**WORKKEYS® PROFILING**

**AGREEMENT**

This WorkKeys® Profiling Agreement (“Agreement”) is made by and between ACT, Inc. a non-profit educational assessment and services corporation having a principal place of business at 500 ACT Drive, Iowa City, IA 52243 (“ACT”) and  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,** an individual or organization providing WorkKeys Profiling services having an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,**  (“Agency”).

In consideration of the mutual promises made herein, ACT and Agency agree as follows:

**Term**

This Agreement will be effective upon the date of last signature and acceptance by ACT and shall remain in effect for one (1) year. This Agreement shall automatically renew for succeeding terms of one (1) year each unless otherwise terminated as contemplated in this Agreement.

**Scope of Work**

Agency desires to use ACT's SkillPro® software (“SkillPro”) and WorkKeys Profiling process and all related materials (collectively, “ACT Materials”), to provide WorkKeys Profiling services to third party clients for use with ACT’s WorkKeys® Assessments. To provide such services, Agency’s employees or independent contractors (hereinafter “Representative(s)”) must be ACT-trained and ACT‑authorized as WorkKeys Profilers. A list of Agency Representatives to be trained as Profilers upon the initiation of this Agreement is attached (see Attachment A). Those Agency Representatives authorized by ACT to provide WorkKeys Profiling services shall be referred to as “WorkKeys Profilers.”

**Training of WorkKeys Profilers**

WorkKeys Profilers will attend and satisfactorily complete all training and refresher requirements, as determined by ACT, necessary to become or remain authorized as WorkKeys Profilers. WorkKeys Profilers will also stay up-to-date on changes and enhancements to the WorkKeys Profiling procedures by reviewing all communications from ACT upon receipt, periodically accessing the WorkKeys Profiling resources website identified by ACT, and incorporating any revised material and/or procedures into their WorkKeys Profiling activities.

**Authorization Status**

WorkKeys Profilers must maintain their authorized status, as determined in ACT’s sole discretion, by attending and satisfactorily completing all required WorkKeys profiling training and refresher requirements and engaging in on-going post-training coaching with ACT.

If these conditions are not met, ACT may, at its sole discretion and upon written notice to the Agency, de-authorize any WorkKeys Profiler(s) with thirty (30) days notice to the Agency, who will then have the opportunity to remedy the conditions identified by ACT prior to expiration of the notice period.

**Required Software Licenses**

Agency shall use SkillPro to conduct WorkKeys Profiling and shall adhere to the provisions of the SkillPro License Agreement executed between the parties.

**Responsibilities of the Parties**

ACT agrees to:

 A. provide Agency Representatives with WorkKeys Profiling training and, upon satisfactory completion of such training, verify and authorize, in writing, that such Representatives have received such training;

1. periodically review Agency’s final WorkKeys Content Validity reports prior to delivery of such reports to end-user clients and provide guidance and feedback regarding consistency with ACT standards as specified in the WorkKeys Profiling training, including the training material, and resources website;
2. provide limited technical support to Agency Representatives by telephone or electronic mail for the WorkKeys profiling process; and
3. license SkillPro to Agency for purposes of this Agreement, based on the terms of the SkillPro License Agreement, as executed by the parties.

Agency agrees to:

1. provide WorkKeys profiling services for end-user clients in a professional manner consistent with ACT standardsas specified in the WorkKeys Profiling training, including training materials and resources website, and direct feedback from ACT, whether given to WorkKeys Profiler or Agency;
2. provide each organization for which aWorkKeys Profile is conducted with a written report for each profile conducted by Agency using the current WorkKeys Content Validity report template;
3. use SkillPro and the ACT Materials provided by ACT exclusively for work associated with performing WorkKeys Profiling for use with ACT’s WorkKeys Assessments;
4. provide ACT with the electronic data for each WorkKeys Profile conducted by Agency in accordance with the standards and procedures specified by ACTin the WorkKeys Profiling training notebooks and resource website;
5. upon request and in a timely manner, but in any event not more than thirty (30) days following such request, provide to ACT: written WorkKeys Content Validity reports (or example reports) performed by one or more Agency Representatives, draft reports, initial task lists, or other such documentation as requested by ACT;
6. respond in a timely manner to end-user client and ACT questions regarding any WorkKeys Profiling session, and provide interpretation of any related profile upon request;
7. Communicate to any employer or other end user the following statement, and if any agreement is executed between Agency or its Representative and an organization for which Agency or its Representative is conducting a WorkKeys Profile, include such language in such agreement:
	1. The WorkKeys Profiling system, including the WorkKeys Profiling Training and all ACT Materials, use ACT’s proprietary data and research and are designed exclusively for use with the WorkKeys Assessments. ACT does not have any data regarding the use of the WorkKeys Profiling system with other assessments which may differ from the WorkKeys Assessments in material ways, including but not limited to: having different skill definitions, different test questions, and different levels of difficulty. ACT therefore makes no representations regarding the efficacy or predictive value of the WorkKeys Profile if used with any assessment other than the WorkKeys assessments.
8. refrain from providing SkillPro to any third party, from authorizing or knowingly allowing others to use SkillPro, and from training or allowing any third party or any Representatives (who is not a WorkKeys Profiler) to use SkillPro; provided, however, that others may be engaged to enter and edit text in SkillPro to support WorkKeys Profiling sessions under the Agency's supervision as defined in the WorkKeys Profiling training materials; and
9. accurately represent the nature of Agency's relationship to ACT.

**Termination**

This Agreement may be terminated without cause at any time by either party giving at least thirty (30) days written notice to the other party. ACT may also terminate this Agreement as further set forth in the **Default By Agency** paragraph of this Agreement, or upon written notice if the SkillPro License Agreement ultimately executed between the parties is terminated.

Upon the termination of this Agreement for any reason, Agency shall immediately discontinue all WorkKeys Profiling activities and the use of SkillPro and the ACT Materials including, but not limited to, holding WorkKeys Profiling sessions, preparing WorkKeys Content Validity reports, and holding out its Representatives as WorkKeys Profilers. Upon expiration or termination of this Agreement, the obligations set forth in the following provisions of this Agreement shall survive: Payment, Ownership of Materials, Confidentiality, Limitation on Damages and Warranty and Limitations. Agency shall pay ACT for services provided under this Agreement through the date of termination.

**Default by Agency**

Any of the following shall constitute a default of this Agreement by Agency. Upon such default, ACT may terminate this Agreement after giving written notice and ten (10) days to cure the default and ACT, in addition to its right to terminate, may seek any legal remedy which may also be available.

1. Agency's failure to pay the fees when invoiced in accordance with the terms of the invoice.
2. Agency becomes insolvent or involved in any bankruptcy proceedings.
3. Agency misrepresents facts or data to ACT.
4. Agency violates the ACT SkillPro License Agreement.
5. Agency breaches any other term or condition of this Agreement.
6. Agency no longer has at least one authorized WorkKeys Profiler, or person training to become a WorkKeys Profiler, as determined in ACT sole discretion.

Notwithstanding the above, ACT may terminate this Agreement immediately if it concludes in its sole discretion that its continued association with Agency is inconsistent with ACT’s values or could otherwise adversely affect its reputation.

**Nondelegation / Assignment of WorkKeys Profiling Services**

This Agreement may not be assigned by Agency without the express prior written consent of ACT. No permitted assignment shall relieve Agency of its obligations under this Agreement. Any assignment in violation of this paragraph shall be void. Subject to the above restrictions on assignment and transfer, this Agreement shall be binding upon the Agency’s permitted successors and assigns.

WorkKeys Profilers shall personally perform all WorkKeys Profiling services using SkillPro and the ACT Materials. Agency may engage other employees to perform incidental services to support the WorkKeys Profiling sessions, but WorkKeys Profiling must not be conducted by anyone other than a WorkKeys Profiler. Agency shall not attempt to directly or indirectly hire or employ any ACT employee to perform any WorkKeys Profiling services.

