



# ACT Online Prep Order Form

## 2024–2025

PRODUCT: ACT ONLINE PREP | PROGRAMS: NATIONAL, STATE, AND DISTRICT | PLATFORM: ONLINE | AUDIENCE: EDUCATORS AND TEST COORDINATORS | EFFECTIVE SEPTEMBER 1, 2024

**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](http://act.org/onlineprep).

## I. Pricing and Payment

Select a license type. No minimum purchase is required. Prices are per student; one license per student.

**Standard Bulk = \$34.95** per license

**Standard Bulk – FRLP = \$17.48** per license

**Contract = \$27.95** per license. Applicable to schools or districts purchasing AOP where a contract is in place for the ACT test.

**Contract – FRLP = \$13.98** per license\*

*Note: 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>.*

*Note: 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)

Romeoville High School

Organization (“Customer”)

100 N. Independence Blvd

Street Address (no PO Boxes)

Street Address Line 2

Romeoville IL 60446

City State ZIP

Gina Smith

Contact Person

815-407-5002

Phone Fax

smithgm@vvsd.org

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

*Note: Regardless of when students activate their accounts, access will end one year from the date order form is signed.*

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.

Site 1

142657	Romeoville High School
HS Code (6 digits)	School/Site Name
Gina Smith	
Site Administrator	
815-407-5002	smithgm@vvsd.org
Phone	Email
75	
License Quantity	

Site 2

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

Site 3

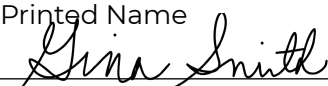
HS Code (6 digits)	School/Site Name
Site Administrator	
Phone	Email
License Quantity	

☐ 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*.

Gina Smith
Printed Name

Signature
12/13/24
Date

Email all pages of this completed order form (including Terms and Conditions) to [customerservice@onlineprep.act.org](mailto: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 Education Corp. ("ACT") desires to provide, a license to the ACT Online Prep subscription service. In consideration of the foregoing, ACT and Customer, intending to be legally bound, agree that the Agreement, defined below, governs ACT's license and delivery of Licensed Products:

1. **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.  
 "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.
2. **Term.** This Agreement shall become effective on the date 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, this Agreement will continue in effect for so long as Authorized Users access or may access the Licensed Products made available under this Agreement.
3. **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.

4. **Grant and Scope of License.** Subject to the terms and conditions of this Agreement, ACT hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right during the term of this Agreement to use the Licensed Products for preparatory purposes only, including the purpose of preparing 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 19 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.

5. Confidentiality. Customer agrees that neither it nor its employees shall at any time during or following the term of this Agreement, either directly or indirectly, publish, display or otherwise disclose to any person, organization, or entity in any manner whatsoever any ACT Materials, except as strictly necessary for Customer to use the ACT Materials as part of the Licensed Products provided hereunder. Customer shall protect the ACT Materials in accordance with ACT's policies and procedures, but in no event less than a reasonable standard of care. All ACT Materials are and remain the property of ACT notwithstanding the subsequent termination of this Agreement. Customer shall not store and must return any unused Licensed Products (and all copies, if any) in accordance with ACT's policies and procedures. In the event Customer receives a Freedom of Information Act, public record, or open record request for any confidential information covered by this Agreement, Customer agrees to immediately notify ACT of such request in writing. Customer shall immediately notify ACT in writing in the event of any unauthorized use or disclosure of the ACT Materials and assist in remedying such unauthorized use or disclosure, as requested by ACT (which shall not limit other remedies of ACT as provided in this Agreement or by applicable law). Customer acknowledges and agrees that damages may not be adequate to compensate for the breach of this paragraph and accordingly, Customer agrees that, in addition to any and all other remedies available, ACT is entitled to obtain relief by way of a temporary or permanent injunction to enforce the obligations described in this paragraph.
6. 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.
7. 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 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.
8. 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.
9. 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, available at [www.act.org/privacy.html](http://www.act.org/privacy.html), as amended from time to time.
10. 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 during the current Term of this Agreement. In no event shall ACT be liable to Customer for special, indirect, incidental, punitive, exemplary, or consequential damages.

11. Warranty and Limitations. **EXCEPT FOR WARRANTIES EXPRESSLY SET FORTH HEREIN, ACT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES REGARDING GUARANTEED UPTIME, WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AND WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE. CUSTOMER SHALL HAVE THE SOLE RESPONSIBILITY FOR ASSURING THAT ITS USE OF THE ASSESSMENTS, PRODUCTS OR SERVICES COMPLIES WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AND ALL LABOR, EMPLOYEE, OR OTHER CONTRACTS OR PRACTICES TO WHICH IT IS A PARTY.**
12. 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.
13. 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.
14. 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.
15. Ownership. ACT and its vendors own or have license for 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™ (collectively, the "ACT Materials"). 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 ACT Materials. THE CONTENTS OF THE ACT MATERIALS, 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 including without limitation the ACT Materials, 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. 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 Materials (or seek to register or protect any designation confusingly similar to the ACT Materials; or (ii) challenge ACT's ownership in or the validity of the ACT Materials. Customer shall promptly notify ACT, in writing, of any known, threatened, or suspected infringement or unauthorized use of the ACT Materials by any third party. Customer's rights to the ACT Materials expressly terminate upon the termination of this Agreement. Customer may not sell, provide access to, or otherwise transfer ACT Materials to any other person; provided, however, that Customer may provide the Licensed Product to its designated personnel, participating locations, and examinees solely for testing and interpretation purposes consistent with the terms of this Agreement and any related agreement for the use of the Licensed Product.

16. U.S. Government Licensees. 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.
17. 17. Username and Password. Access to the Licensed Products will be provided only to those Customer and Participating Location staff and students that have been authorized to use the services by Customer. Each authorized staff member and student will be required to use a unique username and password to access the online platforms provided as part of the Products and Services. Staff and students may not share or otherwise divulge their password with any other person. Access to the online platform is personal to the individual authorized staff member or student. Customer and Participating Testing Site staff accessing the online platforms may not impersonate person or entity or falsely state or otherwise misrepresent their identity or affiliation with a person or entity to ACT.
18. 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. 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 Licensed Product. ACT is not responsible for any incompatibility between ACT Licensed Products, and any versions of operating systems, hardware, browsers, inadequate network configurations, or other products not specifically approved by ACT for Customer's use with the ACT Licensed Products. Licensed Product is subject to recurring maintenance windows, and occasionally unscheduled maintenance, during which servers may be taken offline. ACT will not be responsible for any damages or costs incurred by Customer, if any, for such down time.
19. 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, 9, 10, 11, 15, and 24 of these Terms and Conditions shall survive.
20. Force Majeure. ACT shall not 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, 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 the party upon notice to the other.
21. Assignment. This Agreement may not be assigned by Customer without the express prior written consent of ACT. No permitted assignment shall relieve Customer of its obligations under the Agreement.
22. 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.
23. 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.

24. 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 27 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.
25. 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.  
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](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 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.

26. Use of Third Parties. In the event ACT Licensed Products are administered by a third party on behalf of Customer ("Third Party"), Customer enters into this Agreement on its own behalf and on behalf of the Third Party. Customer represents and warrants that it has the authority to bind the Third Party to this Agreement and that such Third Party is hereby bound by the terms and conditions of this Agreement as if it were Customer. Customer agrees that it shall be jointly and severally liable for all obligations of the Third Party.
27. 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, 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, 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.

28. 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.



**ATTACHMENT A TO ACT ONLINE PREP ORDER FORM**

**Standard Student Data Privacy Agreement**

**IL-NDPA v1.0a**

School District or LEA  
Valley View School District 365U

**and**

ACT Education Corp.

This Student Data Privacy Agreement ("**DPA**") is entered into on the date of full execution {the "**Effective Date**") and is entered into by and between:

[Valley View School District 365U], located at [ 801 West Normantown Road, Romeoville, IL 60446 ] (the "**Local Education Agency**" or "**LEA**") and  
 ACT Education Corp. , located at 500 ACT Drive, Iowa City, IA 52243 (the "**Provider**").

**WHEREAS**, the Provider is providing ACT Online Prep to LEA.

**WHEREAS**, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 CFR Part 99); the Children's Online Privacy Protection Act ("**COPPA**") at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

**WHEREAS**, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.
2. **Special Provisions. Check if Required**
  - ☒ If checked, the Supplemental State Terms and attached hereto as **Exhibit "G"** are hereby incorporated by reference into this DPA in their entirety.
  - ☐ If checked, LEA and Provider agree to the additional terms or modifications set forth in **Exhibit "H". (Optional) Not applicable/Not Checked.**
  - ☐ If Checked, the Provider, has signed **Exhibit "E"** to the Standard Clauses, otherwise known as General Offer of Privacy Terms **Not applicable/Not Checked.**
3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
4. This DPA shall stay in effect for the term of the ACT Online Prep Order Form ("Service Agreement") to which this DPA is attached as Attachment A.
5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit "A"** (the "**Services**").
6. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the LEA for this DPA is:

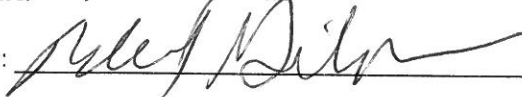
Name: Robert Gilmore Title: Executive Director of Technology  
Address: 755 Dalhart Ave., Romeoville, IL 60446  
Phone: 815-886-2700 Email: gilmore@vvsd.org

The designated representative for the Provider for this DPA is:

Name: George Schlott Title: Account Executive  
Address: 500 ACT Drive, Iowa City, IA 52243  
Phone: (319) 337-1000 Email: george.schlott@act.org

IN WITNESS WHEREOF, LEA and Provider execute this DPA as of the Effective Date.

LEA: Valley View School District 365LJ

By:  Date: 4/10/2025

Printed Name: Robert Gilmore Title/Position: Executive Director of Technology

Provider:  
ACT Education Corp.

By:  Date: 4/11/2025

Printed Name: C. Blake Curwen Title/Position: Senior Vice President

## **STANDARD CLAUSES**

Version 1.0

### **ARTICLE I: PURPOSE AND SCOPE**

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Student Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data
2. **Student Data to Be Provided.** In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.
3. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit "C"**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

### **ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS**

1. **Student Data Property of LEA.** All Student Data transmitted to the Provider by the LEA pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA ("Student Data"). The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement, subject to Provider's ownership of its intellectual property, as described in the Service Agreement at Para. 15 Ownership, shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above. Data and information provided directly to Provider by a student or a student's parent or guardian is not Student Data and is not subject to this Agreement.
2. **Parent Access.** To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student- Generated Content to a separate account created by the student.



4. **Law Enforcement Requests.** Should law enforcement or other government entities ("Requesting Party(ies)") contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the LEA of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

### ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws.** LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the LEA has a policy of disclosing Education Records and/or Student Data under FERPA {34 CFR § 99.31(a)(1)}, LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.
4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

### ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.
2. **Authorized Use.** The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.
3. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.
4. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data other than as directed or

permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.

5. **De-Identified Data**: Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless that party agrees in writing not to attempt re-identification. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which de-identified data is presented.
6. **Disposition of Data**. Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data according to Provider's record retention schedule. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "Directive for Disposition of Data" form, a copy of which is attached hereto as **Exhibit "D"**. If the LEA and Provider employ Exhibit "D," no further written request or notice is required on the part of either party prior to the disposition of Student Data described in Exhibit "D."
7. **Advertising Limitations**. Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product improvements or recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits

## ARTICLE V: DATA PROVISIONS

1. **Data Storage**. Where required by applicable law, Student Data shall be stored within the United States. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.
2. **Audits**. No more than once a year, or following unauthorized access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA. The Provider will cooperate reasonably with the LEA and any local, state, or federal



agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.
4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:
  - (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
    - i. The name and contact information of the reporting LEA subject to this section.
    - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
    - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
    - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
    - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
  - (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
  - (3) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.



- (4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
- (5) In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

#### ARTICLE VII: MISCELLANEOUS

1. **Termination.** In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.
2. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy LEA's Student Data pursuant to Article IV, section 6.
3. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Exhibit H, the SDPC Standard Clauses, and/or the Supplemental State Terms, Exhibit H will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
4. **Entire Agreement.** This DPA and the Service Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

5. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
6. **Governing Law, Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
7. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
8. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof.
9. **Waiver.** No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

**EXHIBIT "A" DESCRIPTION  
OF SERVICES**

ACT Online Prep licenses.

**EXHIBIT "B"**  
**SCHEDULE OF DATA FOR ACT ONLINE PREP**

See following pages.

**EXHIBIT "B"**  
**SCHEDULE OF DATA**

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	<input type="checkbox"/>
	Other application technology meta data-Please specify:	<input type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application	<input type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input type="checkbox"/>
	Other assessment data-Please specify:	<input type="checkbox"/>
Attendance	Student school (daily) attendance data	<input type="checkbox"/>
	Student class attendance data	<input type="checkbox"/>
Communications	Online communications captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Conduct or behavioral data	<input type="checkbox"/>
Demographics	Date of Birth	<input type="checkbox"/>
	Place of Birth	<input type="checkbox"/>
	Gender	<input type="checkbox"/>
	Ethnicity or race	<input type="checkbox"/>
	Language information (native, or primary language spoken by student)	<input type="checkbox"/>
	Other demographic information-Please specify:	<input type="checkbox"/>
Enrollment	Student school enrollment	<input type="checkbox"/>
	Student grade level	<input type="checkbox"/>
	Homeroom	<input type="checkbox"/>
	Guidance counselor	<input type="checkbox"/>
	Specific curriculum programs	<input type="checkbox"/>
	Year of graduation	<input type="checkbox"/>
	Other enrollment information-Please specify:	<input type="checkbox"/>
Parent/Guardian Contact Information	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>



Category of Data	Elements	Check if Used by Your System
	Phone	<input type="checkbox"/>
Parent/Guardian ID	Parent ID number (created to link parents to students)	<input type="checkbox"/>
Parent/Guardian Name	First and/or Last	<input type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>
Special Indicator	English language learner information	<input type="checkbox"/>
	Low income status	<input type="checkbox"/>
	Medical alerts/ health data	<input type="checkbox"/>
	Student disability information	<input type="checkbox"/>
	Specialized education services (IEP or 504)	<input type="checkbox"/>
	Living situations (homeless/foster care)	<input type="checkbox"/>
	Other indicator information-Please specify:	<input type="checkbox"/>
Student Contact Information	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
Student Identifiers	Local (School district) ID number	<input type="checkbox"/>
	State ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input type="checkbox"/>
	Student app username	<input type="checkbox"/>
	Student app passwords	<input type="checkbox"/>
Student Name	First and/or Last	<input checked="" type="checkbox"/>
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	<input type="checkbox"/>
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	<input type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires	<input type="checkbox"/>
Student work	Student generated content; writing, pictures, etc.	<input type="checkbox"/>
	Other student work data -Please specify:	<input type="checkbox"/>
Transcript	Student course grades	<input type="checkbox"/>
	Student course data	<input type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	Student course grades/ performance scores	<input type="checkbox"/>
	Other transcript data - Please specify:	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>
	Other transportation data – Please specify:	<input type="checkbox"/>
Other	<p>Please list each additional data element used, stored, or collected by your application:</p> <p>An email address or user ID is required to register.</p>	<input checked="" type="checkbox"/>
None	No Student Data collected at this time. Provider will immediately notify LEA if this designation is no longer applicable.	<input type="checkbox"/>



## **EXHIBIT "C"**

### **DEFINITIONS**

**De-Identified Data and De-Identification:** Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student's identity is not personally identifiable, taking into account reasonable available information.

**Educational Records:** Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

**Metadata:** means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

**Operator:** means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K-12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an "operator" for the purposes of this section, with respect to the contracted services.

**Originating LEA:** An LEA who originally executes the DPA in its entirety with the Provider.

**Provider:** For purposes of the DPA, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Student Data. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

**Student Generated Content:** The term "Student-Generated Content" means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content. Data and information provided directly by student or a student's parent/guardian is not considered Student Generated Content and is not subject to this Agreement.

**School Official:** For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

**Service Agreement:** Refers to the Contract, Purchase Order or Terms of Service or Terms of Use to which this NDPA is attached by reference as Attachment A to the ACT Online Prep Order Form.

**Student Data:** Student Data includes any data, whether gathered by Provider or provided to Provider by LEA pursuant to the Service Agreement, that is descriptive of the student including, but not limited to,

information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Meta Data. Student Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student's use of Provider's services. For the purposes of this Agreement, data and information provided directly to Provider by a student or a student's parent/guardian is not considered Student Data and is not subject to this Agreement.

**Subprocessor:** For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Student Data.

**Targeted Advertising:** means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

**Third Party:** The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

**EXHIBIT "D"**  
**DIRECTIVE FOR DISPOSITION OF DATA**

Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

☐ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

☐ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

☐ Disposition shall be by destruction or deletion of data.

☐ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

3. Schedule of Disposition

Data shall be disposed of by the following date:

☐ As soon as commercially practicable.

☐ By:

4. Signature

\_\_\_\_\_  
Authorized Representative of LEA

\_\_\_\_\_  
Date

5. Verification of Disposition of Data

\_\_\_\_\_  
Authorized Representative of Company

\_\_\_\_\_  
Date

**EXHIBIT "E"**  
**GENERAL OFFER OF PRIVACY TERMS**  
**RESERVED**

**EXHIBIT "F"**  
**DATA SECURITY REQUIREMENTS**

**Adequate Cybersecurity Frameworks**  
**2/24/2020**

The Education Security and Privacy Exchange ("Edspex") works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles\* ("Cybersecurity Frameworks") that may be utilized by Provider .

Cybersecurity Frameworks

See next page

Please visit <http://www.edspex.org> for further details about the noted frameworks.

\*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here

**EXHIBIT "F"**  
**DATA SECURITY REQUIREMENTS**

**Adequate Cybersecurity Frameworks**  
**2/24/2020**

The Education Security and Privacy Exchange ("Edspex") works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles\* ("Cybersecurity Frameworks") that may be utilized by Provider .

**Cybersecurity Frameworks**

	MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
<input checked="" type="checkbox"/>	National Institute of Standards and Technology	NIST Cybersecurity Framework Version 1.1
<input checked="" type="checkbox"/>	National Institute of Standards and Technology	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
<input type="checkbox"/>	International Standards Organization	Information technology — Security techniques — Information security management systems (ISO 27000 series)
NOT CHECKED	<input checked="" type="checkbox"/> Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
<input type="checkbox"/>	<input checked="" type="checkbox"/> Center for Internet Security	CIS Critical Security Controls (CSC, CIS Top 20)
<input type="checkbox"/>	Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)

Please visit <http://www.edspex.org> for further details about the noted frameworks.

\*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here



**EXHIBIT "G" - Supplemental SDPC (Student Data Privacy Consortium) State Terms for Illinois**

Version IL-NDPA v1.0a (Revised March 15, 2021)

This **Exhibit G**, Supplemental SDPC State Terms for Illinois ("Supplemental State Terms"), effective simultaneously with the attached Student Data Privacy Agreement ("DPA") by and between Valley View School District 365U (Romeoville High School)

\_\_\_\_\_ (the "Local Education Agency" or "LEA") and ACT Education Corp. (the "Provider"), is incorporated in the attached DPA and amends the DPA (and all supplemental terms and conditions and policies applicable to the DPA) as follows:

**1. Compliance with Illinois Privacy Laws.** In performing its obligations under the Agreement, the Provider shall comply with all Illinois laws and regulations pertaining to student data privacy, confidentiality, and maintenance, including but not limited to the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/, Mental Health and Developmental Disabilities Confidentiality Act ("MHDDCA"), 740 ILCS 110/, Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/, Identity Protection Act ("IPA"), 5 ILCS 179/, and Personal Information Protection Act ("PIPA"), 815 ILCS 530/, and Local Records Act ("LRA"), 50 ILCS 205/.

**2. Definition of "Student Data."** In addition to the definition set forth in **Exhibit C**, Student Data includes any and all information concerning a student by which a student may be individually identified under applicable Illinois law and regulations, including but not limited to (a) "covered information," as defined in Section 5 of SOPPA (105 ILCS 85/5), (b) "school student records" as that term is defined in Section 2 of ISSRA (105 ILCS 10/2(d)) (c) "records" as that term is defined under Section 110/2 of the MHDDCA (740 ILCS 110/2), and (d) "personal information" as defined in Section 530/5 of PIPA.

**3. School Official Designation.** Pursuant to Article I, Paragraph 1 of the DPA Standard Clauses, and in accordance with FERPA, ISSRA and SOPPA, in performing its obligations under the DPA, the Provider is acting as a school official with legitimate educational interest; is performing an institutional service or function for which the LEA would otherwise use its own employees; is under the direct control of the LEA with respect to the use and maintenance of Student Data; and is using Student Data only for an authorized purpose and in furtherance of such legitimate educational interest.

**4. Limitations on Re-Disclosure.** The Provider shall not re-disclose Student Data to any other party or affiliate without the express written permission of the LEA or pursuant to court order, unless such disclosure is otherwise permitted under SOPPA, ISSRA, FERPA, and MHDDCA. Provider will not sell or rent Student Data. In the event another party, including law enforcement or a government entity, contacts the Provider with a request or subpoena for Student Data in the possession of the Provider, the Provider shall redirect the other party to seek the data directly from the LEA. In the event the Provider is compelled to produce Student Data to another party in compliance with a court order, Provider shall notify the LEA at least five (5) school days in advance of the court ordered disclosure and, upon request, provide the LEA with a copy of the court order requiring such disclosure.

**5. Notices.** Any notice delivered pursuant to the DPA shall be deemed effective, as applicable, upon receipt as evidenced by the date of transmission indicated on the transmission material, if by e-mail; or four (4) days after mailing, if by first-class mail, postage prepaid.

**6. Parent Right to Access and Challenge Student Data.** The LEA shall establish reasonable procedures pursuant to which a parent, as that term is defined in 105 ILCS 10/2(g), may inspect and/or



copy Student Data and/or challenge the accuracy, relevance or propriety of Student Data, pursuant to Sections 5 and 7 of ISSRA (105 ILCS 10/5; 105 ILCS 10/7) and Section 33 of SOPPA (105 ILCS 85/33). The Provider shall respond to any request by the LEA for Student Data in the possession of the Provider when Provider cooperation is required to afford a parent an opportunity to inspect and/or copy the Student Data, no later than 5 business days from the date of the request. In the event that a parent contacts the Provider directly to inspect and/or copy Student Data, the Provider shall refer the parent to the LEA, which shall follow the necessary and proper procedures regarding the requested Student Data.

7. **Corrections to Factual Inaccuracies.** In the event that the LEA determines that the Provider is maintaining Student Data that contains a factual inaccuracy, and Provider cooperation is required in order to make a correction, the LEA shall notify the Provider of the factual inaccuracy and the correction to be made. No later than 90 calendar days after receiving the notice of the factual inaccuracy, the Provider shall correct the factual inaccuracy and shall provide written confirmation of the correction to the LEA.

8. **Security Standards.** The Provider shall implement and maintain commercially reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect Student Data from unauthorized access, destruction, use, modification, or disclosure, including but not limited to the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of the Student Data (a "Security Breach"). For purposes of the DPA and this Exhibit G, "Security Breach" does not include the good faith acquisition of Student Data by an employee or agent of the Provider or LEA for a legitimate educational or administrative purpose of the Provider or LEA, so long as the Student Data is used solely for purposes permitted by SOPPA and other applicable law, and so long as the Student Data is restricted from further unauthorized disclosure.

9. **Security Breach Notification.** In addition to the information enumerated in Article V, Section 4(1) of the DPA Standard Clauses, any Security Breach notification provided by the Provider to the LEA shall include:

- a. A list of the students whose Student Data was involved in or is reasonably believed to have been involved in the breach, if known; and
- b. The name and contact information for an employee of the Provider whom parents may contact to inquire about the breach.

10. **Reimbursement of Expenses Associated with Security Breach.** In the event of a Security Breach that is attributable to the Provider, the Provider shall reimburse and indemnify the LEA for any and all costs and expenses that the LEA incurs in investigating and remediating the Security Breach, without regard to any limitation of liability provision otherwise agreed to between Provider and LEA, including but not limited to costs and expenses associated with:

- a. Providing notification to the parents of those students whose Student Data was compromised and regulatory agencies or other entities as required by law or contract;
- b. Providing credit monitoring to those students whose Student Data was exposed in a manner during the Security Breach that a reasonable person would believe may impact the student's credit or financial security;
- c. Legal fees, audit costs, fines, and any other fees or damages imposed against the LEA

as a result of the security breach; and

- d. Providing any other notifications or fulfilling any other requirements adopted by the Illinois State Board of Education or under other State or federal laws.

**11. Transfer or Deletion of Student Data.** Upon the request of the LEA, the Provider will delete or transfer Student Data in readable form to the LEA, as directed by the LEA (which may be effectuated through Exhibit D of the DPA), within 30 calendar days if the LEA requests deletion or transfer of the Student Data and shall provide written confirmation to the LEA of such deletion or transfer. Upon termination of the Service Agreement between the Provider and LEA, Provider shall conduct a final review of Student Data within 60 calendar days.

If the LEA receives a request from a parent, as that term is defined in 105 ILCS 10/2(g), that Student Data being held by the Provider be deleted, the LEA shall determine whether the requested deletion would violate State and/or federal records laws. In the event such deletion would not violate State or federal records laws, the LEA shall forward the request for deletion to the Provider. The Provider shall comply with the request and delete the Student Data within a reasonable time period after receiving the request.

Any provision of Student Data to the LEA from the Provider shall be transmitted in a format readable by the LEA.

**12. Public Posting of DPA.** Pursuant to SOPPA, the LEA shall publish on its website a copy of the DPA between the Provider and the LEA, including this Exhibit G.

**13. Subcontractors.** Upon request of LEA, the Provider shall provide the LEA with a list of any subcontractors to whom Student Data may be disclosed or a link to a page on the Provider's website that clearly lists any and all subcontractors to whom Student Data may be disclosed.

**14. DPA Term.**

- a. **Original DPA.** Paragraph 4 on page 2 of the DPA setting a three-year term for the DPA shall be deleted, and the following shall be inserted in lieu thereof: "This DPA shall be effective upon the date of signature by Provider and LEA, and shall remain in effect as between Provider and LEA and shall be co-terminus with the ACT Online Prep license agreement."

**15. Termination.** Paragraph 1 of Article VII shall be deleted, and the following shall be inserted in lieu thereof: "In the event either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or been terminated. One party may terminate this DPA upon a material breach of this DPA by the other party. Upon termination of the DPA, the Service Agreement shall terminate."

**16. Privacy Policy.** The Provider must publicly disclose material information about its collection, use, and disclosure of Student Data, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document.

**17. Minimum Data Necessary Shared.** The Provider attests that the Student Data request by the Provider from the LEA in order for the LEA to access the Provider's products and/or services is limited to the Student Data that is adequate, relevant, and limited to what is necessary in relation to the K-12 school purposes for which it is processed.

**18. Student and Parent Access.** Access by students or parents/guardians to the Provider's programs

or services governed by the DPA or to any Student Data stored by Provider shall not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in this DPA.

19. **Data Storage.** Provider shall store all Student Data shared under the DPA within the United States.
20. **Exhibits A and B.** The Services described in Exhibit A and the Schedule of Data in Exhibit B to the DPA satisfy the requirements in SOPPA to include a statement of the product or service being provided to the school by the Provider and a listing of the categories or types of covered information to be provided to the Provider, respectively.

**EXHIBIT "H"**  
**Additional Terms or Modifications**  
Version \_\_\_\_\_

LEA and Provider agree to the following additional terms and modifications:

This is a free text field that the parties can use to add or modify terms in or to the DPA. If there are no additional or modified terms, this field should read "None."

None