**SKILLPRO® LICENSE AGREEMENT**

This SkillPro**®** License 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 having an address of       (“Licensee”).

ACT, Inc., in consideration of the terms and conditions of this Agreement including payment of a license fee, does hereby grant a limited license to Licensee for the SkillPro® software (“SkillPro”) and other materials related to SkillPro and WorkKeys Profiling (collectively, “ACT Materials”) furnished by ACT for use by Licensee and by the ACT-authorized WorkKeys Profilers identified in Attachment A, for the limited purpose of creating WorkKeys Profiles to be used in connection with ACT’s WorkKeys® Assessments and according to the terms of this Agreement, as set forth below.

 **TERMS AND CONDITIONS**

**Term of License**

This Agreement shall become effective on the date of the last signature to this Agreement and shall remain in effect for one (1) year. This Agreement shall automatically renew for succeeding terms of one (1) year each on the anniversary date (the "Anniversary Date") unless otherwise terminated as contemplated in this Agreement. For purposes of this Agreement, the Anniversary Date is \_\_\_\_\_\_\_\_ (month/day to be filled in by ACT).

**Responsibilities of the Parties**

ACT agrees to:

A. Provide Licensee with SkillPro and any ACT Materials ACT deems necessary, including any modifications of each as they may occur; and

B. Provide Licensee with technical support via telephone or electronic mail during normal ACT business hours, Monday through Friday, 8:30am – 5:00pm CST, excluding ACT holidays, for the initial installation of SkillPro and for any updates or modifications.

Licensee agrees to:

A. Pay the fees as specified herein when invoiced in accordance with the terms of the invoice.

B. Refrain from knowingly misrepresenting facts or data to ACT.

C. Adhere to the terms of the WorkKeys Profiling Agreement.

D. Maintain at least one authorized WorkKeys Profiler, or person training to become a WorkKeys Profiler, as determined in ACT’s sole discretion.

E. Ensure that SkillPro and any ACT Materials are used to conduct WorkKeys Profiling for the ACT WorkKeys Assessments and for that purpose only;

F. Ensure that SkillPro and any ACT Materials are used only by ACT‑authorized WorkKeys Profilers, though the profiler may engage others to assist in entering and editing text into the software;

G. Send WorkKeys Content Validity (Profiling) reports to ACT when requested in a timely manner via electronic data exchange and ensure that the reports meet ACT standards;

H. Submit WorkKeys Profiles to ACT via SkillPro upon completion of the profile.

I. Be responsible for supervision, management and control of the use of SkillPro and the ACT Materials including, but not limited to: (1) assuring proper machine configuration, program installation, audit controls, backup and operating methods, (2) implementing security and accuracy of input and output, as well as restart and recovery in the event of malfunctions, and (3) ensuring that WorkKeys Profilers are ACT-trained and ACT-authorized;

J. Conduct business in a highly professional and ethical manner, consistent with generally accepted standards for the performance of WorkKeys Profiling services; and

K. comply with all federal, state, and local laws.

**Annual License Fee**

The fee for the initial term of the license is $1,600.00 per profiler. ACT reserves the right to revise its price annually.

**Payments**

Licensee agrees to pay ACT the amounts set forth in this Agreement. The initial term license fee will be invoiced when the Agreement is accepted by ACT. License fees for annual renewal periods will be invoiced at the beginning of each annual renewal term. All amounts are due thirty (30) days from the date of invoice. Licensee 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 Licensee address identified in this Agreement. Licensee shall be responsible for any sales, use or other taxes due as a result of any fees paid to ACT under this Agreement, unless Licensee is exempt from tax as evidenced by a valid tax exemption certificate provided to ACT. Licensee shall promptly provide ACT with Licensee required purchase order, as applicable, prior to the scheduled delivery of the services in this Agreement.

Payment of the annual license fee will entitle Licensee to receive updates and modifications to SkillPro as may be issued by ACT, in its sole discretion, during the period covered by the fee. Licensee shall promptly install any update or modification issued by ACT.

**Computer Requirements**

Licensee acknowledges and agrees that the computer configuration requirements located at <http://www.act.org/workkeys/jptrain/> are required to properly access and use SkillPro and that ACT shall have no liability for matters relating to Licensee’s failure to comply with these computer requirements. ACT may revise these configuration requirements from time to time in its sole discretion.

All references to SkillPro in this Agreement are to the version(s) of the SkillPro software in machine readable format, including any updates and modifications made by ACT, to be used in conjunction with ACT’s WorkKeys Profiling system.

ACT disclaims and shall have no responsibility for (1) the operation of other products that may interfere with SkillPro, (2) technical difficulties that may arise due to the simultaneous operation of other software and SkillPro, (3) any loss of profile data that may occur during Licensee’s use of SkillPro, and (4) delays or other events beyond ACT’s reasonable control.

**Termination**

Either party may terminate this Agreement upon written notice to the other party if other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. This Agreement may be terminated without cause at any time by either party giving thirty (30) days written notice to the other. Upon termination of this Agreement, Licensee’s access to SkillPro will be automatically terminated, and Licensee must discontinue use of the ACT Materials and destroy all ACT Materials in its possession, including manuals and skill descriptions, within ten (10) days of termination. Licensee shall pay ACT for all services delivered through the date of termination. Upon the expiration or termination of this Agreement, the obligations set forth in the following provisions of the Agreement shall survive: Payments, Ownership of Materials, Confidentiality, Warranty and Limitations and Limitation on Damages.

In the event of a breach of the terms of this Agreement or the WorkKeys Profiling Agreement, ACT may, without further notice, terminate this Agreement and/or exercise any other right or remedy that it may have under law or in equity, and ACT shall have the right to recover from Licensee the reasonable expenses incurred in doing so, including attorney fees and court costs, to the extent permitted under Iowa law.

**Ownership of Materials**

Licensee acknowledges that SkillPro and the ACT Materials are owned by 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, Licensee does not acquire any right, title or interest in or to SkillPro or the ACT Materials.

Except as needed to complete the WorkKeys Profile for the end-user client, Licensee 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, or (d) authorize or allow a third party to use SkillPro or the ACT Materials.

ACT, in addition to other rights and remedies for breach of this Agreement or the WorkKeys Profiling Agreement, shall have the right to recover from Licensee, at a minimum, an amount equal to the greater of (1) the sum that ACT would have charged the persons making unauthorized use, or (2) any amount received by Licensee for the unauthorized use.

**Confidentiality**

Except as needed to conduct the WorkKeys Profiling activities and prepare and provide the WorkKeys Content Validity Report to the end-user client, Licensee agrees that neither it nor its agents or employees shall at any time, either directly or indirectly, publish, display or otherwise disclose to any person, organization or entity in any manner whatsoever, SkillPro and any ACT Materials.

Licensee shall protect SkillPro and the ACT Materials as directed by ACT. Licensee 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 any of the ACT Materials may be subject to disclosure pursuant to a subpoena or other legal action, Licensee 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 Licensee breaches the confidentiality requirements of this Agreement or any part of the WorkKeys Profiling 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 Licensee and/or its employees from committing or continuing any such breach of confidentiality, and may also seek monetary damages and any other relief provided for by law.

**License Modifications**

Licensee may elect to increase the number of WorkKeys Profilers. The terms of this Agreement apply to any and all additional WorkKeys Profilers who may be added. The fees for SkillPro licenses for additional WorkKeys Profilers shall be the fees in effect at the time the Profiler is added. Fees for mid‑term additions shall be prorated to the Agreement renewal date.

**Warranty and Limitations**

EXCEPT AS OTHERWISE REPRESENTED IN THIS AGREEMENT, SKILLPRO IS PROVIDED AS IS. ACT EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY INDIRECT OR IMPLIED WARRANTIES REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GUARANTEED UPTIME, OR WARRANTIES ARISING BY STATUE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE.

customer shall have the sole responsibility for assuring that its use of SKILLPRO complies with federal, state and local laws and regulations and all labor, employee, or other contracts or practices to which it is a party. ACT’S TOTAL LIABILITY TO LICENSEE 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 LICENSEE HAS PAID ACT DURING THE CURRENT TERM OF THIS AGREEMENT. IN NO EVENT SHALL ACT BE LIABLE FOR ANY LOST DATA OR 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 LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**Representations**

ACT represents that it has the authority to grant the rights herein and that use of SkillPro and the ACT Materials in accordance with this Agreement will not violate any patent, copyright, trade secret, or other proprietary right of any other party.

**Force Majeure**

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

**Assignment**

This Agreement may not be assigned by Licensee without the express prior written consent of ACT. No permitted assignment shall relieve Licensee of its obligations under the Agreement.

**Relationship of the Parties**

The parties to this Agreement are independent contractors. Neither party shall have the right or authority or shall hold itself out to have the right or authority to bind the other party, nor shall either party be responsible for the acts or omissions of the other.

**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.

**Indemnification**

To the extent permitted by law, ACT will indemnify, defend, and hold Licensee 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 WorkKeys Profiling Agreement by Licensee or its employees or agents.

To the extent permitted by law, Licensee 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 Licensee 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 the parties 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 Licensee’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 Licensee shall be sent to the address provided on the first page of this Agreement.

**Authorization**

# Licensee acknowledges having read the Terms and Conditions and Attachments, understands them fully, and agrees to be bound by them. Each party represents and warrants (a) it has the requisite authority to enter into this Agreement and (b) the individual(s) signing this Agreement on behalf of such party is(are) authorized to do so.

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| ACT, Inc. | Licensee Name: |       |
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| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  (Authorized Signature) |
| Name: Helen Palmer  | Name:  |       |
|  |  (Type or print name of person authorized to sign) |
| Title: Director, Research Administration | Title: |       |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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# SkillPro® License Agreement

 **Attachment A**

Names and job titles of Licensee WorkKeys Profilers: