ACT, Inc. Contract

This \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Contract is dated August 5, 2015, between the Iowa College Student Aid Commission (“Iowa College Aid”), a department of the State of Iowa created by chapter \_\_\_ of the Iowa Code, and ACT, Inc., \_\_\_\_\_\_\_\_\_. The parties agree as follows.

1. **Purpose.** The parties are entering into this contract for ACT, Inc. to provide the ACT Engage assessment to 1,200 students in the GEAR UP Iowa cohort. The students are participating in a non-cognitive curriculum pilot program in select GEAR UP Iowa school districts.
2. **Scope of services.**

Contractor will perform the following services:

|  |  |  |
| --- | --- | --- |
| School Year 2015-2016 | | |
| August 2015 | Meta-district setup fee & demo sites for school personnel administering Engage | Offered at no cost to Iowa College Aid |
| September 1, 2015-April 30, 2016 | 1,200 ACT Engage assessments for 8th grade students | 1,200 x $6.25 per test= $7,500 |

1. **Compensation.**
   1. **Compensation.** Iowa College Aid will pay ACT, Inc. for work it performs under this contract in the amount and in manner described in Exhibit A, Description of Project and Compensation.
   2. **Withholding payments.** Despite anything to the contrary in this contract, Iowa College Aid may withhold any payment to ACT, Inc. if ACT, Inc. fails to comply with this contract, including any problems identified during Iowa College Aid’s monitoring of ACT, Inc.’s performance.
   3. **Payment is no waiver.** By making any payments under this contract, Iowa College Aid does not waive its ability to challenge any payment for failing to comply with this contract later.
2. **Control of staff.**
   1. All staff provided by ACT, Inc. under this contract will be under ACT, Inc.’s direct control and supervision.
   2. ACT, Inc. is solely responsible for selecting, hiring, disciplining, firing, and compensating its staff. If Iowa College Aid believes that any of ACT, Inc.’s staff fails to perform duties in a manner that is consistent with this contract, Iowa College Aid will notify ACT, Inc. ACT, Inc. will then investigate and, if appropriate, discipline, or reassign the staff. Iowa College Aid lacks any authority to discipline or reassign ACT, Inc.’s staff, except that Iowa College Aid has the authority to demand that a particular staff member not be assigned to provide services under this contract.
   3. **Insurance, benefits, and compensation.** ACT, Inc. must provide for and pay all employment costs of its staff including, but not limited to, workers’ compensation, unemployment insurance, health insurance, and other benefits and compensation, and must make and remit all payroll withholdings with respect to the staff, all as required by law. Iowa College Aid will have no liability whatsoever for any of those employment costs. ACT, Inc. must provide Iowa College Aid with evidence of the payment of compliance with this paragraph when requested by Iowa College Aid.
   4. **Independent contractor.** ACT, Inc. is an independent contractor. Iowa College Aid will not provide ACT, Inc. with any office space, support staff, equipment, or tools. ACT, Inc. and its staff are ineligible for any State of Iowa employee benefits, including but not limited to, retirement benefits, insurance coverage, and the like. ACT, Inc. and its staff are not employees of the State of Iowa or Iowa College Aid for federal or state tax purposes. Iowa College Aid will not withhold taxes on behalf of ACT, Inc., unless required to do so by law. ACT, Inc. is solely responsible for payment of all taxes in connection with any income earned from performing this contract.
3. **Term.**
   1. **Initial term.** The initial term of this contract is from August 10, 2015, through April 30, 2016, unless the contract is terminated earlier in accordance with this contract.

* 1. **Renewal terms.** Iowa College Aid may renew this contract for

1. **Termination.**
   1. **Immediate termination by Iowa College Aid.** Iowa College Aid may immediately terminate this contract when one or more of the following events occurs:
      1. ACT, Inc. fails to comply with any provision of this contract that provides for immediate termination; or
      2. Iowa College Aid determines that ACT, Inc. made a statement, representation, warranty, or certification that is materially false, deceptive, incorrect, or incomplete.
   2. **Termination on notice by Iowa College Aid.** Following 30 days’ written notice, Iowa College Aid may terminate this contract in whole or in part for convenience without the payment of any penalty or incurring any further obligation to ACT, Inc. Following termination upon notice, Iowa College Aid will pay ACT, Inc., upon submission of invoices and proper proof of claim, for services provided under this contract up to and including the date of termination.
   3. **Termination for cause by Iowa College Aid.** Iowa College Aid may declare ACT, Inc. to be in default of its obligations under this contract when any of the following events occurs:
      1. ACT, Inc. fails to observe and perform any covenant, condition or obligation created by the contract;
      2. ACT, Inc. fails to make substantial and timely progress toward performance of the contract;
      3. ACT, Inc.’s work product and services fail to conform with the requirements of this contract; or
      4. ACT, Inc.’s work product or services infringe on any patent, trademark, copyright, trade dress, or any other intellectual property right.
   4. **Notice of default.** If there is a default event that ACT, Inc. can cure, Iowa College Aid must provide written notice to ACT, Inc. requesting that the breach or noncompliance be immediately remedied. If the breach or noncompliance continues 10 days beyond the date of the written notice, Iowa College Aid may:
      1. immediately terminate the contract without additional written notice; or
      2. enforce the terms and conditions of the contract and seek any legal or equitable remedies.

In either event, Iowa College Aid may seek damages due to the breach or failure to comply with the terms of the contract.

* 1. **Termination by Iowa College Aid due to lack of funds or change in law.** Despite anything in this contract to the contrary, and subject to the limitations, conditions, and procedures set forth below, Iowa College Aid may terminate this contract without penalty by giving 60 days’ written notice to ACT, Inc. if any of the following occurs:
     1. the legislature or governor fails to appropriate funds sufficient to allow Iowa College Aid to operate as required and to fulfill its obligations under this contract;
     2. if funds are de-appropriated or not allocated;
     3. if the federal government reduces or eliminates any federal grant that funds all or a portion of the services provided under this contract;
     4. if Iowa College Aid’s authorization to operate is withdrawn or there a material alteration in the programs administered by Iowa College Aid;
     5. if Iowa College Aid’s duties are substantially modified.
  2. **ACT, Inc.’s remedies if Iowa College Aid terminates the contract due to lack of funds or change in law.** If Iowa College Aid terminates this contract due to lack of funds or change in law as provided above, ACT, Inc.’s exclusive, sole, and complete remedy is the payment for services completed prior to and including the date of termination.
  3. **ACT, Inc.’s duties on termination.** When ACT, Inc. receives Iowa College Aid’s notice of termination for any reason allowed under this contract, ACT, Inc. must:
     1. cease all work under this contract except any work that Iowa College Aid directs ACT, Inc. to perform;
     2. comply with Iowa College Aid’s instructions for the timely transfer of any active files and related work product; and
     3. cooperate in good faith with Iowa College Aid during the transition period between the notification of termination and the substitution of any replacement contractor.
  4. **Set off.** Should Iowa College Aid obtain a money judgment against ACT, Inc. because of a default under this contract, ACT, Inc. consents to such judgment being set off from moneys owed ACT, Inc. by the State of Iowa or any other agency of the State of Iowa under any other contract.

1. **Indemnification.**
   1. **ACT, Inc.’s indemnification of Iowa College Aid.** ACT, Inc. must indemnify the State of Iowa and Iowa College Aid from any and all liabilities, damages, settlements, judgments, costs and expenses, related to or arising from:
      1. ACT, Inc.’s negligent acts or omissions;
      2. ACT, Inc.’s performance or attempted performance of this contract;
      3. ACT, Inc.’s failure to comply with all local, state and federal laws and regulations; or
      4. ACT, Inc.’s failure to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by ACT, Inc. to conduct business in the State of Iowa.
   2. **Survives termination.** All indemnification obligations imposed by this paragraph survive the termination of this contract.
2. **Insurance.**
   1. **ACT, Inc.’s insurance requirements.** ACT, Inc. must maintain in effect, with insurance companies of recognized responsibility, at its expense, insurance covering its work of the type and in amounts required by this contract. ACT, Inc.’s insurance must, among other things, insure against any loss or damage resulting from ACT, Inc.’s performance of this contract. These insurance policies must remain in full force and effect for the entire life of this contract and must not be canceled except after 30 days’ written notice to Iowa College Aid.
   2. **Amount of insurance required.** Unless otherwise requested by Iowa College Aid, ACT, Inc. must, at its sole cost, cause to be issued and maintained during the entire term of this contract not less than the insurance coverages identified below. Each insurance policy must name the State of Iowa and Iowa College Aid as additional insureds or loss payees, as applicable:

| TYPE OF INSURANCE | LIMIT | AMOUNT |
| --- | --- | --- |
| General Liability (including contractual liability) written on an occurrence basis | Combined Single Limit  Umbrella coverage | $1Million  $1 Million |
| Automobile Liability (including any auto, hired autos, and non-owned autos) | Combined Single Limit  Umbrella | $1 Million  $1 Million |
| Workers Compensation and Employer Liability | As required by Iowa law | As required by Iowa law |
| Professional Liability Insurance | Aggregate  Per Claim | $ 2 Million  $ 1 Million |

* 1. **Claims provisions.** All insurance policies required by this contract must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.
  2. **Certificates of coverage.** ACT, Inc. must submit the certificates of insurance described above to Iowa College Aid within 30 days after the contract’s effective date. The certificates must state that the insurer cannot cancel the insurance without giving Iowa College Aid at least 30 days prior written notice.
  3. **No limitation of liability.** Iowa College Aid’s acceptance of the insurance certificates does not relieve ACT, Inc. of any obligation imposed by this contract. Only companies authorized to transact business in the State of Iowa may issue the insurance policies and certificates required by this contract. ACT, Inc. is responsible to maintain the required insurance policies current and without lapse in coverage during the term of this contract.

1. **Confidential information.**
   1. **Access to confidential information.** When performing its responsibilities under this contract, ACT, Inc. and its employees, agents, and subcontractors may have access to confidential information. ACT, Inc. must designate one individual who will be responsible for all confidential information collected, used, or disseminated by Contractor when performing this contract. ACT, Inc. must also supervise and train its employees, agents, and subcontractors to ensure compliance with confidentiality requirements.
   2. **No dissemination of confidential information.** ACT, Inc. must not disseminate any confidential information collected, maintained, or used when performing its obligations under this contract except as authorized by law, this contract, or Iowa College Aid, either during the term of this contract or thereafter. ACT, Inc. must promptly return to Iowa College Aid any data collected, maintained, created, provided, or used in the course of the performance of the contract, in whatever form it is maintained, at Iowa College Aid’s request.
   3. **Subpoena.** If a subpoena or other legal process is served upon ACT, Inc. for records containing confidential information, ACT, Inc. must promptly notify Iowa College Aid and cooperate with Iowa College Aid in any lawful effort to protect the confidential information.
   4. **Reporting of unauthorized disclosure.** ACT, Inc. must immediately report to Iowa College Aid any unauthorized disclosure of confidential information.
   5. **Survives termination.** ACT, Inc.’s obligation to maintain the confidentiality of confidential information survives termination of this contract.

1. **Project management and reporting.**
   1. **Project managers.** When this contract is executed, each party must designate, in writing, a project manager to serve until the expiration of this contract or the designation of a substitute project manager. During the term of this contract, each project manager will be available to meet, as otherwise mutually agreed, as required to plan the services being provided under this contract.
   2. **Review meetings.** The project managers will meet regularly to discuss ACT, Inc.’s performance. Each party will provide a status report, as desired by a project manager, listing any problems or concerns encountered since the last meeting. Each party will maintain records of such reports and other communications issued in writing during the course of this contract.
   3. **Reports.** At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem must provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains outstanding, written reports must identify:
      1. Any event not within the control of ACT, Inc. or Iowa College Aid that accounts for the problem;
      2. Any damages incurred as a result of any party's failure to perform its obligations under this contract; and
      3. Any request or demand for services by one party that another party believes is not included within the terms of this contract.
   4. **Project problem reporting requirements.** A party’s acceptance of a problem report does not relieve any party of any obligation imposed by this contract. A party’s failure to identify a problem does not waive performance of any obligation imposed under this contract. Where other provisions of this contract require notification of an event in writing, the written report constitutes valid notice.
2. **Fiscal procedures.**
   1. **ACT, Inc.’s accounting system.** ACT, Inc. represents that its accounting system is adequate to comply with this contract.
   2. **Audit exceptions.** If an authorized federal or state audit takes exception to the services provided under this contract for which federal or state reimbursement has been paid, ACT, Inc. must refund the reimbursement if the audit exception is due to the ACT, Inc.’s error. If the audit exception is due solely to the Iowa College Aid’s error, the Iowa College Aid is responsible for the reimbursement. If the audit exception is a joint responsibility, the parties will work together to achieve an equitable resolution.
3. **Contract administration.**
   1. **Compliance with laws.** ACT, Inc. must comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing services under this contract. ACT, Inc. represents that it has complied with all federal, state, and local laws regarding any business permits and licenses that may be required to carry out the work to be performed under this contract.
   2. **Amendments.** No supplement, modification, or amendment of this contract will be binding unless it is in writing and signed by both parties.
   3. **Third parties.** This contract has no third-party beneficiaries; it benefits only Iowa College Aid and ACT, Inc.
   4. **Assignment and delegation.** No party may assign, transfer, or convey in whole or in part this contract without the prior written consent of the other party. For purposes of this clause, a transfer of a controlling interest in ACT, Inc. constitutes an assignment.
   5. **Choice of law and forum.** Iowa law governs this contract without regard to its choice-of-law provisions. Any litigation arising out of or related to this contract must be brought in Polk County District Court, Des Moines, Iowa.
   6. **Representations.** Each party represents to the other that:
      1. It has the right, power, and authority to enter into and perform its obligations under this contract.
      2. It has taken all requisite action (corporate, statutory, or otherwise) to approve the execution, delivery, and performance of this contract.

* + 1. This contract constitutes a legal, valid, and binding obligation on itself in accordance with its terms.
  1. **Integration.** This contract constitutes the entire agreement between the parties and none of the parties are relying on any representations that may have been made that are not included in this contract.

* 1. **Not a joint venture.** Nothing in this contract creates the relationship of a partnership, joint venture, or other association of any kind, or agent and principal relationship between the parties. Each party is an independent contractor to the other contracting for services and acting toward the mutual benefits derived from this contract. No party, unless otherwise specifically authorized in this contract, has the authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or be binding on another party to this contract.
  2. **Obligations beyond the term of this contract.** This contract will remain in full force and effect to the end of the specified term or until terminated or canceled under this contract. All obligations of the parties incurred or existing under this contract as of the expiration, termination, or cancellation will survive the termination or cancellation of this contract.
  3. **Supersedes former agreements.** This contract supersedes all prior contracts between Iowa College Aid and ACT, Inc. for the services provided under this contract.
  4. **Waiver.** No waiver of any term of this contract constitutes a waiver of any other provision, whether similar or dissimilar. No waiver of any term constitutes a continuing waiver of that term. No waiver is binding unless it signed in writing by the waiving party.
  5. **Notices.** Whenever this contract requires a party to send notice or other communication to the other party, the notice must be in writing and must be delivered personally or sent by certified or registered mail, or by overnight courier, postage prepaid, or by e-mail message to the following ad dresses:

|  |  |
| --- | --- |
| If to Iowa College Aid:  430 East Grand Avenue,  Floor 3  Des Moines, IA 50309 |  |
|  |  |
| If to Contractor: |  |

500 ACT Drive

P.O. Box 168

Iowa City, IA 52243

A notice is effective either (1) on the day of personal delivery, or (2) two days after the date of mailing, whichever is earlier.

* 1. **Severability.** If any term of this contract is for any reason invalid or unenforceable, the rest of the contract remains fully valid and enforceable.
  2. **Cumulative rights.** The various rights, powers, options, elections, and remedies of any party in this contract are cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies, or priorities allowed either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains unremedied, unsatisfied, or undischarged.
  3. **Time is of the essence.** Time is of the essence with respect to the performance of the terms of this contract.
  4. **Successors in interest.** This contract binds and inures to the benefit of all parties and their successors, assigns, and legal representatives.
  5. **Record retention and access.** ACT, Inc. must maintain books, records, and documents that sufficiently and properly document and calculate all charges billed to Iowa College Aid throughout the term of this contract for a period of at least 5 years following the date of final payment or completion of any required audit, whichever is later. ACT, Inc. must permit the Auditor of the State of Iowa or any authorized representative of the State of Iowa and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of ACT, Inc. relating to orders, invoices, or payments or any other documentation or materials pertaining to this contract. ACT, Inc. must not impose a charge for audit or examination of ACT, Inc.’s books and records.

The parties are signing this contract on the date stated in the introductory paragraph.

IOWA COLLEGE STUDENT AID COMMISSION

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director

ACT, Inc.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_