

ACT ASPIRE TERMS AND CONDITIONS

ACT Aspire, LLC (“ACT Aspire”) and Customer agree as follows:

1. Definitions. As used in this Agreement, the following terms shall mean:
 - (i) “Agreement” means these terms and conditions.
 - (ii) “Assessments” means the ACT Aspire assessments provided as part of the Assessment Services.
 - (iii) “Assessments Services” means the services provided by ACT Aspire for the registration, administration, scoring and reporting of the ACT Aspire Assessments.
 - (iv) “Customer” means the party being granted access to the Assessment Services pursuant to this Agreement.
2. Grant of Use Rights to the Assessment Services. ACT Aspire grants to Customer the right to use the Assessment Services and Assessments solely under the terms and conditions set forth herein.
3. ACT Aspire Materials. ACT Aspire owns or has license rights in the Assessments and Assessment Services, including all testing materials, documentation, related materials, and all intellectual property rights therein (collectively, the “ACT Aspire Materials”). Customer does not acquire any right, title, or interest in or to the ACT Aspire Materials. Customer shall not copy, modify, enhance, reverse engineer, or make any addition to the ACT Aspire Materials. Customer acknowledges and agrees that the ACT Aspire Materials are not sold to Customer. Customer shall not (and shall not assist or permit any third party to): (i) seek to register or protect, anywhere in the world, the ACT Aspire Materials (or seek to register or protect any designation confusingly similar to the ACT Aspire Materials; or (ii) challenge ACT Aspire’s or its licensors’ ownership in or the validity of the ACT Aspire Materials. Customer shall promptly notify ACT Aspire, in writing, of any known, threatened, or suspected infringement or unauthorized use of the ACT Aspire Materials by any third party. Customer’s rights to the ACT Aspire Materials expressly terminate upon the termination of this Agreement as set forth in Section 9 below. Customer may not sell, provide access to, or otherwise transfer the ACT Aspire Materials to any other person, provided however that Customer may provide the Assessment Services to authorized Customer examinees, employees, and personnel solely for testing and interpretation purposes consistent with the terms of this Agreement and any related agreement for the use of the Assessment Services. Customer shall be further obligated to administer the Assessments in accordance with all policies and procedures provided by ACT Aspire or its licensors, as updated from time to time.
4. Confidentiality. Customer agrees that neither it nor its employees or personnel shall at any time, either directly or indirectly, publish, display or otherwise disclose to any person, organization, or entity in any manner whatsoever any ACT Aspire Materials, except as strictly necessary for Customer to use the ACT Aspire Materials as part of the Assessment Services. Customer shall protect the ACT Aspire Materials in

accordance with ACT Aspire’s procedures and using a standard of care appropriate for secure test materials, but in no event less than a reasonable standard of care. All ACT Aspire Materials shall be and remain the property of ACT Aspire or its licensors notwithstanding the subsequent termination of this Agreement. The ACT Aspire Materials shall, within ten (10) days of ACT Aspire’s written request, be returned to ACT Aspire (including any copies thereof). In the event that Customer receives a FOIA, public record, or open record request for any confidential information covered by this Agreement, Customer agrees to immediately notify ACT Aspire of such request in writing. Customer acknowledges and agrees that damages may not be an adequate remedy to compensate for the breach of this Section 4, and accordingly Customer agrees that in addition to any and all other remedies available, ACT Aspire shall be entitled to obtain relief by way of a temporary or permanent injunction to enforce the obligations described in this Section 4.

5. Testing Procedures. Customer agrees to administer the Assessments in accordance with all policies and procedures provided by ACT Aspire or any ACT Aspire licensor, as updated from time to time. Customer agrees that all ACT Aspire Materials will be returned in accordance with the policies and procedures provided by ACT Aspire. Customer agrees to fully cooperate with, and cause those individuals involved in the administration of the Assessments to fully cooperate with, ACT Aspire in the event of a test security incident. Customer acknowledges that failure to maintain the confidentiality of the Assessments will result in damages to ACT Aspire and its licensors and may require ACT Aspire or its licensors to develop a replacement form or replacement items. Accordingly if through the fault of Customer, the security of an Assessment is compromised, Customer agrees to pay ACT Aspire the costs of developing a new form or item in addition to any other remedies under the law. ACT Aspire or its licensors may, in their sole and absolute discretion, cancel scores in cases of testing irregularities, which may include without limitation, use of a compromised test form, falsification by an examinee of his/her identity, impersonation of another examinee (surrogate testing), unusual similarities in the answers of examinees at the same test center, or other indicators that the test scores may not accurately reflect the examinee’s level of educational development.

6. Data. The parties acknowledge and agree that ACT Aspire and its affiliates may use and disclose the data collected from the administration of the Assessments, as set forth in ACT Aspire and its affiliates’ data usage policies, as amended from time to time. ACT Aspire’s data usage policies are available at www.discoveractaspire.org.

7. Compatible Platforms and Hardware. Customer is responsible for obtaining and maintaining an appropriate operating environment with the necessary hardware, operating system software, network configurations, and other items required to use and access the ACT Aspire Materials and Assessment Services. Neither ACT Aspire nor any of its

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licensors will be responsible for any incompatibility between ACT Aspire Materials and Assessment Services, and any versions of operating systems, hardware, browsers, inadequate network configurations, or other products not specifically approved by ACT Aspire for Customer's use with the ACT Aspire Materials and Assessment Services.

8. Passwords. Each user identification, access code, and password is personal to the authorized user to which it is issued. Customer and the authorized users Customer identifies are responsible for maintaining the confidentiality and security of all user identifications, access codes, and passwords issued, and ensuring that each such user identification, access code, and password is only used by its identified authorized users. To the extent ACT Aspire assigns Customer with administrative rights to create user identifications, access codes, and passwords for its authorized users, Customer shall be wholly responsible for each such issuance.

9. Limitation on Damages. **THE LIABILITY OF ACT ASPIRE AND ANY ACT ASPIRE AFFILIATE OR LICENSOR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT CUSTOMER HAS PAID HEREUNDER DURING THE APPLICABLE CONTRACT TERM. IN NO EVENT SHALL ACT ASPIRE OR ANY ACT ASPIRE AFFILIATE OR LICENSOR BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.**

10. Warranty and Limitations. **ACT ASPIRE WARRANTS THAT THE ASSESSMENTS HAVE BEEN DEVELOPED IN ACCORDANCE WITH, AND THE ASSESSMENT SERVICES WILL BE PERFORMED IN A MANNER CONSISTENT WITH, INDUSTRY STANDARDS. EXCEPT AS SET FORTH IN THIS SECTION, ACT ASPIRE 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. CUSTOMER WARRANTS THAT CUSTOMER HAS OBTAINED ALL NECESSARY PERMISSIONS FOR THE DELIVERY OF ASSESSMENT SERVICES AND THE ASSESSMENTS AND THAT CUSTOMER WILL USE, DELIVER, AND HANDLE DATA FROM THE ASSESSMENT SERVICES, AND WILL TAKE NECESSARY STEPS TO ASSIST ACT ASPIRE OR ITS AFFILIATES OR LICENSORS TO USE, DELIVER, AND HANDLE DATA FROM THE ASSESSMENT SERVICES, CONSISTENT WITH APPLICABLE LAWS, RULES, AND REGULATIONS.**

11. Termination. This Agreement will terminate (a) one year after execution of this Agreement or (b) upon Customer's

breach of this Agreement and failure to cure such breach within 30 days of receiving notice of said breach from ACT Aspire. The obligations of Paragraphs 3, 4,5,6,7, and 8 survive termination of this Agreement.

12. 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. There are no third party beneficiaries to this Agreement.

13. Third Party Rights. Except for the rights and benefits provided to and for ACT Aspire's affiliates and licensors in this Agreement, including, without limitation, rights and benefits contemplated in Section 6 of this Agreement, nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

14. Force Majeure. Neither ACT Aspire nor its licensors shall be liable to Customer for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control, including, without limitation, national emergencies, fire, flood, epidemics, or catastrophe, acts of God, governmental authorities, or parties not under the control of ACT Aspire or its licensors, insurrection, war, riots, or failure of transportation, communication, or power supply. ACT Aspire and/or ACT Aspire licensors shall exercise commercially reasonable efforts to mitigate the extent of the excusable delay or failure and its adverse consequences.

15. Assignment; Subcontracts. This Agreement may not be assigned by Customer without the express prior written consent of ACT Aspire. No permitted assignment shall relieve Customer hereto of its obligations prior to the assignment. ACT Aspire is expressly permitted to assign this contract to its corporate affiliates, and may subcontract with its affiliates or licensors for the delivery of the Assessment Services.

16. Entire Agreement. This Agreement (including all exhibits to this Agreement and agreements referenced herein) constitutes the entire agreement between the parties with respect to the subject matter hereunder and supersedes all other prior agreements and understandings, both written and oral. The terms and conditions contained in this Agreement are the only conditions applying to the ACT Aspire Materials, Assessments, and delivery of the Assessment Services. ACT Aspire and its licensors expressly object to and reject any different or additional terms included in Customer's request for proposal, quotation, purchase order, acknowledgment 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.

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