as Twitter and Facebook, to track your interaction with ACT advertisements on those websites. We also target ACT's advertisements on social media websites. This means that after visiting ACT.org and MyACT.org, if you later log into, for example, Facebook or Twitter, an ACT advertisement may appear. To learn more about your choices regarding online tracking, please visit these sites: <http://www.aboutads.info/choices/> (<http://www.aboutads.info/choices/>); <https://www.usa.gov/optout-instructions> (<https://www.usa.gov/optout-instructions>).
 - The Site does not respond to Do Not Track signals.

Non-Personal Information and De-identified Information

- **Non-Personal Information** is information that does not identify you. In addition to collecting personal information by Automated Means (explained above), ACT may also use automated means to collect anonymized technical and internet data, such as your browser type, the date and time you access the Site, which web pages on the Site you visited, your referring website Uniform Resource Locator (URL), how long you spent on each page of the Site, your operating system, and your screen settings. This information can be used by ACT to administer and improve the Site, enhance security, and inform statistical analyses.
- **De-identified Information.** ACT also uses personal information that has been de-identified. ACT takes reasonable steps to ensure that this data cannot be associated with an individual and we will not attempt to re-identify data that has been de-identified.

How ACT Uses Personal Information

Each category of personal information collected by ACT may be used to:

- Administer, review, or improve ACT's Products and communicate with you about the same, which may include the following activities:
 - Process a request for an ACT Product and communicate with you about the same;
 - Maintain your account, verify your identity, process payments, and collect debts you owe us;
 - Administer, review or improve the Site;
 - Invite you to participate in surveys consistent with ACT's mission, including surveys about ACT Products;
 - Provide you with marketing information about ACT Products or special offers from ACT;
 - Comply with and enforce applicable legal requirements;
 - Investigate, prevent, act on, or respond to suspected or actual test security or score validity concerns;
- Conduct internal research and analysis, including to inform public policy and advocacy; provided that if such research is published or reported, for example to educational institutions, state agencies, or businesses, this use only includes information that ACT maintains in an aggregate or de-identified form, such that it does not constitute personal information.

ACT only processes your sensitive data to administer, review, or improve ACT's Products and communicate with you about the same, for its internal operations, and to conduct internal research and analysis, including to inform public policy and advocacy.

Marketing

ACT uses your contact information, education and job information, and device information to contact you regarding ACT Products. If you receive a marketing email from ACT, you will be provided instructions on how to opt out of receiving further marketing communications by email. If you opt-out of receiving marketing communications, you will still receive transactional communications by email about your use of ACT Products, for example, confirmation of your registration and receipt of your scores.

Information Sharing and Disclosure

It is important and consistent with ACT's mission to share information with those who can provide educational or career opportunities to you or who have another legitimate purpose to use your information. ACT will not license your personal information for this purpose without your express consent, and will only disclose personal information as set forth below.

ACT may disclose personal information as follows:

- **EOS.** ACT's Educational Opportunity Service ("EOS") is an optional program that provides you with information from colleges, universities, financial aid and scholarship agencies, government agencies, and organizations that offer educational, community involvement, extracurricular, and career opportunities, products and services (Participating Organizations). When you opt-in to EOS, ACT may share your personal information with its subsidiary Encoura, LLC (f.k.a. NRCCUA), who may provide that information to Participating Organizations, who may then pay for a license to use the information to contact you about opportunities. The personal information shared may include your contact information, education and job information, and sensitive information. Your ACT test score range (not your specific scores but a range they fall within) may be disclosed to Participating Organizations and used to identify candidates for opportunities. Personal information shared through the EOS program is also subject to Encoura's privacy policy, available

here: <https://encourageme.com/privacy-policy/> (<https://encourageme.com/privacy-policy/>). All EOS Participating Organizations have agreed to use your information only for the purpose of sharing information about their programs. If you previously opted-in to the EOS program but now wish to opt-out, you may do so by visiting: <https://www.act.org/content/act/en/products-and-services/the-act/opting-out-of-eos.html> (<https://www.act.org/content/act/en/products-and-services/the-act/opting-out-of-eos.html>) (California law (Civil Code Section §1798.83) permits residents of California that use the Site to opt-out of sharing of their information with other organizations for those organizations' marketing purposes, which can be done using this link.)

- **Test Security.** As necessary to investigate, prevent, act on, or respond to suspected or actual test security or score validity concerns.
- **Educational Institutions.** To schools, school districts, state entities and/or their agents or representatives for educational, research, and reporting purposes.
- **Others.** To others who pay for you to use ACT Products or who receive certificates of achievement or credentials you may have earned by using ACT Products.
- **Parents.** To parents or legal guardians of minors under the age of 18.
- **Government Agencies.** To certain state and federal scholarship and recognition programs and agencies, as further described in the Terms and Conditions you agree to in connection with using ACT Products.
- **Third Party Researchers.** To certain third-party researchers conducting research consistent with ACT's mission. Researchers who receive any personal information are required to protect the confidentiality and security of the information.
- **Subsidiaries and Affiliates.** To our subsidiaries and affiliates, including for their own direct marketing purposes.
- **An Acquirer.** To another company that acquires ACT or its assets, at which point that company will have responsibility for your personal information, as described in this Privacy Notice.
- **Third Party Service Providers.** To third parties providing services to ACT or as necessary to deliver ACT Products. This includes information needed to verify an individual's identity or for security purposes.
- **Legal Compliance.** As required by law, for subpoena or other legal processes, and as necessary to investigate, act on, or prevent suspected or actual illegal activities, fraud, or potential threats to personal safety.

International – Onward Transfer of Personal Information

If you use ACT Products or request information about ACT Products outside of the United States, your personal information may be transferred outside of your home country to the United States, either to ACT or a third-party service provider, and will be subject to use and disclosure under the laws of the United States. It may also be accessible to law enforcement and national security authorities in the United States. If you do not consent to this transfer to the United States, do not participate in or request information about ACT Products.

Links and Websites

The Site may contain links to websites that are not affiliated with ACT. ACT does not control the privacy policies or practices of those websites and you should review the privacy policy of any such website before providing any information through that website. ACT is not responsible for the content or practices of any websites that are not affiliated with ACT and provides links on the Site solely for the convenience and information of Site visitors.

Access, Correction, and Deletion of Personal Information

You can review and change your personal information by visiting your account profile page at [MyACT.org \(https://my.act.org\)](https://my.act.org). Additionally, you can update your contact information (address, email address and/or telephone number), by contacting ACT Customer Service at 1-800-498-6065 or [customerservices@act.org \(mailto:customerservices@act.org\)](mailto:customerservices@act.org).

If you are a Colorado resident or a European Economic Area ("EEA") resident, you have additional rights regarding your personal information that you may be able to exercise. These rights include the right to request deletion of some or all of your personal information, the right to request access to and receive your personal information in a portable manner, the right to correct your personal information, the right to withdraw your consent to our use of all or some of your personal information, the right to request restrictions on how we use or share your personal information, or the right to lodge a complaint with your local supervisory authority. For requests of this type, please contact ACT's Vice President for Data Privacy either via email, at [DPO@act.org \(mailto:DPO@act.org\)](mailto:DPO@act.org), or via postal mail at the below address:

Attn: Vice President, Data Privacy

Email: [DPO@act.org \(mailto:DPO@act.org\)](mailto:DPO@act.org)

Mailing Address:

500 ACT Drive

P.O. Box 168

Iowa City, IA 52243-0168

Your request to exercise data rights must:

- Provide sufficient information that allows us to reasonably verify you are the person about whom we collected personal information, which may include our verification of your full legal name, date of birth, home address, and ACT ID.
- Describe your request with sufficient detail that allows us to properly understand, evaluate, and respond to it.

We cannot respond to your request or provide you with personal information if we cannot verify your identity, and we will only use personal information provided for identity verification to verify identity. You do not need to create an account with us to submit a request to know or delete.

If you are an EEA resident and you wish to report a complaint or if you feel that ACT has not addressed your concern in a satisfactory manner, you may contact the appropriate Supervisory Authority. The EU Commission has a list of Supervisory Authorities

here: https://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index_en.htm (https://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index_en.htm).

Retention of Information

ACT will retain your information for as long as necessary to fulfill any of the uses identified in this Privacy Notice or to comply with applicable legal obligations.

ACT may be required to retain personal information, for example for contractual or other legal reasons as described in this Privacy Notice. Please be aware that assessment scores are maintained by ACT indefinitely and closing your account does not delete your assessment scores.

Security and Confidentiality

Protecting personal information by using reasonable administrative, physical and technical safeguards is important to ACT. For example, we use secure sockets layer (SSL) transmission, which is a protocol for establishing a secure connection for transmitting your personal information. ACT also has other security protocols and measures in place to

protect your personal information from unauthorized access, alteration, and unlawful disclosure. When ACT disposes of personal information, we take reasonable measures to protect against unauthorized access to the information.

The safety and security of your personal information also depends on you. Where we have given you (or where you have chosen) a password to access certain parts of the Site, you are responsible for keeping this password confidential. We ask you not to share your password with anyone and urge you to be careful about giving out information in public areas of the Site like message boards. The information you share in public areas may be viewed by any user of the Site.

Unfortunately, the transmission of information via the internet is not completely secure. Although we do our best to protect your personal information, we cannot guarantee the security of your personal information transmitted to our Website. Any transmission of personal information is at your own risk. ACT is not responsible for circumvention of any privacy settings or security measures contained on the Site.

Digital Millennium Copyright Act (DMCA)

ACT respects the rights of copyright holders and complies with the Digital Millennium Copyright Act (DMCA) and other applicable copyright laws. We also expect users to respect the rights of copyright holders when using ACT Products and the Site. Uses that infringe the intellectual property rights of others violate ACT's terms of use.

Making or distributing unauthorized copies of a copyrighted work may infringe on the copyright holder's rights. If a copyright holder notifies us about unauthorized reproduction and/or distribution of copyrighted works, we reserve the right to disable access to the identified works promptly. We also reserve the right to disable the accounts of repeat infringers in appropriate circumstances. For more information, please visit the **[ACT DMCA Page \(https://www.act.org/content/act/en/terms-of-use/dmca.html\)](https://www.act.org/content/act/en/terms-of-use/dmca.html)**.

Changes to this Notice

ACT reserves the right to modify this Privacy Notice at any time. If ACT makes material changes to this Privacy Notice, the changes will be posted on this Site to alert you.

GDPR Notice

How will we use your data?

ACT collects your personal information so that we can use the information as described in the [How ACT Uses Personal Information](#) section of the Main Notice. ACT's uses your personal information according to the lawful bases of:

- **Contract Fulfillment.** When you register to use an ACT Product, we collect and use your personal information to provide that Product to you.
- **Consent.** When you consent to a specific use of your personal information, ACT will collect and use your personal information in accordance with your consent.
- **Legal Obligations.** ACT is subject to a variety of legal and regulatory obligations and will collect and use your personal information to comply with its legal obligations.
- **ACT's Legitimate Interests.** ACT will collect and process your personal information to carry out its legitimate interests to conduct the following, except where your fundamental rights and freedoms override such interests:
 - Protecting ACT or you from data security threats;
 - Managing test security;
 - Improving ACT Products; and
 - Conducting corporate transactions, such as a merger or acquisition.

Automated Decision Making

ACT may use automated means to make decisions about you, including scoring assessments, assigning you a testing location, and carrying out test security. ACT will only use such automated means as (1) necessary for the performance of its contract with you to provide the ACT Products, or (2) as explicitly consented to by you.

Last Updated: July 12, 2024

TERMS AND CONDITIONS

Testing Rules and Policies for the ACT Test

2024–2025

The ACT® Test Terms and Conditions: *Testing Rules and Policies for the ACT Test* (“*Terms and Conditions*”) are a legal agreement between the person who will take the ACT test (“you”) and ACT Education Corp. (“ACT”). They set out important rules and policies relating to your taking the ACT test, including those relating to test security. By registering for, launching, starting, or submitting answer documents for an ACT test (“test”), you are agreeing to these *Terms and Conditions*. All references to “test” or “tests” in these *Terms and Conditions* refer to the ACT test and test-related documents in paper or electronic form, including test booklets, test questions, test responses, and responses marked on answer documents.

Please read these *Terms and Conditions* carefully. If you have any questions, you may discuss them with your parent, legal guardian, or trusted adult. You should carefully review the *Terms and Conditions* each time you test (available on the ACT website at www.act.org/the-act/terms).

If you have difficulty accessing these *Terms and Conditions* and/or any of the ACT rules and policies referred to in the *Terms and Conditions*, please contact ACT Customer Support at 319.337.1270 or at www.act.org/content/act/en/contact-act.html before registering for or taking the ACT test. ACT will be happy to provide these *Terms and Conditions*, rules, or policies in an alternative format or give you access to these *Terms and Conditions* in some other reasonable manner.

NOTICE: By registering for and/or taking the ACT test, you represent and affirm the following to ACT:

- The information you have provided to ACT is true.
- You have read, understand, and agree to be bound by these *Terms and Conditions* and the ACT rules and policies referenced in these *Terms and Conditions*.
- You are not working for or on behalf of any test preparation provider(s).
- Any and all disputes, claims, or controversies (“Disputes”) between you and ACT will be resolved through binding arbitration except as expressly provided in Section 14 below, and you understand that by agreeing to arbitration you and ACT are waiving the right to have any such Disputes heard and decided by a judge or jury.

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1. **Privacy Policy and Notice of Collection of Personally Identifying Information.** ACT collects personally identifying information when you register for or take one of our tests. Some of this information is mandatory (including, but not limited to, your name, address, and date of birth), because it enables ACT to, for example, administer the test, report scores to colleges, and protect test security. ACT recognizes the importance of protecting the privacy of your personally identifying information. Our processing of such information, including collection, use, transfer, and disclosure, is described in the ACT Privacy Policy found at www.act.org/privacy. When you register for or take an ACT test, you consent to the ACT Privacy Policy. If you or your parent or guardian has any questions about the ACT Privacy Policy, contact our Data Protection Officer at dpo@act.org.
2. **Automatic Score Reporting for Scholarship Purposes.** Some scholarship and recognition programs use ACT scores as one source of information to recognize student achievement. If you meet the program's criteria, ACT may automatically report your test scores (including superscores) and other information about you (including personally identifying information) to these programs, unless you opt out of such sharing. To opt out, you must send an email to act-services@act.org no later than the late registration deadline for the test date for which you do not want your scores and information reported.
Note: *Opting out of scholarship score reporting will not affect other uses of your scores, such as reporting to the colleges you select when you register for the test, reporting to your high school, or sending your information to Educational Opportunity Service (EOS) recipients if you opt in to that service. This section does not apply to the ACT On-Campus testing program, which is a limited testing program authorized for use by institutions of higher education.*
3. **Photo Submission Requirement for Registration.** During test registration, ACT may require you to submit a photo that meets the ACT Photo Submission Requirements found at www.act.org/the-act/photo-requirements.html. Your photo may be used for test security and other identification purposes. For example, ACT may place your photo on your admission ticket, provide it to test staff, and/or include it on the score report that is sent to your high school. You must have the right to submit the photo to ACT, either because you own it or because you have permission to submit it from the person who owns it. ACT may use your photo for all the purposes described in the ACT Privacy Policy, the ACT Photo Submission Requirements, and this section.
 - a. **Consequences for Failure to Provide Photo:** Photos must be submitted by the photo upload deadline found at www.act.org/the-act/photo-requirements.html. If you fail to provide a required photo by the deadline, ACT may cancel your test registration and release your seat; you will be subject to all test date change policies and fees. You must then provide a photo by the photo deadline for any new test date. If you miss the deadline and do not request a test date change, your original registration fee will not be refunded.
 - b. **Examinees Age 12 or Under:** Examinees who are 12 years old or younger do not have to submit a photo for registration but must bring acceptable identification to be admitted to the test, as set forth in Section 4 below.
4. **Rules for Entry to the Test.** You must meet all rules for entry to the test described in this section.
 - a. **Verifying your Identity:** You must review ACT requirements for acceptable identification, found at www.act.org/the-act/id, and have acceptable identification with you on test day. ACT policies on acceptable

forms of identification are updated from time to time; you must comply with the identification requirements in effect on the day you test. Make sure to check for any updates before the day of testing. If you have any questions about acceptable identification, please contact ACT Customer Support at 319.337.1270 or at www.act.org/content/act/en/contact-act.html before the day of testing. Test staff have sole discretion on test day to deny admission to the test if they conclude you do not have an acceptable form of identification. Any such decision by test staff is final. For State testing, District testing, Special testing, Arranged testing, and On-Campus testing, ACT requires that you show acceptable identification on the test day, unless test staff personally recognize you.

- b. **Other Entrance Requirements:** You may be denied entry to the test center and not allowed to take the ACT test if you do not follow the physical security requirements or health and safety rules in place at the test center. Test staff has sole discretion on test day to deny admission to the test if they conclude that you do not meet the test center requirements. Any such decision by test staff is final.

- 5. **Items Brought to the Test.** Neither ACT nor test staff shall be responsible for loss of or damage to any items that you bring to a test center. ACT may also restrict the items you bring to the test. Items you bring or wear including, but not limited to, hats, glasses, masks, purses, backpacks, cell phones, calculators, other electronic devices, pre-approved medications or personal aids, and watches, may be searched or inspected at the discretion of ACT and test staff. Searches may include the use of tools, such as handheld metal detectors that detect prohibited metal items. ACT may confiscate and retain for a reasonable period any item suspected of

having been used, or capable of being used, in violation of these *Terms and Conditions*. ACT may also provide such items to, and permit searches of such items by, third parties in connection with investigations conducted by ACT or others.

- 6. **Prohibited Behaviors.** You may not engage in any of the following behaviors in connection with taking the ACT test:
 - a. Filling in or altering responses to any multiple-choice questions or continuing to write or alter the essay after time has been called. This means that you cannot make any changes to a test section outside of the designated time for that section, even to fix a stray mark or accidental keystroke.
 - b. Looking back at a test section on which time has already been called.
 - c. Looking ahead to other test sections.
 - d. Looking at another person's test or answers.
 - e. Giving or receiving assistance by any means.
 - f. Discussing or sharing test questions, answers, or test form identification numbers at any time, including during test administration, during breaks, or after the test.
 - g. Attempting to photograph, copy, or memorize test-related information or remove test materials, including questions or answers, from the test room in any way or at any time.
 - h. Disclosing test questions or answers, in whole or in part, in any way or at any time, including through social media.
 - i. Failure to comply with ACT's required computer configurations, secure testing client installation, and/or system checks if you are taking the ACT online using a device you bring.
 - j. Using a prohibited calculator (described in the ACT Calculator Policy found at www.act.org/calculator-policy.html).
 - k. Using a calculator on any test section other than mathematics.

- l. Sharing a calculator with another person.
- m. Wearing a watch during test administration. All watches, timers, or other timing devices must be removed and placed on the desk while in the test room so that it remains visible to staff during the test.
- n. Using a watch or other timing device with recording, internet, communication, or calculator capabilities (e.g., a smart watch or fitness band).
- o. Accessing any electronic device other than an approved calculator or watch. All other electronic devices, including cell phones and other wearable devices, must be powered off and stored out of sight from the time you are admitted to test until you leave the test center.
- p. Using highlighter pens, colored pens or pencils, notes, dictionaries (unless approved by the test administrator for translations), or other aids.
- q. Using scratch paper.
Note: *If you are taking the ACT online, some use of ACT-authorized scratch paper or a dry erase surface/white board may be permitted; all such use must be in accordance with ACT policies and procedures.*
- r. Not following instructions or abiding by the rules of the test center.
- s. Not following the rules of the test administration.
- t. Exhibiting confrontational, threatening, or unruly behavior.
- u. Violating any laws. If ACT suspects you have engaged in criminal activities in connection with a test, such activities may be reported to law enforcement agencies.
- v. Allowing an alarm on a personal item to sound in the test room or creating any other disturbance.

7. **Capturing Images or Video or Audio Recordings.** ACT may capture images or record video and/or audio of you and your

testing environment in connection with the testing process and may use the images or recordings at any time for the purpose of protecting test security, improving services, or as otherwise allowed under the ACT Privacy Policy and/or applicable law.

8. **Prohibited Behavior Observed or Suspected by Test Staff.** Test staff may monitor you and others during the testing process. If they observe or suspect you of engaging in prohibited behavior, they have the right to discontinue your exam and direct you to leave the test center, if applicable. Any such decision by test staff is final. Test staff may not give you a warning of any observed or suspected prohibited behavior before you are dismissed.

In some cases, test staff may allow an examinee to continue an exam, but report observed or suspected prohibited behavior on an irregularity report that is submitted to ACT. ACT, in its sole discretion, may take action in response, which may include not scoring your exam or canceling a previously reported score. Any such decision by ACT is final.

If your exam is canceled pursuant to this Section 8, you forfeit your registration, and no refund will be issued.

9. **Individual Score Reviews.** In some cases, test staff may not suspect, observe, or report prohibited behavior in the testing process, but other information comes to the attention of ACT that raises questions about the validity of an examinee's test scores. For example, ACT may find unusual similarities in an examinee's answers and the answers of another examinee through statistical or other analyses, indicators that an examinee may have falsified his or her identity or impersonated someone else, indicators of possible advance access to test questions or answers, or other indicators that an examinee's test scores may not be valid. In these cases, ACT may

choose to conduct an Individual Score Review.

- a. Objective of an Individual Score Review: The objective of an Individual Score Review is to determine whether your scores should be considered valid ACT scores—not to determine whether you engaged in misconduct. ACT reserves the right to cancel your scores if it has reason to believe the scores are invalid, based on substantial evidence. Proof of misconduct is not required to cancel scores.
- b. Integrity of Test Scores: ACT conducts Individual Score Reviews to protect the fairness of the testing process and the integrity of ACT scores. This benefits examinees as well as colleges, universities, and other score recipients.
- c. Notification of an Individual Score Review: In most cases, ACT will initiate the Individual Score Review process by sending you a letter. If your mailing address is outside of the United States, however, ACT will send a letter to the email address you provided to ACT. Email is used to avoid delays caused by international mailing, and if your mailing address is outside the United States, you agree to receive unencrypted emails from ACT regarding Individual Score Reviews. You must maintain accurate and up-to-date contact information with ACT. You can update your mailing address by contacting ACT Customer Support at 319.337.1270 or at www.act.org/content/act/en/contact-act.html.
- d. Timing of an Individual Score Review: Your scores may become the subject of an Individual Score Review at any time they are on file with ACT as valid and reportable ACT scores. While Individual Score Reviews are typically initiated within a year after the applicable test date, information may come to ACT's attention at any time that causes a review of your scores. For example,

investigations into recently reported scores or activities may cause ACT to reevaluate older scores; ACT may receive inquiries at any time from high schools, colleges, and other official score recipients questioning scores they believe to be inconsistent with their observations of academic performance; or ACT may receive information through its Test Security Hotline or from external investigations causing ACT to reexamine past scores. ACT reserves the right to conduct an Individual Score Review at any time.

10. Individual Score Review Process. If your ACT scores become the subject of an Individual Score Review, ACT will send you a letter that gives you three options: (1) submit documentation to ACT in support of your scores; (2) take a free, private retest to resolve the score review; or (3) voluntarily cancel your scores. Additional details regarding these options will be provided in ACT's correspondence to you. ACT's letter will include a Score Review Option Sheet that outlines these options. You must sign and return the Score Review Option Sheet to ACT with only one option selected by the deadline stated in the letter.
 - a. Submit Documentation: If you choose to submit documentation to ACT in support of your scores, this documentation is provided to a Test Security Review Panel, which will consider the totality of the evidence from you and ACT and determine whether to recommend cancellation of the scores. If the review panel recommends that your scores be canceled, you will again be given several options, including: (1) voluntarily canceling your scores; (2) taking a free, private retest to resolve the score review; or (3) challenging the review panel's cancellation recommendation pursuant to the dispute resolution provisions discussed in Section 14 below. Additional details regarding

these options will be provided in ACT's correspondence to you.

- b. Private Retest or Voluntary Score Cancellation: You may select the private retest option or voluntary score cancellation option at any point in the Individual Score Review process to fully resolve the Individual Score Review.
- c. Failure to Participate in the Individual Score Review Process: If you do not respond to ACT's Individual Score Review correspondence and identify a preferred option by the deadline stated in the correspondence, do not participate in the Individual Score Review process, or unreasonably delay the Individual Score Review process or resolution, ACT may cancel your scores that are under review if it has substantial evidence to support they are invalid. You hereby agree and authorize ACT to make such a cancellation. If your scores have been canceled, ACT will not reinstate them absent exceptional circumstances and only in ACT's sole discretion.
- d. Score Reporting While Scores Are Under Review: ACT reserves the right to hold scores and not issue score reports pending the outcome of the Individual Score Review process.
- e. Notification to Official Score Recipients of Pending Individual Score Review: Although it is ACT's general policy not to notify official score recipients of a pending Individual Score Review, ACT reserves the right to notify official score recipients that an Individual Score Review is pending at any time. You hereby agree and authorize ACT to make such a disclosure.
- f. Score Cancellation Notices: If your scores are canceled for any reason relating to an Individual Score Review, ACT sends a letter to all official score recipients (i.e., the entities that receive scores directly from ACT) informing them that the scores have been canceled. ACT generally does not

inform official score recipients of the reason for cancellation but may do so in exceptional circumstances including, but not limited to, instances in which there is a misconduct finding as defined in Section 12(c) below.

11. Compromises in the Registration, Testing, Scoring, or Score Reporting Process and Group Irregularities. ACT takes steps that are intended to provide you a standardized testing process. However, circumstances may prevent this from occurring in some cases. Those circumstances include, but are not limited to:

- Deviations from standard testing procedures such as events that cause testing to be canceled or interrupted, or a mistiming on any part of the test;
- Concerns regarding whether testing can be safely conducted considering health or other conditions affecting a testing location;
- Errors, delays, or other non-standard circumstances in (a) processing test registrations; (b) delivering tests; (c) administering tests; (d) uploading test responses; (e) preparing, handling, shipping, receiving, processing, or scoring tests; or (f) reporting scores;
- Disruptions at the test location;
- Evidence of group irregularities or compromises (which includes, but is not limited to, evidence of advance access to or disclosure of test content, unusual similarities for a group of examinees, or evidence that a room or center was impacted by prohibited behavior); or
- Any other events that disrupt or compromise any part of the testing process (i.e., registration, test distribution, testing, scoring, and score reporting).

In the event such a circumstance occurs, ACT will examine the situation and determine whether it needs to take any action including, but not limited to, not proceeding with a scheduled test

administration, not scoring tests, or canceling scores. ACT may determine that no further action is necessary, and that decision is final. However, if ACT determines that it needs to take action, ACT will in its sole discretion: (a) correct the error (if an error occurred and ACT believes correction is feasible); (b) cancel the test administration, not score tests, or cancel scores, including all completed sections of the test ("discontinue the testing process"); (c) discontinue the testing process and offer each affected person the option to retest at no additional fee (normally on a future National test date); or (d) discontinue the testing process and offer a refund.

If the impacted test event is a State testing event (i.e., one where a state or district has paid for your test), ACT may offer you the option to retest at no additional fee or it may cancel the test event without an option for retest.

ACT shall not be required to conduct Individual Score Reviews for each impacted group member described in this Section 11.

ACT may take any action pursuant to this section regardless of whether you caused or benefited from the compromise or irregularity, or otherwise violated these *Terms and Conditions*. **To the extent permitted by applicable law, the remedies listed in this Section 11 are the exclusive remedies available to examinees for the circumstances described in this Section 11.** Decisions made by ACT pursuant to this section are final.

12. **Test Security Investigations.** As part of its efforts to protect the fairness of the ACT test and the integrity of ACT scores, ACT may investigate the security of its test materials and the testing process ("test security investigation"), and you agree to cooperate with any test security investigation. ACT reserves the right to hold and not report scores pending the outcome of a test security investigation.

Test security investigations may produce evidence that causes ACT to initiate one or more Individual Score Reviews as outlined in Sections 9 and 10 above. In other cases, test security investigations may produce evidence that calls into question a group of examinee scores (e.g., all scores achieved from a specific room, school, or district on a specific test date) and results in ACT taking action under Section 11, above.

In addition to taking action regarding examinee scores, ACT may, in its sole discretion, decide as part of a test security investigation that additional steps are appropriate, such as when prohibited behavior is or might be ongoing or rises to the level of an infringement of ACT's intellectual property rights or a criminal act (e.g., coordinated group efforts to steal and disseminate ACT's secure test content; activities involving someone else taking the test for another person or altering test responses; theft of, disclosure of, or access to test content or responses to secure test questions; or other serious or potentially ongoing misconduct). Those additional steps may include, but are not limited to, the following:

- a. **Prohibiting You from Taking the ACT:** ACT may prohibit you from taking the ACT test, even if you have already registered, if ACT has reason to believe (1) you engaged in prohibited behavior in connection with a prior or future administration of the ACT test, (2) you intend to engage in prohibited behavior in the future, (3) you have provided false or misleading information to ACT or to others relating to your taking the ACT test, or (4) you are working for a test preparation provider. This prohibition may be temporary or permanent.
- b. **Disclosure of Investigative Information:** ACT may disclose details of a test security investigation to anyone who may be able to assist ACT in the

investigation or who may have an interest in their own independent investigation, such as law enforcement, state departments of education, local school officials, and official score recipients. Such disclosures help protect the integrity and fairness of the test process and benefit examinees who properly obtain their ACT scores, as well as official score recipients. You authorize and consent to these disclosures.

- c. Disclosure of Misconduct Finding: If you are found by a court or arbitrator to have engaged in any action prohibited under these *Terms and Conditions* that affected the validity of your scores on the ACT test or the scores of any other examinee(s) (“misconduct finding”), ACT may disclose that fact to any schools or scholarship entities that received your ACT scores and to other third parties with a legitimate reason for knowing that information.

- 13. Voluntary Cancellation of Scores by You. Unless you test under a State, District, or On-Campus testing program, ACT will cancel your scores upon your request. If ACT has already sent the scores to official score recipients, ACT will notify those official score recipients that the scores have been canceled. ACT will not be required to reinstate voluntarily canceled scores, even if you later change your mind.

- 14. ARBITRATION AGREEMENT. Arbitration is an alternative dispute resolution procedure intended to allow you and ACT to resolve issues without going to court. As described in this Section 14, certain Disputes between you and ACT will be submitted to an arbitrator, not a judge or jury, for resolution.

- a. Arbitration of Disputes: You and ACT agree that any and all disputes, claims, or controversies (“Disputes”) (other than Disputes that solely involve infringement of intellectual property rights) that may arise

between you and ACT—including, but not limited to, Disputes that relate in any way to these *Terms and Conditions*, registering for the test, taking the test, requesting or receiving accommodations or supports on the test, the reporting of ACT test scores, the use or disclosure of personal information by ACT, Individual Score Reviews, or the cancellation of test scores—shall be resolved by a single arbitrator through final and binding arbitration. You and ACT agree that a final arbitration award may be entered in a court which has jurisdiction.

By agreeing to arbitration, you and ACT are waiving the right to have Disputes subject to this arbitration agreement (including Disputes regarding statutory rights) brought before or decided by a judge or jury in state or federal court and are agreeing that any such Disputes will instead be resolved through final and binding arbitration.

- b. Arbitration Process: The arbitration will be administered by the American Arbitration Association (“AAA”), under the AAA Consumer Arbitration Rules (“AAA Consumer Rules”) in effect at the time a request for arbitration is filed with the AAA, unless you and ACT agree in writing to an alternate arbitration forum and/or different arbitration rules, or a substitute arbitration forum is agreed to or ordered pursuant to Section 14(f). Copies of the AAA Consumer Rules can be located on AAA’s website at: www.adr.org. When an arbitration demand is properly and permissibly filed pursuant to this Section 14, you and ACT must promptly comply with the filing requirements, which for AAA arbitrations includes your obligation to pay AAA a non-refundable individual filing fee (unless AAA agrees to waive

the fee for you or ACT is the claimant) and ACT's obligation to pay the remainder of the filing fee. The filing party must provide prompt notice of the filing of the arbitration demand to the other party. Each party will be responsible for its own attorney's fees and expenses incurred in connection with the arbitration, regardless of the outcome of the arbitration, except as required by applicable law.

- c. Arbitrator Jurisdiction: Any issues regarding the enforceability of this arbitration agreement or whether a Dispute is subject to this arbitration agreement will be decided solely by the arbitrator, except in the case of Disputes that solely involve infringement of intellectual property rights or as set forth in Section 14(e) below.
- d. Individual Arbitration; Class Action Waiver: No arbitration may be brought or maintained as a class action or a collective action. All arbitration demands must be filed on an individual examinee basis. The arbitrator shall not have the authority to combine, consolidate, or aggregate the Disputes of more than one individual, conduct any class proceeding, make any class award, or make an award to any person or entity not a party to the arbitration.
- e. Multiple Demands: Notwithstanding the arbitration agreement set forth in this Section 14, neither you nor ACT may file an arbitration demand or arbitrate a Dispute if your arbitration demand or ACT's arbitration demand would be one of more than 50 substantially similar arbitration demands filed within a consecutive 12-month period by or with the assistance or coordination of the same law firm(s) or organization(s). You and ACT agree that AAA (or any substitute arbitration forum) may not accept any such arbitration demand for filing or invoice

or collect any filing or other fees for any such arbitration demand. You and ACT agree that arbitration demands that challenge score cancellation decisions made in different Individual Score Reviews do not constitute "substantially similar arbitration demands."

In the event you or ACT are unable to seek resolution of a Dispute in arbitration due to this provision, you or ACT may seek resolution of the Dispute in court in accordance with Section 21. Neither you nor ACT may file a court action pursuant to this provision, however, unless the other party is provided prior written notice identifying all the substantially similar arbitration demands that have been or will be filed to trigger coverage under this provision, with such notice to be provided at least 30 days prior to the filing of any such court action. Notwithstanding Section 14(c), any issues regarding whether the filing of an arbitration demand does or would violate this Section 14(e) and/or whether a court action may be filed pursuant to this Section 14(e) must be resolved in court in accordance with Section 21, and no proceedings may be conducted before, and no fees may be invoiced or collected by AAA (or any substitute arbitration forum) pending resolution of any such issues in court.

- f. Substitute Arbitration Forum: If, for any reason, AAA is not available as an arbitration forum, you and ACT agree to reasonably confer regarding a substitute arbitration forum or arbitrator. In the event you and ACT are not able to reach agreement on a substitute arbitration forum or arbitrator within 14 days of the first communication on the topic between the parties, you and/or ACT may submit the issue to the U.S. District Court for the Southern District of Iowa or a state court located in Johnson

County, Iowa, for the sole purpose of seeking a declaratory judgment naming a substitute arbitration forum or arbitrator.

- g. Small Claims Court: Notwithstanding the arbitration agreement set forth in this Section 14, you or ACT may take a claim to small claims court instead of arbitration if the claim is within the jurisdiction of the small claims court, but only if and as permitted in the AAA Consumer Rules. If an action in small claims court is instituted by you or ACT pursuant to the rules, and such action is within the jurisdiction of the small claims court, you and ACT agree to accept the judgment of the small claims court as a final resolution of the Dispute and not to appeal the small claims court's decision or pursue any other claim relating to that Dispute in court or arbitration. Each party will be responsible for its own attorney's fees and expenses incurred in connection with the small claims proceeding, regardless of the outcome, except as required by applicable law.
- h. Applicable Law: The Federal Arbitration Act ("FAA") applies to and governs this arbitration agreement, including interpretation and enforcement of the agreement, and preempts all state laws to the fullest extent permitted by law. Rulings in other arbitrations involving ACT to which you are not a party may not be relied upon as binding precedent or be given preclusive effect in any arbitration or court proceeding involving you.
- i. Severability: If any provision in this Section 14 is held by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way; and, to the fullest extent possible, the invalid, illegal, or unenforceable provision shall be modified so that it is

valid, legal, and enforceable and, to the fullest extent possible, reflects the intention of you and ACT as originally set forth in this agreement. If, however, a finding of invalidity, illegality, or unenforceability applies to (i) Section 14(d) so as to allow for class, collective, combined, consolidated, or aggregated arbitration, or to allow for an award to any person or entity not a party to the arbitration, or (ii) Section 14(e) so as to allow for more than 50 substantially similar arbitration demands to be filed within a consecutive twelve-month period by or with the assistance or coordination of the same law firm(s) or organization(s), the arbitration agreement between you and ACT will be unenforceable in its entirety except with respect to any claim(s) and/or remedies sought on an individual basis. The remainder of the Dispute will be resolved in court in accordance with Section 21, and you and ACT agree that any court proceedings will be stayed pending conclusion of any arbitration proceedings.

- 15. Termination of Agreement (in Whole or in Part). If you repudiate, disaffirm, disavow, rescind, or otherwise cancel your agreement to all or any part of these *Terms and Conditions* at any time, ACT may—in addition to taking other action and without conceding the validity of your actions—in its sole discretion, refund your test registration fee(s), cancel your score(s), and notify official score recipients that the score(s) have been canceled.
- 16. LIMITATION OF LIABILITY AND DAMAGES. To the extent permitted by applicable law, ACT's total liability to you, or anyone claiming by or through you or on your behalf, for any claims, losses, costs, or damages arising out of, resulting from, or in any way related to the ACT test, from any cause, shall not exceed the test registration fees you paid to ACT or \$250, whichever is greater. To the extent

permitted by applicable law, in no event shall ACT be liable to you, or anyone claiming by or through you or on your behalf, for

- a. Any indirect, special, consequential, speculative, incidental, loss of opportunity (regardless of whether or how these are classified as damages), exemplary, or punitive damages
- b. Attorneys' fees or expenses
- c. Expert witness fees
- d. Other costs, whether arising out of claims for breach of contract, tort (including negligence), strict liability, product liability, or otherwise and regardless of whether such loss or damage was foreseeable, or you have been advised of the possibility of such loss or damage.

17. ACT Intellectual Property Rights and Confidentiality.

- a. Intellectual Property: All ACT tests, test-related documents and materials, and test preparation materials (collectively, "ACT materials") are copyrighted works owned by ACT and protected by the laws of the United States and other countries. Outside of the protection granted by United States copyright law, ACT considers the ACT tests to be trade secrets. The test questions and answers, test-related secure documents, and other materials constitute highly confidential, proprietary testing information that ACT takes every precaution to protect from disclosure beyond what is absolutely necessary for the purpose of administering a test.
- b. Confidentiality: You agree to maintain the confidentiality of the ACT materials. Secure ACT tests and test questions (i.e., tests and test questions that are not made available by ACT to the general public) may not be copied, shared, discussed, or disclosed at any time or in any manner whatsoever. Test-related materials that ACT has

made available to the general public, such as materials designated by ACT as practice or sample tests, may not be copied, duplicated, or used in any other works, in whole or in part, without the prior written approval of ACT.

- c. Consequences for Violation of ACT Rights: ACT may pursue all available civil and criminal remedies if its intellectual property rights are violated, including seeking damages and injunctive relief in a court of law and referring such violations to law enforcement authorities for criminal prosecution.
- d. ACT Ownership of Answer Documents and Use of Score Reports: ACT owns all answers and answer documents you submit, including all essay responses, and all score-related data maintained by ACT. Score reports that ACT provides you may not be altered, and if ACT cancels the scores reflected on such score reports, you may not provide those scores or score reports to third parties. You do not have any property rights or property interests in your actual test score.

18. ACT Policies and Rules. The ACT examinee policies and rules referenced in these *Terms and Conditions* and other rules applicable to the administration of the ACT test are available for your review at www.act.org/the-act/terms/rules and are specifically incorporated into these *Terms and Conditions*. ACT examinee policies and rules are periodically updated, and subject to change until 48 hours prior to your test date. Except to the extent you are testing under a State, District, Arranged, or On-Campus testing program, ACT will send you a notification approximately 48 hours before the test date reminding you to review the policies and rules on the website, and you have an obligation to read the policies and rules before you take the test. If you do not agree to comply with the policies and rules that are in effect 48 hours prior to your test date, you must

notify ACT prior to the test of your intent to cancel your registration pursuant to this provision. ACT may provide a refund in the event of such cancellation in its sole discretion. Information about when ACT allows refunds can be found at www.act.org/the-act/terms/rules. If you have any questions about the applicable policies and rules, or wish to provide notification of your intent to cancel your registration pursuant to this provision, contact ACT Customer Support at 319.337.1270 or at www.act.org/content/act/en/contact-act.html in advance of the applicable test date.

19. **Limitations.** To the extent permitted by applicable law, any and all claims by you and ACT arising out of or relating in any way to these *Terms and Conditions* (except for claims relating to intellectual property rights), whether sounding in contract, tort, or statute, must be brought within two years of the date the cause of action accrues, provided that ACT has the right to cancel scores consistent with these *Terms and Conditions* at any time as long as the scores are otherwise considered valid, college reportable scores.
20. **Governing Law.** If you take the ACT test outside the United States, these *Terms and Conditions* and any and all Disputes between you and ACT arising out of or relating in any way to these *Terms and Conditions*, whether sounding in contract, tort, or statute, shall be governed by the laws of the State of Iowa, without giving effect to conflict of law principles or other rules that would result in the application of the laws of a different jurisdiction and subject to the applicability of the FAA as stated in Section 14(h) above, as well as applicable United States federal law.
21. **Venue.** Pursuant to Section 14, you and ACT have agreed to participate in binding arbitration (or small claims court proceedings if allowed under the AAA Consumer Rules) to resolve certain Disputes. You and ACT agree that any permissible court action (except for any permissible small claims court action), shall be brought exclusively in the U.S. District Court for the Southern District of Iowa or a state court located in Johnson County, Iowa. You and ACT agree to submit to the personal jurisdiction of either of these courts, and you and ACT waive any objection they may have to the location of such courts (including, but not limited to, any objection based on personal jurisdiction or venue in such courts).
22. **Waiver and Severability.** Any failure by either party to insist on strict performance of any of these *Terms and Conditions* shall not be deemed a waiver of its rights unless such waiver is in writing signed by the party against whom it is asserted. Any waiver of any right hereunder at any time shall not be deemed a waiver of any other right. Except as stated in Section 14(i) above, if any provision in these *Terms and Conditions* is held by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way; and, to the fullest extent possible, the invalid, illegal, or unenforceable provision shall be modified so that it is valid, legal, and enforceable and, to the fullest extent possible, reflects the intention of you and ACT as originally set forth in these *Terms and Conditions*.
23. **Force Majeure.** ACT shall not be liable for any delay or failure to perform when such delay or failure is due to causes or circumstances beyond ACT's control including, without limitation, your actions or failure to comply with the requirements of ACT; national emergencies, fire, flood, inclement weather, epidemics, pandemics, or catastrophes; acts of God, governmental authorities, or parties not under the control of ACT; or insurrection, war, riots, or failure of transportation, communication, or power supply. ACT will exercise commercially reasonable efforts to mitigate the extent of any excusable delay

or failure to perform and any adverse consequences.

24. **No Third-Party Beneficiary.** These *Terms and Conditions* do not create a third-party beneficiary relationship between ACT and any individual or entity other than you.
25. **Questions Regarding These Terms and Conditions.** You must agree to these *Terms and Conditions*, including the

provisions regarding score cancellation and binding arbitration, as a condition to registering for and/or taking the ACT. If you have questions about these *Terms and Conditions*, you should discuss them with your parent or guardian before registering for and/or taking the test.

Exhibit A ADDENDUM

This Addendum is agreed and entered into by and between the **Boone County School District** ("District" or "BCS") and **ACT EDUCATION CORP.** ("ACT" or "Vendor"), and is intended to amend, modify, and supplement the ACT District Testing Enrollment and Agreement entered into by the parties on July 18, 2024 (hereinafter, the "Agreement").

WHEREAS, the Vendor is providing Assessments and Services (as defined in the Agreement) to the Boone County Board of Education and, by extension, the District; and

WHEREAS, the Vendor and the District recognize the need to protect personally identifiable student information, and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g), 34 C.F.R. Part 99; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. § 6501-6506, 16 C.F.R. Part 312; the Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. § 1232h; 34 C.F.R. Part 98; and applicable state privacy laws and regulations; and

WHEREAS, the Vendor and District desire to enter into this Addendum for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations, and to amend, modify, and supplement the Agreement previously entered into; and

NOW THEREFORE, in consideration of the terms, covenants, conditions and promises set forth herein, as well as those set forth in the Parties' Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend, modify, and supplement the Agreement as follows:

Section 1. Definitions for Addendum. For the purpose of this Addendum, the following definitions shall apply:

- 1.1 "Confidential Student Information" shall mean all information, whether PII or directory information, included in the Education Records provided to or accessed by Vendor pursuant to the terms of the Parties' Agreement. Student data provided directly to Contractor by the student or the student's parent/guardian is not Confidential Student Information and is not subject to this Agreement.
- 1.2 "District Data" shall mean any information or data owned by the District and provided to Vendor pursuant to the Parties' Agreement. Student data provided directly to Contractor by the student or the student's parent/guardian is not District Data and is not subject to this Agreement.

1.3 “Education Records” shall be defined consistent with the definition set forth in 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. § 99.3, and shall mean records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.

1.4 “Personally Identifiable Information” (“PII”) shall be defined consistent with the definition set forth in 20 U.S.C. § 1232g(a); 34 C.F.R. § 99.3, and shall mean identifiable information that is maintained in education records and includes direct identifiers, such as a student’s name or identification number, indirect identifiers, such as a student’s date of birth, or other information which can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information.

Section 2. Student Privacy Acknowledgements. The Parties acknowledge the following: (a) the District is a public school district and is subject to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g; 34 CFR Part 99, which protects the privacy of student education records; (b) the District has outsourced certain services to Vendor, as defined in the Agreement, in furtherance of a legitimate educational interest that would otherwise be performed by the school district; (c) these services include the collection and storage of certain District Data and Confidential Student Information, as set forth in Section 1 of this Addendum; (d) the Vendor is under the direct control of the District with respect to the use and maintenance of District Data and Confidential Student Information provided to it pursuant to the Parties’ Agreement; and (e) Vendor is subject to the applicable requirements in FERPA that any PII obtained from Education Records may be used only for the purposes for which the disclosure was made and consistent with the terms of the Parties’ Agreement.

Section 3. Vendor’s Obligations. Vendor acknowledges and agrees to the following: (a) Vendor is acting as a contractor to the District in performing the function, either directly under the terms of the Agreement and this Addendum, or indirectly through Vendor’s interfaces with another District contractor; (b) Vendor uses reasonable methods to ensure that only individuals with a legitimate educational interest (as to a particular student, such as the student, his or herself, the student’s guardian, and the District) shall have access to the District Data in Vendor’s possession or control; and (c) Vendor uses reasonable methods to ensure that no third parties shall have access to Confidential Student Information or Education Records in its control unless written authorization to distribute such information is provided by the student’s parent/guardian.

Section 4. Ownership of Data. As between District and Vendor, the District retains ownership of all District Data or Confidential Information provided to Vendor pursuant to the Parties’ Agreement

Section 5. Data Transmission. The Vendor shall ensure the secure transmission of any data exchanged during the course of this agreement. All data transmissions, whether internal

or external, shall be encrypted using encryption processes for data in motion which comply, as appropriate, with National Institute of Standards and Technology ("NIST") Special Publications 800-52; NIST Special Publications 800-77; NIST Special Publications 800-113, or others which are Federal Information Processing Standards ("FIPS") 140-2 validated, to protect the confidentiality and integrity of the transmitted data. In the event of any security incidents or breaches affecting data while in transit, the Vendor agrees to promptly notify BCS and take necessary remedial actions to mitigate the impact as set forth in Section 8 of this Addendum.

Section 6. Security of Data at Rest. Vendor acknowledges that it is responsible for implementing robust measures to safeguard data at rest. This includes, but is not limited to, encryption of stored data, physical/logical access controls, regular security audits, and the prohibition of storing any data onto a personally owned device. All District Data must be stored in a secure environment, with access limited to authorized personnel only. Vendor shall adhere to valid encryption processes for data at rest that are consistent with NIST Special Publication 800-111 and comply with relevant data protection regulations to ensure the confidentiality and integrity of data at rest. If requested by the District, Vendor shall provide a list of locations where student data is/may be stored, and whenever possible, including where required by applicable law, data shall be stored within the United States. In the event of any security incidents or breaches affecting data at rest, the Vendor agrees to notify the BCS within seventy-two (72) hours after a determination that District Data has been impacted and take necessary remedial actions to mitigate the impact.

Section 7. Prohibition Against Use of Student or District Likeness. Vendor acknowledges and agrees that it may not disseminate the District's name, logo, or likeness for any reason, including marketing, internal training, or similar purposes, to any third party without written authorization from the District. Vendor further acknowledges and agrees that it may not disseminate any Confidential Student Information or District Data – whether explicitly protected under FERPA, directory information (i.e., name, grade, etc.), or student likeness – without written authorization from the student or, if the student is a minor, the student's parent/guardian. Vendor shall not in any case process student data that is Confidential Student Information or District Data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purpose, and shall not sell, disclose, or otherwise process such data for any commercial purpose as defined by KRS 365.734.

Section 8. Security Breach Remediation and Notice. Vendor agrees to maintain procedures and practices to preemptively safeguard against security breaches as described in KRS 61.932. However, in the event of a security breach as defined by KRS 61.931, Vendor shall notify the District in the most expedient time possible and without unreasonable delay, but within seventy-two (72) hours of determination of a security breach relating to the personal information in the possession of Vendor. The notice to the District shall

include all information the nonaffiliated third party has with regard to the security breach at the time of notification. In the event of a security breach relating to the personal information in the possession of Vendor, Vendor shall bear the full cost of the notification and investigation requirements set forth in KRS 61.933. In the event of a suspected or confirmed breach, Vendor agrees to retain an independent IT consulting firm, which is mutually agreed-upon by the Parties, to provide requisite forensic/recovery/notification services as provided for by the Commonwealth Office of Technology's recommended data breach response plan. Vendor agrees to comply with all provisions of KRS 61.931–.934 pertaining to the prevention of, investigation of, response to, and remediation of any and all such security breaches.

Section 9. Cloud Computing Service Providers. If Vendor is a cloud computing service provider (as defined in KRS 365.734(1)(b) as “any person other than an educational institution that operates a cloud computing service”), Vendor agrees that: (a) Vendor shall not process Confidential Student Information or District Data subject to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless Vendor receives express permission from the student's parent. Vendor shall work with the student's school and the District to determine the best method of collecting parental permission; (b) Vendor shall not in any case process Confidential Student Information, District Data, or data subject to KRS 365.734(2) to advertise or facilitate advertising or to create or correct an individual or household profile for any advertising purposes; (c) Vendor shall not sell, disclose, or otherwise process Confidential Student Information for any commercial purpose; and (d) Vendor shall certify in writing to the District that it will comply with KRS 365.734(2).

Section 10. Advertising Limitations. Vendor is prohibited from using, disclosing, or selling Confidential Student Information or District Data to (a) inform, influence, or enable targeted advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the services as set forth in the Parties' Agreement. This section does not prohibit Vendor from using Confidential Student Information or District Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or District employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Confidential Student Information or District Data for any purpose explicitly permitted by the Parties' Agreement.

Section 11. Open Records. Vendor acknowledges that the District is subject to the Kentucky Open Records Act, KRS 61.870 to KRS 61.884, and may be required to disclose certain information obtained pursuant to the Parties' relationship as set forth therein.

Vendor agrees that it will not pursue any legal action against the District for any disclosure of Vendor's information or data made in response to an Open Records Request.

Section 12. Law Enforcement or Court-Mandated Disclosures. Should law enforcement or other government entities ("Requesting Part(ies)") contact Vendor with a request for Confidential Student Information or Education Records held by the Vendor pursuant to the Parties' Agreement, the Vendor shall notify the District in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the Board of the request. Similarly, if Vendor becomes legally compelled to disclose any District Data, Confidential Student Information, or Education Records (whether by judicial or administrative order, applicable law, rule, regulation, or otherwise), Vendor shall use all reasonable efforts to provide the District with advance notice before disclosure so that the District may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure the Board's compliance with the confidentiality requirement of federal or state law.

Section 13. Data Protection Upon Conclusion of Contract. Upon termination, cancellation, expiration, or other conclusion of the Parties' Agreement, upon District's written request, Vendor shall return all District Data in the possession of Vendor, its subcontractors, or agents to the District, unless otherwise directed by the District in writing that such Client Data alternatively be destroyed. Vendor shall complete such return or destruction within thirty (30) calendar days of the termination of this Agreement and shall certify compliance with this Section, in writing, to the District within ten (10) calendar days of such return or destruction.

Section 14. Insurance. Vendor shall maintain, during the term of the Agreement, a cyber-insurance liability policy, in the amount of \$3 million. Upon request, Vendor shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Boone County Board of Education as additional insured in the Description of Operations section of the Certificate of Insurance.

Section 15. Equitable Relief. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover costs and attorneys' fees awarded by a court of competent jurisdiction. Vendor acknowledges that the District may seek and obtain injunctive relief for the unauthorized use or dissemination of District Data or Confidential Information, or other violations of the Parties' Agreement, in addition to, and not in limitation of, other legal remedies provided under state and federal law.

Section 16. Governance. The laws of the Commonwealth of Kentucky shall govern all questions as to the execution, validity, interpretation, construction and performance of this Agreement and Addendum, or any of their terms. Any suit, action or other proceeding regarding the execution, validity, interpretation, construction or performance of this agreement shall be filed in the Boone Circuit Court of the Commonwealth of Kentucky. In

the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern District of Kentucky.

Section 17. Effect of Addendum. The Parties agree that the terms and conditions set forth in this Addendum modify, amend, and supplement the Agreement as set forth above, and agree to be bound to the terms herein. To the extent that the Addendum expressly conflicts with the terms and conditions of the Agreement, the Addendum shall control.

IN WITNESS WHEREOF, the District and Vendor execute this Addendum to be effective consistent with the effective date of the Parties’ Agreement.

BOONE COUNTY SCHOOL DISTRICT

By: _____ Date: 12/12/2024
Printed Name: Jesse Parks
Title/Position: Board of Ed Chair

ACT EDUCATION CORP.

By:  _____ Date: 8/6/2024
Signed by:
B21CAE5161004F6...
Printed Name: C. Blake Curwen
Title/Position: Vice President