**Payment Terms**

Agency agrees to pay ACT the amounts set forth in the profiling training application for initial training and/or any subsequent training of Agency Representatives, according to ACT's applicable fee schedule in effect at the time of training. All amounts are due thirty (30) days from receipt of an invoice from ACT. Agency will pay a service fee of one percent (1%) per month or the maximum rate allowed by law, whichever is less, on any fees not paid when due under this Agreement. All invoices shall be sent to the Agency address identified in this Agreement. Agency shall be responsible for any sales, use, or other taxes due as a result of any fees paid to ACT under this Agreement, unless Agency is exempt from tax as evidenced by a valid tax exemption certificate provided to ACT. Agency shall promptly provide ACT with Agency required purchase order, as applicable, prior to the scheduled delivery of the services in this Agreement.

Agency acknowledges that fees paid to ACT under this Agreement are not applied to a SkillPro license.

**Agency Expenses**

All expenses incurred by Agency pertaining to this Agreement or to any WorkKeys Profiling services provided by Agency, shall be paid by Agency. ACT is not responsible for and will not reimburse Agency for any travel, per diem, business costs, or any other expenses which may be incurred by Agency.

**Ownership of Materials**

# Agency acknowledges that SkillPro and the ACT Materials supplied by ACT are owned and proprietary to ACT. ACT owns all intellectual property rights, including but not limited to copyrights, trademarks, and trade secrets, in such materials. Except as expressly granted in this Agreement, Agency does not acquire any right, title, or interest in or to SkillPro or the ACT Materials.

# Except as needed to conduct the WorkKeys Profiling activities and prepare and provide the WorkKeys Profile Report to the end-user client, Agency shall not (a) use SkillPro or the ACT Materials, (b) copy, modify, enhance, reverse engineer, decompile, disassemble, create derivatives, or make any addition to SkillPro or the ACT Materials; (c) assign, license, sell, loan, lease, or otherwise transfer SkillPro or the ACT Materials in whole or in part, (d) authorize or allow a third party to use SkillPro or the ACT Materials.

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SkillPro and the ACT Materials shall be and remain the property of ACT notwithstanding the subsequent termination of this Agreement. The ACT Materials shall, within ten (10) days of termination, be destroyed (including all copies), and access to SkillPro will be automatically terminated.

**Confidentiality**

Except as needed to conduct the WorkKeys Profiling activities and prepare and provide the WorkKeys Content Validity Report to the end-user client, Agency agrees that neither it nor its Representatives shall at any time, either directly or indirectly, publish, display or otherwise disclose to any person, organization, or entity in any manner whatsoever SkillPro or the ACT Materials. Agency shall protect the ACT Materials in accordance with ACT’s procedures. Agency shall also protect the proprietary and confidential information of any end-user client obtained during, after, and as the result of any WorkKeys Profile, including related material and reports.

If SkillPro or any of the ACT Materials may be subject to disclosure pursuant to a subpoena or other legal action, Agency will notify ACT prior to any such disclosure and shall not make any disclosure until ACT has had a reasonable opportunity to respond and take all necessary actions to protect its interests.

If Agency breaches the confidentiality requirements of this Agreement or any part of the SkillPro License Agreement executed between the parties, ACT may pursue any remedies available at law or in equity that it deems necessary to protect its interests. ACT shall be entitled to both a temporary and a permanent injunction to prevent Agency and/or its Representatives from committing or continuing any such breach of confidentiality, and may also seek monetary damages and any other relief provided for by law.

**Warranty and Limitations**

EXCEPT AS SET FORTH IN THIS SECTION AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE. ACT’S TOTAL LIABILITY TO AGENCY FOR ANY CLAIMS, LOSSES, COSTS, OR DAMAGES ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THIS AGREEMENT, SHALL NOT EXCEED THE AMOUNT AGENCY HAS PAID ACT DURING THE CURRENT TERM OF THIS AGREEMENT. IN NO EVENT SHALL ACT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, SPECULATIVE, INCIDENTAL, LOSS OF OPPORTUNITY (REGARDLESS OF WHETHER OR HOW THESE ARE CLASSIFIED AS DAMAGES), EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR ATTORNEYS’ FEES, EXPENSES, EXPERT WITNESS FEES, OR 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 AGENCY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**Force Majeure**

ACT shall not be liable to Agency for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control, including, without limitation, the actions of Agency, national emergencies, fire, flood, inclement weather, epidemics, or catastrophe, acts of God, governmental authorities, or parties not under the control of ACT, insurrection, war, riots, or failure of transportation, communication, or power supply. ACT shall exercise commercially reasonable efforts to mitigate the extent of the excusable delay or failure and its adverse consequences; provided, however, that should any such delay or failure continue for more than sixty (60) days, the Agreement may be terminated by either party upon notice to the other.

**Relationship of the Parties**

The parties to this Agreement are independent contractors. Neither party nor any of its employees or agents is, or will hold themselves out to be, an agent or employee of the other party. Neither party shall have the right or authority or shall hold itself out to have the right or authority to bind the other party, nor shall either party be responsible for he acts or omissions of the other.

**No Third Party Beneficiaries**

The parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of the parties based upon this Agreement. During the term of this Agreement, Agency may provide ACT WorkKeys profiling services for third party clients including any clients which may be referred to Agency by ACT. However, ACT makes no representations regarding the market for WorkKeys profiling services, nor does ACT guarantee to make any referrals to Agency.

**Indemnification**

To the extent permitted by law, ACT will indemnify, defend, and hold Agency harmless against any third-party claim of infringement related to SkillPro or the ACT Materials; provided that ACT must be given prompt, written notice of the claim and allowed, at its option, to control the defense and settlement of any such claim. ACT will not be responsible for any settlement it does not approve in writing. ACT’s obligations under this paragraph do not apply to any infringement to the extent such infringement is caused by the unauthorized use or modification of SkillPro or the ACT Materials or other breach of this Agreement or the SkillPro License Agreement by Agency or its employees or agents.

To the extent permitted by law, Agency agrees to indemnify and hold harmless ACT from any third party claims, actions, causes of action, demands, controversies, liabilities, losses, costs, attorneys’ fees or expenses relating to or arising out of any Agency use of the WorkKeys Profiling services, SkillPro, or the ACT Materials that is not in conformance with ACT’s policies, including the WorkKeys Profiling training.

**Severability; Headings; Governing Law**

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

**Entire Agreement**

This Agreement, including Attachment A, constitutes the entire Agreement between ACT and the Agency with respect to the services described herein and supersedes all other prior agreements and understandings, both written and oral. ACT expressly objects to and rejects any different or additional terms included in Agency’s request for proposal, quotation, purchase order, acknowledgement form, or other documents that purport to bind the parties. No waiver, consent, modification, or amendment to this Agreement shall be binding unless in writing and signed by both parties.

**Notices**

Notices under this Agreement shall be deemed to be adequate and sufficient notice if given in writing and delivered via (a) registered or certified mail, postage prepaid, in which case notice shall be deemed to have been received three business days following deposit to U.S. mail; or (b) a nationally recognized overnight air courier, next day delivery, prepaid, in which case such notice shall be deemed to have been received one business day following delivery to such nationally recognized overnight air courier. All notices shall be sent to ACT at the following address: ACT, Inc., 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243-0168, Attention: CFO, Fax 319-341-2760. All notices to Agency shall be sent to the address provided on the first page of this Agreement.

**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.

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| Agency      | ACT, Inc. |
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| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name:      | Name: Helen Palmer  |
| Title:      | Title: Director, Industrial/Organizational Psychology |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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 **WorkKeys Profiling Agreement**

 **Attachment A**

Names and job titles of Agency Representatives to be trained as WorkKeys Profilers: