

■ PRODUCT: ACT ONLINE PREP ■ PROGRAMS: NATIONAL, STATE, AND DISTRICT ■ PLATFORM: ONLINE ■ AUDIENCE: EDUCATORS AND TEST COORDINATORS ■ EFFECTIVE SEPTEMBER 1, 2022

ACT Online Prep (AOP) This course provides tools, analytics, and real-time data for monitoring student success in ACT-aligned instruction in core courses—English, math, reading, and science—and test prep for the ACT[®] test. See act.org/onlineprep.

Note: Students must activate their account within one year of the date this form is signed. Access, regardless of activation, ends one year from that date.

I. Pricing and Payment

- Select a license type. No minimum purchase is required. Prices are per student; one license per student.
 - Standard Bulk = \$32.95** per license*
 - Standard Bulk – FRLP[†] = \$16.48** per license*
 - Contract = \$25.95** per license.* Applicable to schools or districts purchasing AOP where a contract is in place for the ACT test.
 - Contract – FRLP[†] = \$12.98** per license*
- * Tax is charged where required. Tax information, including documentation required for tax exempt status, is available at <http://www.act.org/content/act/en/order-information.html>.
- † Free and Reduced Lunch Program (FRLP): More than 50% of students in the school qualify for the federal FRLP.
- Purchase order (PO) number, if known: _____

II. Purchasing Information

Customer ID (office use only) _____

Organization ("Customer") _____

Street Address (no PO Boxes) _____

Street Address Line 2 _____

City _____

State _____ ZIP _____

Contact Person _____

Phone _____ Fax _____

Email _____

III. Billing Information

Same as Purchasing Information

Customer ID (office use only) _____

District Name ("Customer") _____

Street Address (no PO Boxes) _____

Street Address Line 2 _____

City _____

State _____ ZIP _____

Contact Person _____

Phone _____ Fax _____

Email _____

IV. Site, Administrator, and Seat Quantity

Complete the table below for each site. When the order is processed, the site administrator will receive an email with instructions to access the program. Copy this form to include more high schools (HS) if needed.

HS Code (6 digits)	
School/Site Name	
Site Administrator	
Phone	
Email	
License Quantity	
HS Code (6 digits)	
School/Site Name	
Site Administrator	
Phone	
Email	
License Quantity	
HS Code (6 digits)	
School/Site Name	
Site Administrator	
Phone	
Email	
License Quantity	

- I am a multiple-school site administrator and want to manage my schools. Please set me up with a District Test Coordinator account.

Name _____

Phone _____ Email _____

V. Signing and Submitting the Form

Sign below, indicating you acknowledge and accept the attached *Terms and Conditions*.

Printed Name _____

Signature _____

Date _____

Email all pages of this completed order form (including *Terms and Conditions*) to customerservice@onlineprep.act.org.

If you have questions about using this form, please contact ACT Customer Support at 319.337.1429.

Terms and Conditions

Customer (identified on the Order Form to which these Terms and Conditions are attached) desires to purchase and ACT, Inc. ("ACT") desires to provide, a license to the ACT Online Prep™ subscription service. In consideration of the foregoing, ACT and the Customer, intending to be legally bound, agree that the Agreement, defined below, governs ACT's license and delivery of Licensed Products:

- Definitions.** The following terms used herein have the meanings set forth on the ACT Online Prep Order Form and in these Terms and Conditions.

"Agreement" means these Terms and Conditions and the ACT Online Prep Order Form (the "Order Form") to which these Terms and Conditions are attached and expressly excludes any contrary terms, conditions or provisions reflected in any Customer purchase order or similar document. As and to the extent set forth in Paragraph 21 of these Terms and Conditions, this Agreement supersedes any prior agreement, oral or written, between the parties with respect to the Licensed Products.

"Licensed Product(s)" means seat licenses for ACT Online Prep use by Authorized Users, and any related manuals and materials.

"Authorized Users" means Customer-authorized students, teachers, administrators and agents.
- Term.** This Agreement shall become effective on the date the Customer signs the Agreement as presented (if Customer requires modifications to these terms and conditions, any such agreement must be set forth in writing, signed by ACT and Customer). All seat licenses for the Licensed Products must be assigned and activated by the assigned student within one year of the start of the Term. To the extent Customer fails to assign any of the purchased seat licenses within one year, or the student fails to activate their license, such unassigned and inactivated seat licenses shall be null and void, and Customer shall not be entitled to any refund. Subject to earlier termination as permitted in this Agreement or this Agreement being supplanted by a future agreement as is contemplated in Paragraph 21, this Agreement will continue in effect for so long as Authorized Users access or may access the Licensed Products made available under this Agreement.
- Fees.** Customer shall pay to ACT the fees as indicated on the Order Form or if not so indicated then in advance and as ACT may reasonably require. All references in this Agreement to monetary amounts and payments are in United States Dollars. Customer shall be responsible for any tax liability imposed on it by any United States or foreign national, federal, state, provincial, municipal, or local government authority. ACT will withhold any amounts required by applicable laws and regulations. All sums payable to ACT under this Agreement shall be paid without any deduction, withholding, counter-claim or set off. If Customer is compelled by law to make any deduction or withholding from any such sums or if any payment hereunder shall be or become subject to any tax, duty, levy or impost of any nature (whether before or after the same has been paid to ACT), Customer will immediately pay to ACT such additional amount or amounts as will result in payment to and retention by ACT of the full amount which would have been received and retained but for such deduction or withholding or the imposition of such tax, duty, levy or impost. ACT reserves the right to discontinue delivery of the Licensed Product if payments are delinquent. Any amount owing from Customer to ACT pursuant to the terms of this Agreement and not paid when due shall accrue interest, commencing on the due date until paid in full at the lesser of 18% per year or the highest amount permitted by law. All costs associated with collecting amounts due to ACT under this Agreement, including attorney fees, shall be paid by Customer.
- Grant and Scope of License.** Subject to the terms and conditions of this Agreement, ACT hereby grants to the Customer a limited, non-exclusive, non-transferable, and non- sublicenseable right during the term of this Agreement to use the Licensed Products for preparatory purposes only, including the purpose of preparing the Customer's Authorized Users for the ACT® test. The Licensed Products, including any embedded quizzes, tests and reports are in no way intended as a high- stakes assessment or as a replacement for assessments such as the ACT test, or Customer's own means of evaluating and assessing Authorized Users. The Licensed Product made available under this Agreement is licensed, not sold. Subject to the terms and conditions of this Agreement, including, without limitation, rights of termination under Paragraph 17 of these Terms and Conditions, each Authorized User of Licensed Product shall have access to the Licensed Product for one (1) year from the date of the date the Order Form was signed by Customer.

The license granted hereunder may, in ACT's sole discretion, allow and provide for scoring of one or more Authorized User responses to sample writing prompts. If that functionality is made available by ACT, each Authorized User would receive at least one writing "unit" enabling the scoring of one writing response. In its sole discretion, ACT may provide for and allow the purchase of additional writing units from ACT on terms, including, without limitation, fees and whether such purchase can be made by Customer or directly by Authorized Users, as are required by ACT.
- Restrictions.** Except as expressly permitted in this Agreement, Customer may not (a) use the Licensed Product for any purpose inconsistent with Paragraph 4 of these Terms, (b) assign, license, sell, resell, distribute, loan, lease, or otherwise transfer any Licensed Product or any related materials in whole or in part, (c) authorize or allow a party other than Authorized Users to use any Licensed Product, (d) copy, or allow anyone else to copy, in whole or in part, any Licensed Product, or (e) modify, reverse engineer, decompile, or disassemble any Licensed Product.
- Customer's Responsibilities.** Customer shall (a) appoint an administrator who will have authority to distribute access information, and to set up user accounts up to the number of seat licenses purchased, (b) assure proper machine configuration, a compatible Internet browser, and Internet access, in each case, as applicable, (c) ensure that only Authorized Users are given access information to access the Licensed Product; (d) ensure that access to the Licensed Product is terminated when Authorized Users cease to be affiliated with the Customer; (e) use the Licensed Product in conformance with any related manuals and materials as published and updated by ACT from time to time, (f) control the use of the Licensed Products, and assure that only Authorized Users are provided access, (g) comply with all other terms and conditions of this Agreement, including, but not limited to, paying, when due, all fees owed ACT, and (h) assume full responsibility for the selection of the Licensed Products to achieve any Customer purpose.
- ACT Responsibilities.** ACT will provide Customer with instructions and provide access information for Customer to distribute to Authorized Users. ACT will provide Customer- designated administrators with telephone and email technical support. Such support will not include assistance with configuring computer hardware, installing or operating computer operating systems, Internet browsers or any software application acquired from any third party.
- Data.** The parties acknowledge and agree that ACT may use and disclose the data collected from the use of the Licensed Products as set forth in ACT's Privacy Policy, as amended from time to time.
- Limitation on Damages.** ACT's liability for damages arising out of or in connection with this Agreement shall not exceed the amount Customer has paid ACT under this Agreement. In no event shall ACT be liable to Customer for special, indirect, incidental, punitive, exemplary, or consequential damages.
- Warranty and Limitations.** ACT WARRANTS THAT THE LICENSED PRODUCTS HAVE BEEN DEVELOPED IN ACCORDANCE WITH INDUSTRY STANDARDS. EXCEPT AS SET FORTH IN THIS

PARAGRAPH 10, 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, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Use After Termination. Upon termination of this Agreement for any reason, Customer will immediately discontinue use of the Licensed Products and shall immediately destroy any physical materials comprising Licensed Products then in its possession. Customer will certify in writing its compliance with these requirements.
12. Maintenance. The Licensed Products are subject to recurring maintenance windows, and occasionally unscheduled maintenance, during which servers may be taken offline. ACT shall not be responsible for any damages or costs incurred by Customer, if any, for such down time.
13. Updates and Modifications. The Licensed Products may be modified or updated from time to time at ACT's sole discretion. ACT may make such modifications and updates available to Customer as they are developed; provided however, that: (a) ACT reserves the right to charge a fee for any new functionalities available through the revised Licensed Products; and (b) Customer acknowledges that modifications or updates may require revised computer, device, application, and/or Internet browser configurations and ACT will have no liability to Customer or Authorized Users as a result of such necessary configuration changes.
14. Ownership. ACT and its vendors own all right, title, and interest in the ACT Online Prep materials and service offering comprising the Licensed Product(s) and offering made in this Agreement. ACT also owns the trademark ACT® Online Prep™. Through the use of the Licensed Product(s) or otherwise, except for the limited license rights set forth in this Agreement, Customer does not and will not acquire any right, title, or interest in the Licensed Product(s) or ACT's trademarks. THE CONTENTS OF THE LICENSED PRODUCT(S), INCLUDING ITS AND THEIR "LOOK AND FEEL" (E.G., TEXT, GRAPHICS, IMAGES, LOGOS, AND BUTTON ICONS), EDITORIAL CONTENT, NOTICES, SOFTWARE ELEMENTS (INCLUDING HTML-BASED COMPUTER PROGRAMS, MOBILE APPLICATIONS, OR OTHERWISE), AND OTHER MATERIALS ARE PROTECTED UNDER BOTH UNITED STATES AND FOREIGN COPYRIGHT, PATENT, TRADEMARK, AND OTHER LAWS.

Customer acknowledges ACT's title to ACT's intellectual property and the goodwill relating to such intellectual property including without limitation the Licensed Product, and the goodwill relating to such intellectual property, and agrees that ownership remains vested in ACT both during the term of this Agreement and thereafter. Customer will not, directly or indirectly, make or authorize any application to register ACT's trademarks or any trademark that is substantially identical to, deceptively similar to or otherwise incorporates ACT's trademarks, in connection with any goods or services in any jurisdiction. Customer will not do anything that would or might invalidate or put in dispute ACT's title to its intellectual property, oppose any application for registration of ACT's intellectual property, or support any application to limit, remove, cancel or expunge ACT's intellectual property.
15. U.S. Government Licenses. Each Licensed Product is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire only those limited rights in and to the Licensed Products as are set forth in this Agreement.
16. Computer, Device, and Browser Requirements. Customer acknowledges and agrees that ACT may establish computer, device, and Internet browser configuration requirements necessary to properly access and use the Licensed Products and that ACT shall

have no liability for matters relating to the failure to comply with these configuration requirements. ACT may revise these configuration requirements from time to time in its sole discretion.

17. Termination. Either ACT or Customer may terminate this Agreement upon written notice to the other party in the event that the other party breaches its obligations under this Agreement and fails to cure such breach within ten (10) days after receiving written notice of such breach. This Agreement may also be terminated without cause at any time by either party giving thirty (30) days written notice to the other. Notwithstanding anything in this Agreement, at law, or in equity to the contrary, other than pursuant to Customer's claim for actual damages caused by ACT's breach of this Agreement, ACT will be entitled to retain all amounts paid hereunder and will have no obligation to refund or return to Customer any prorated portion of compensation paid hereunder regardless of any early termination and any reason therefore. Upon the expiration or termination of this Agreement, the obligations set forth in Paragraphs 3, 5, 6, 8, 9, 11, 14, and 18 - 21 of these Terms and Conditions shall survive.
18. Governing Law. This Agreement shall be governed by the laws of the State of Iowa, U.S.A. (without giving effect to conflict of interest principles and excluding the United Nations Convention on Contracts for the International Sale of Goods). The parties hereby consent to jurisdiction in the State of Iowa, U.S.A. and agree that, except as set forth in Paragraph 20 below, the courts within Iowa shall have exclusive jurisdiction over any issues regarding the interpretation or enforcement of this Agreement. This Agreement is expressly made subject to any United States government laws, regulations, orders or other restrictions regarding export from the United States of computer hardware, software, technical data or derivatives of such hardware, software or technical data.
19. Customer Representations. Customer will not take any action that would violate, or cause ACT to violate, any applicable laws or regulations of the United States or other applicable jurisdictions, as well as any licenses, authorizations, orders, or any other official government action taken pursuant to any such laws or regulations, including but not limited to the following: (i) any activity prohibited by the U.S. Foreign Corrupt Practices Act ("FCPA"); (ii) any activity prohibited by any U.S. sanctions and embargoes program including those codified in 31 C.F.R. Chapter V and executive orders administered by the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC"); (iii) any activity prohibited by the U.S. Export Administration Regulations (15 C.F.R. § 730 et seq.); or (iv) any activity prohibited by the U.S. International Traffic in Arms Regulations (22 C.F.R. § 120 et seq.) or (v) any activity prohibited or penalized by U.S. antiboycott laws as administered by the U.S. Department of Commerce under the U.S. Export Administration Regulations and the U.S. Department of the Treasury under the Internal Revenue Code. Customer shall indemnify and hold ACT harmless from and against any and all claims, losses, damages, liabilities, expenses, including attorney's fees and expenses, arising out of Customer's, including its owners, officers, employees, agents, and subcontractors, non-compliance with the provision of this Paragraph 19.

Neither Customer nor its owners, officers, employees, agents, or subcontractors (if permitted by ACT) are designated on, owned or controlled by, or otherwise associated with any party designated on any of the U.S. government prohibited party lists, including, without limitation: (i) the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List, Entity List, or Unverified List; (ii) the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or (iii) the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List, and is not otherwise prohibited by U.S. law from receiving U.S.-origin goods or services.

Neither Customer nor any person or entity controlling Customer is an agent or instrumentality of any prohibited destinations, including countries subject to United States comprehensive sanctions (such as Cuba, Iran, Sudan, or Syria); (ii) is organized under the laws of any country to which the United States has embargoed goods; (iii) has its principal place of business in any country to which the United States has embargoed goods, or (if a natural person) is a

national of any country to which the United States has embargoed goods.

Customer shall not, without first obtaining prior express written approval of ACT and any necessary export or re-export licenses, sell, export, re-export, transfer or otherwise transmit the Licensed Product or underlying technology or related services directly or indirectly: (i) for any prohibited end uses; (ii) to any prohibited destinations, including countries subject to United States comprehensive sanctions; (iii) to any individuals or entities that are presently themselves on, or owned or controlled by an entity that is on, any denied party lists including individuals or entities on the Consolidated Screening List at http://export.gov/ecr/eg_main_023148.asp; or (iv) that would, if exported or re-exported by ACT, violate U.S. export control or sanctions laws or require the issuance of a U.S. export license by one or more U.S. government agencies. Customer shall notify any person, organization, or other entity obtaining the Licensed Product or underlying technology or related services from Customer that the acceptance of such Licensed Product or underlying technology or related services implies an affirmative obligation to comply with U.S. export control laws and economic sanctions. The provisions of this Paragraph 19 will survive the expiration or termination of this Agreement for any reason.

Customer shall indemnify and hold ACT harmless from and against any and all claims, losses, damages, liabilities, expenses, including attorney's fees and expenses, arising out of Customer's, including its owners, officers, employees, agents, and subcontractors, non-compliance with U.S. export controls and economic sanctions.

20. Arbitration; Dispute Resolution. In the event of any dispute between the parties arising under or in connection with this Agreement, the complainant must set out in a written notice the nature of the dispute and deliver the notice to the other party. Both parties must make reasonable good faith efforts to resolve the dispute. If the parties are unable to resolve the dispute within sixty (60) days through the efforts described above in this Paragraph 20, the exclusive means of adversarial dispute resolution to resolve any such disputes arising out of this Agreement or related to the Licensed Product, will be for a party to demand that such dispute be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and each party hereby consents to any such disputes being so resolved. Judgment on the award rendered in any such arbitration may be entered in any court having jurisdiction, but including, without limitation, and for all purposes, any court having jurisdiction over any of the parties or their assets. There shall be a sole arbitrator. The parties shall mutually agree to select the arbitrator; provided, however, that if they are unable to agree to the arbitrator within thirty (30) days, then the arbitrator shall be appointed by the American Arbitration Association. The place of arbitration shall be Iowa City, Iowa, U.S.A., or such other U.S. location as the parties may mutually agree. The arbitration shall be conducted exclusively in the English language. The arbitration shall be governed by the substantive laws of the State of Iowa, U.S.A. without regard to principles of conflicts of law. Any award rendered by the arbitrator shall be final and binding on the parties, and each party waives to the fullest extent permitted by law any right it may otherwise have under the laws of any jurisdiction to any form of appeal of, or collateral attack against, such award.

Notwithstanding the foregoing, to the extent a dispute arises in which the remedy must be immediate (as determined by ACT) to protect a ACT's assets, such as in the case of a breach of confidential information, the Customer's violation of criminal law, or violation of ACT's intellectual property rights which poses an immediate threat to ACT or its assets, those disputes may be brought in any forum deemed appropriate by ACT, and shall not be subject to the dispute escalation and arbitration provisions above.

21. Entire Agreement; Severability. This Agreement, including any documents linked to or referenced herein, which the parties agree are a material part of this Agreement, constitutes the entire agreement between the parties with respect to the Licensed Product(s) and supersedes and replaces all other prior agreements and understandings related to the Licensed Product(s). In furtherance of the foregoing and notwithstanding anything in this Agreement to the contrary, ACT may, at any time and in its sole discretion, elect to have this Agreement apply to previously purchased seat licenses of Licensed Product(s) that are either as-yet-unused or then-active as of the date of entry into this Agreement, the effect of which will be that ACT may cause all such like seat licenses for Licensed Product licensed by Customer to be governed by the terms and conditions of this Agreement. If any term, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, that will not affect the other terms, conditions and provisions of this Agreement or the whole of this Agreement, but such term, condition or provision will be deemed modified to the extent necessary in the court's opinion to render such term, condition or provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the parties' intent and agreements set forth in this Agreement.