



State Program License and Services Agreement

SECTION A: Customer/Institution details:

Customer/Institution Name	Mississippi Department of Education				
Customer Address	359 N. West Street				
City	Jackson	State	MS	Zip Code	39205
Telephone	601-359-3052	Fax	601-359-2471	E-Mail	wdrane@mde.k12.ms.us
Person to Contact	Walt Drane		Position	Director of Student Assessment Operations and Test Security	
Direct Telephone	601-359-3052	Direct Fax	601-359-2471		

SECTION B: Services: As set forth in Exhibit 1 (Description of Services) attached to this Agreement and incorporated by reference and relating to the following program(s):

<input checked="" type="checkbox"/>	ACT®
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SECTION C: Fees: As set forth in Exhibit 2 (Fees) attached to this Agreement.

SECTION D: Term: The term of this Agreement shall be from 10/14/2015 through 8/31/2016 with the option to renew under the same terms and conditions for up to two (2) additional one-year terms. ACT reserves the right to amend the Description of Services and Fee Schedule exhibits for each of the optional renewal periods.

SECTION E: Terms and Conditions: This Agreement is subject to the attached Terms and Conditions, which are incorporated by reference.

SECTION F: Signatures: By signing below, the parties' authorized representatives hereby indicate their agreement to the terms and conditions of this Agreement.

ACT, Inc.

Mississippi Department of Education

By: _____

By: _____

Name: Thomas J. Goedken

Name: Carey M. Wright, Ed.D.

Title: Chief Financial Officer

Title: State Superintendent of Education

Date: _____

Date: _____

By: _____

By: _____

Name: Jon Whitmore

Name: Donna Hales

Title: Chief Executive Officer

Title: Director of Procurement

Date: _____

Date: _____

For Office Use Only Purchase Agreement Number: _____

TERMS AND CONDITIONS

ACT and the Customer agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall mean:
 - (i) "ACT" or "Contractor" means ACT, Inc.
 - (ii) "Agreement" means this License and Services Agreement, including these TCs, and any exhibits thereto.
 - (iii) "Assessments and Services" means the assessments and services described in Exhibit 1 to this Agreement.
 - (iv) "Customer" means the party named in Section A of this Agreement.
 - (v) "TCs" means these terms and conditions.
2. **Term.** The term of this Agreement shall be as set forth in Section D of this Agreement ("Term"), subject to earlier termination, as set forth in Paragraph 11 of these TCs.
3. **Assessments and Services.** ACT agrees to provide, subject to the terms and conditions provided in this Agreement, the Assessments and Services.
4. **Payment Terms.** Customer agrees to pay ACT the amounts set forth in Exhibit 2 to this Agreement for the delivery of the Assessments and Services. Customer shall make all payments within forty-five (45) days of receipt of an invoice from ACT. If payment is not made timely, interest will accrue in accordance with Miss. Code Ann. Section 31-7-305, *et seq.* All invoices shall be sent to the Customer at the address listed in Section A of this Agreement unless otherwise specified herein.
5. **Ownership of Materials.** ACT owns the Assessments, including all testing materials, documentation, related materials, and all intellectual property rights therein (collectively, the "ACT Materials"). Customer does not acquire any right, title, or interest in or to the ACT Materials. Customer shall not copy, modify, enhance, reverse engineer, or make any addition to the ACT Materials. The ACT Materials are licensed, not sold. Customer may not sell or otherwise transfer the ACT Materials to any other person, provided however that Customer may provide the Assessments to authorized examinees and its personnel solely for testing and interpretation purposes.

Contractor further agrees that all material produced and/or delivered under this contract will not, to the best of Contractor's knowledge, infringe upon the copyright or any other proprietary rights of any third party. Should any aspect of the materials become, or in Contractor's opinion be likely to become, the subject of any infringement claim or suit, Contractor shall procure the rights to such material or replace or modify the material to make it non-infringing.
6. **Confidentiality.** Customer agrees that neither it nor its employees shall at any time during or following the Term, 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 for their intended purpose under this Agreement. Customer shall protect the ACT Materials in accordance with ACT's procedures and using a standard of care appropriate for secure test materials. All ACT Materials shall be and remain the property of ACT notwithstanding the subsequent termination of this Agreement. The ACT Materials shall, within ten (10) days of ACT's written request, be returned to ACT (including any copies thereof).
7. **Testing Procedures.** Customer agrees to administer the Assessments in accordance with all policies and procedures provided by ACT. Customer agrees that all ACT Materials will be returned in accordance with the policies and procedures provided by ACT, for scoring and processing. Customer agrees to fully cooperate with ACT in the event of a test security incident. ACT may, in its 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.
8. **Data.** The parties acknowledge and agree that ACT may use and disclose the data collected from the administration of the Assessments, as set forth in ACT's Privacy Policy, as amended from time to time. The parties agree that access to personally identifiable information received by ACT from the Mississippi Department of Education is governed by the terms and conditions of the Memorandum of Understanding in effect at the time such access is requested.
9. **Warranty and Limitations.** **ACT WARRANTS THAT THE ASSESSMENTS HAVE BEEN DEVELOPED IN ACCORDANCE WITH AND THE SERVICES WILL BE PERFORMED IN A MANNER CONSISTENT WITH INDUSTRY STANDARDS.**
10. **Termination.** Either party may terminate this Agreement upon written notice to the other party in the event that other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. This Agreement may also be terminated without cause at any time by either party giving ninety (90) days written notice to the other. Customer shall pay ACT for all Assessments and Services delivered or rendered through the date of termination. Upon the expiration or termination of this Agreement, the obligations set forth in Paragraphs 5, 6, 8, 9, 10 and 11 of these TCs shall survive.
11. **Relationship of the Parties.** The parties to this Agreement are independent contractors. Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, employer/employee, partnership, franchise, or fiduciary relationship between the parties, and 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.
12. **Force Majeure.** Neither party shall be responsible 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, insurrection, war, riots, or failure of transportation, communication, or power supply. The party whose performance is interfered with 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.

13. **Assignment; Subcontracts.** Neither party shall assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the other party. Any attempted assignment without said consent shall be void and of no effect and may be grounds for the termination of the contract.

14. **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 delivery of the Assessments and Services. ACT expressly objects to and rejects 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. Certain Assessments and Services may be subject to additional or different terms and conditions, which are set forth in separate license agreements. No waiver, consent, modification, or amendment to this Agreement shall be binding unless in writing and signed by both parties.

15. **Notices.** Notices under this Agreement shall be deemed to be adequate and sufficient notice if given in writing and delivered via (a) registered or certified mail, postage prepaid, in which case notice shall be deemed to have been received three business days following deposit to U.S. mail; or (b) a nationally recognized overnight air courier, next day delivery, prepaid, in which case such notice shall be deemed to have been received one business day following delivery to such nationally recognized overnight air courier. All notices shall be sent to ACT at the following address: ACT, Inc. 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243-0168, Attention: CFO, Fax: 319-341-2760. All notices shall be sent to Customer at the address set forth in Section A of this Agreement.

16. **Authorization.** Each party represents (a) that it has the requisite authority to enter into this Agreement; and (b) that the individual(s) signing this Agreement on behalf of such party is(are) authorized to do so.

ADDITIONAL TERMS AND CONDITIONS

Mississippi Standard Terms and Conditions:

Certain terms and conditions are required for contracting. Therefore, the offeror shall assure agreement and compliance with the following standard terms and conditions.

Priority Clause. The contract consists of this agreement and ACT's State Program License and Services Agreement and its Terms and Conditions.

Termination in Event of Employment. Contract will be terminated immediately if Contractor becomes an employee of Customer and is only subject to payment of services prior to effective date of employment for Customer.

Memorandum of Understanding. The execution of a Memorandum of Understanding (MOU) will be required prior to the release of any student level data by the Mississippi Department of Education. Failure to adhere to the provisions of the MOU may result in termination of the contract and/or may result in denial of subsequent renewal requests.

Ethics. In compliance with State law, Contractor who is employed by a public entity agrees to make arrangements with his/her employer to take the appropriate leave (annual, professional, compensatory, etc.) during the period of service covered by this contract. Contractor also agrees not to utilize resources of the public employer to perform the services pursuant to this contract. Prior to execution of this contract, Contractor must submit to Customer a Certification (on a Customer form) executed from his/her employer whereby the public employer acknowledges that it is aware of its employee working for Customer.

Access to Records. Contractor agrees that Customer, or any of its duly authorized representatives, at any reasonable time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Contractor related to Contractor's charges and performance under this agreement. Such records shall be kept by Contractor for a period of three (3) years after final payment under this agreement, unless Customer authorizes their earlier disposition. Contractor agrees to refund to Customer any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

Authority to Contract. Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

Compliance With Laws. Contractor understands that the MDE is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This Section shall survive the termination or completion of this agreement. The parties agree that this Section is subject to and superseded by Mississippi Code Ann. Section 25-61-1, *et seq.*

Exceptions to Confidential Information. Contractor and Customer shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by non-parties of ordinary skill in the business of the customer; (c) is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on confidential information; (e) is or later becomes part of the public domain or may be lawfully obtained by Customer or Contractor from any non-party; or (f) is disclosed with the Disclosing Party's prior written consent.

Modification or Renegotiation. This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of any applicable laws or regulations make changes in this agreement necessary.

Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 E Capitol Street, Suite 800, Jackson, MS, 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.

Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

Availability of Funds. It is expressly understood and agreed that the obligation of Customer to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to Customer, Customer shall have the right upon thirty (30) days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to Customer of any kind whatsoever, except insofar as Customer shall be obligated to pay Contractor for all Products delivered and Services already performed, but for which Customer has not yet paid. The effective date of termination shall be as specified in the notice of termination.

E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act Mississippi Code Annotated §§ 71-11-1 and 71-113, and will register and participate in the status verification system for all newly hired employees.. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (2) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- (3) both. In the event of such cancellations/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305 (1972, as amended).

Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," codified as section 25-61-1 et seq., Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Section 27-104-151 et seq. (1972, as amended), Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Prior to posting the contract to the website, any information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

Equal Opportunity Employer. Contractor shall be an equal opportunity employer and shall perform to all affirmative action and other applicable requirements; accordingly, contractor shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the ground of race, color, religion, national origin, disability, or sex in any manner prohibited by law.

The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)(ii) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and Customer shall abide by the requirements of 41 C.F.R. § 60-300.5(a), if applicable. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and Customer shall abide by the requirements of 41 C.F.R. § 60-741.5(a), if applicable. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

Board Approval. It is understood that this contract is void and no payment shall be made in the event that the Mississippi Board of Education and/or the Personal Service Contract Review Board does not approve this contract.

Personnel. Contractor agrees that, at all times, the employees of contractor furnishing or performing any of the services specified under this agreement shall do so in a proper, workmanlike, and dignified manner.

Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect the members of the Mississippi Board of Education and the members of its Commissions, the MDE, and its , officers, employees, agents and representatives, and the State of Mississippi from and against all third party claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, reasonable investigative fees and expenses, and reasonable attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement.

The State is entitled to participate in such defense. If the State considers selecting outside counsel to assist in the defense of any claim, the State will consult with the Contractor and its insurer regarding the selection of such counsel. The decision regarding the selection of outside counsel will remain within the sole discretion of the State, however, the State will give due consideration to any concerns expressed or objections made by the Contractor or its insurer.

In situations where Contractor's insurer is providing coverage for the State's defense under this indemnification clause, the Contractor's insurer will control the defense and settlement of any claim, suit, etc. subject to approval by the State (such approval not to be unreasonably withheld). In the event the Contractor defends any claim, suit, etc., the Contractor shall use legal counsel acceptable to the State (which acceptance shall not be unreasonably withheld). If such coverage is not applicable, the State will control decisions pertaining to management and settlement of such litigation subject to approval by the Contractor (such approval not to be unreasonably withheld). The Contractor shall be solely responsible for all costs and/or expenses associated with such defense.

Debarment and Suspension. Contractor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud of a criminal offence in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

Compensation and Financial Reports. This contract is based upon a not-to-exceed amount of \$1,400,000.00. Payment of the fixed amount of the contract shall be made upon completion of all work specified in the contract and upon receipt of an invoice on a schedule negotiated by the parties, following the completion of the work.

Budget Narrative. The Mississippi Department of Education will pay an amount not to exceed \$1,400,000.00 for the purpose of the delivery of assessments and services.

Stop Work Order

- (1) Order to stop work. The Procurement Officer of MDE may by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the

order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer of MDE shall either:

- (a) cancel the stop work order; or
 - (b) terminate the work covered by such order as provided in the Termination Clause of this contract.
- (2) Cancellation or Expiration of the Order. If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
- (a) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer of MDE decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) Termination of Stopped Work. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

Exhibit 1
Description of Services
Mississippi Department of Education
The ACT®
2015-2016 School Year

Scope Summary

This Description of Services (DOS) describes the testing services ACT will provide for the 2015-16 ACT State and District Testing Program in delivering the following assessments:

1. The ACT®, paper
2. The ACT taken online

Assessment Description

Test	Grade	Description	Assessments	Number of Questions	Approx Time
The ACT – paper or online version	Per state; (11 th graders)	The ACT® is a curriculum- and standards-based educational and career planning tool that assesses students’ academic readiness for college. Includes an Interest Inventory that provides valuable information for career and educational planning, and a Student Profile Section that provides a comprehensive profile of a examinee’s work in high school and his/her future plans.	English Mathematics Reading Science	75 items 60 items 40 items 40 items	45 min. 60 min. 35 min. 35 min.

For instructions on administering the ACT on paper or online, Test Coordinators must refer to the Test Administration Manual and other manuals provided for each assessment.

Test Window

For the 2015-16 ACT State and District Testing Program, the test dates are outlined below. All participating schools in the state must test the entire battery of subject tests in the paper format on initial test date with the corresponding makeup test date. Schools have a window to test examinees online. Examinees must take their entire battery of tests in the online format within the same day.

Please consider that schools must allow approximately four to five hours of continual testing time for The ACT in a single test day devoted to administering the test.

Test dates include:

April		
Test	Activity	Dates
The ACT	Initial Test Date (paper)	April 19, 2016
The ACT	Makeup Test Date (paper)	May 3, 2016
The ACT	Test Window (online)	April 19 – May 3, 2016
The ACT	Accommodations Test Window (paper and online)	April 19 – May 3, 2016

Note: In order to adhere to the test form security guidelines of the ACT, ACT expects that all examinees testing the ACT accommodations' form or online testing form will test sometime during the stated window on a weekday.

Project Milestone Schedule – Key Dates for Spring 2016 Testing

The State and schools must accommodate ACT's testing schedule for the ACT State Testing Program. ACT deliverable dates are contingent on State and Schools' responsibilities being met without delay. A delay in key input files such as Organization or Examinee Pre-ID may cause risk to a successful testing experience for all sites.

Milestone/Activity	April
State indicates final decision to use State Use Question Option and/or Late Accommodations Options for the ACT for Spring testing	10/14/15
School Eligibility	
ACT sends Organizational file in ACT layout (and list of closed schools) to state	10/14/15
State provides ACT the final State Use Questions for the ACT for Spring testing	10/14/15
State sends Organizational file to ACT for the ACT (paper and online formats)	10/14/15
School sends required Establishment online profile forms.	10/14/15 – 10/28/15
Demographic Information/Pre-ID	
ACT provides Examinee Pre-ID File layout to state	10/14/15
State provides test file of Examinee Pre-ID to ACT	11/9/15
State provides production version of Pre-ID Label File to ACT	1/29/16
Training	
The ACT (paper and online Administration Training: Establishment Training Webcast	Mid October

Milestone/Activity	April
Accommodations Webcasts Available – <i>Guiding Principles for ACT-Approved Accommodations, Providing Locally Approved Accommodations on the ACT, Requesting ACT-Approved Accommodations Using TAA, Providing State-Allowed Accommodations on the ACT</i>	Mid October
The ACT: Accommodations – Q & A session Test Administration Training Webcast Available Room Supervisor/Proctor Training Webcast Available	Mid-December Early December Early February
The ACT (paper and online) Test Admin. Q & A sessions (2 per state)	To be arranged by ACT and state
Test Preparation	
Schools complete The ACT (online test) Site Readiness Checkpoint #1	10/14/15 – 11/20/15
Schools submit request for the ACT – approved Accommodations	1/22/16
Schools submit offsite testing proposal for online format	11/25/15
Schools confirm number expected to test The ACT	1/27/16 – 2/3/16
Schools complete The ACT (online test) Site Readiness Checkpoint #2	12/14/15 – 1/29/16
Schools submit offsite testing proposal for paper format	1/15/16
Schools submit an Edit for Reconsideration in TAA system	3/25/16
Schools complete the ACT (online test) Site Readiness Checkpoint #3	3/21/16 – 4/8/16
Schools submit ACT-Approved Exceptions (<i>New to school, medical, etc.</i>)	4/6/16
Schools submit online orders for makeup test materials	4/19/16 - 4/20/16
Schools submit online orders for Non-college reportable accommodations	4/8/16
Schools submit ACT-approved Accommodations for Late Special Conditions (Fee based conditions)	4/2/16 – 4/14/16

Milestone/Activity	April
Test Material Shipments	
Non-Secure Materials arrive in districts – the ACT	Week of 3/21/16
Early Secure Materials arrive in districts – the ACT	Week of 4/4/16
Secure Materials arrive in districts (standard time and accommodations) for the ACT	Week of 4/11/16
Makeup Secure Materials arrive in school—the ACT	Week of 4/25/16
Testing	
Initial Test Date for the ACT- Paper	4/19/16
Test window for the ACT taken online	4/19/16 – 5/3/16
Initial Test Date – paper materials pickup	4/20/16 – 4/21/16
Makeup Test Date with the ACT - Paper	5/3/16
Makeup Test Date – paper materials pickup	5/4/16 – 5/5/16
Answer Document Return	
School’s deadline for Late Cutoff for ACT Receipt of Materials	5/13/16
Reporting	
Reporting provided to examinees, schools, and districts	Refer to Reporting Section
Billing	
Last invoice provided to State	6/30/16
Planning	
State indicates State Testing Window, Test Options (subjects/skills etc), Test Mode for following year (FY 17)	2/15/16

Customer Service

State Contract Oversight:

ACT will name a designated staff person who will serve as the primary operational contact and will coordinate all aspects of program delivery with the State. A program schedule will be provided, tracked and covered on status conference calls.

School Customer Service:

ACT will provide the State and District Testing toll-free number and email contact for use in preparation and administering of the ACT (paper and online) assessments.

- Monday – Friday from 7:00 a.m. to 5:00 p.m. Central Time (except ACT holidays)
- Test dates and Windows –
 - General and Technical Questions: 6:00 a.m. to 5:30 p.m. Central Time.

- Accommodations: 7:00 a.m. to 5:00 p.m. Central Time, during the two week accommodations window.

Communications

ACT relies on the State to communicate the State's own policy regarding participation in this testing program to the participating locations or schools.

ACT will communicate directly with school/designated testing staff on upcoming activities and deadlines related to the assessments. It is imperative that designated Test Coordinators assure receipt and follow instructions as communicated via email. ACT can make every effort to provide the customer with a preview of planned communications to schools/districts.

ACT will provide a State Testing Webpage specifically for the contracted State client to assist district and school coordinators to access administration training and manuals applicable for specified testing experience.

Training Available

Training for ACT (Paper and Online)

The State and its schools must remain in strict compliance with ACT administration policies and procedures that are required to ensure a standardized testing environment and test security for all ACT assessments described in this DOS. Therefore, ACT will provide test administration manuals as well as online training opportunities for test preparation and test administration via webcasts and Q&A sessions. Training webcasts (except Q&A sessions) are generally recorded and made available online for further reference. ACT will inform the designated Testing Coordinator with information on training sessions available and Test Coordinators must inform other key personnel. Training documents are considered proprietary material and must not be forwarded or shared publicly without permission.

The following types of training are made available:

- Test preparation and Administration modules made available online (for paper and online testing) for Standard and Special Testing. Audiences may include State personnel, District and School Test Coordinators, Room Supervisors and Proctors as identified in communications and manuals.
- For The ACT online test, there is additional training for Technical Coordinators (Proctor training is not applicable).
- Question and Answer live webcast sessions for Test Coordinators and Proctors (by State)
- Training plan to be agreed upon.

Product Support Materials

ACT offers support materials for counselors and educators to make the best use of the ACT assessment suite. Technical manuals, information briefs, research reports, as well as test preparation tools are made available online. There are additional professional development opportunities made available for free and for purchase for districts and schools.

Site Establishment and Preparation

- Date File Exchange Secure Site: Secure site will be provided by ACT for secure exchange of data files and other information such as organization site unit and examinee data files.
- Organization File: The State will define participating testing sites/schools and provide the list and contact information to ACT in ACT's designated file format for organization units. All

sites/schools (including alternative schools) must have active ACT codes prior to being established as test sites. This is in addition to the state-assigned school code.

- **Establishment Process:** ACT will then facilitate the school Establishment process to confirm the schools' intention to participate, confirm contact information, and collect which mode of testing (paper or online) the school intends to utilize. The School will then be set up in the respective online testing platforms for the ACT.

It is mandatory that all schools that will administer ACT assessments become officially "established" as an ACT test site and must agree to remain in strict compliance with ACT administration policies, procedures and timelines that are required to ensure a standardized testing environment and test security for all ACT assessments described in this DOS.

- **Contacts:** The designated Test Coordinator (TC) must fulfill duties necessary to ensure a successful and standardized testing experience. If the school is administering the online format, a Technical Coordinator must be appointed. Appointed testing staff must meet all of ACT's guidelines for serving in the appointed role. All test staff must participate in Test Administrator trainings. The State will assist ACT with confirming designated testing staff at all participating locations as needed.
- **Testing counts:** The Test Coordinator must be prepared to provide preliminary and final examinee enrollment counts for initial, accommodated, and makeup testing for paper and online testing.
- **Technical Readiness:** For the ACT in online format, ACT has a Technical Site Readiness process. School must comply to requirements in specified Checkpoints in order to assure proper readiness of systems and software for a successful test experience. The Technical Coordinator will be responsible to support the technical readiness.

Examinee Demographic - Pre-ID File

This Pre-ID file is used to identify examinees who are eligible to test within the state at participating schools. In turn, ACT will use the file to produce individual barcode labels. The State shall provide a production version of a Pre-ID file in the ACT-prescribed format containing records for all examinees taking the test no later than the date specified in the milestone dates section.

Examinees without barcode labels must have their state-assigned examinee ID number grid on the answer document. In all cases, examinees must grid demographic information on the answer document.

ACT will upload examinee demographic data one time into the online testing platform to enable school test session creation for the ACT only.

State Use Question(s) for The ACT (Optional Paper Only)

The State may choose to use up to 13 State Use Questions for paper mode of the ACT. The ACT reserves Questions 2 and 10 response fields for specific state uses (must be the same questions for entire State). For paper testing, generally examinees or Testing Coordinators could respond to the State Use Questions. All questions must fit the response formats on the answer document (e.g., single item response; mark all that applies may not be used). ACT does not edit responses; they are passed through onto the state electronic file. These item spaces are typically used for additional questions to examinees.

No later than May 31 of the preceding year, the State must inform ACT of their decision to use the State Use Section. The State must indicate the questions and item response options.

ACT Paper Test Materials

Non-secure paper materials

Non-secure materials for the standard administration will be shipped to the Test Coordinator according to the Milestone Schedule. The following are the list of materials included in the shipment.

The ACT	Notes	Freight
The ACT State Testing Answer Documents	Used for all examinees to be tested. One document for the ACT. Answer documents contain all subjects. ACT will calculate and provide an overage based on the school's enrollment numbers.	ACT pays outbound / inbound shipping by standard delivery (FedEx) of materials orders and returns.
Administration Manual for State and District Testing The ACT – Standard Testing	ACT will calculate based on the school's enrollment numbers	
Administration Manual for State and District Testing The ACT – Special Testing	ACT will calculate based on the school's enrollment numbers.	
<i>Taking the ACT for State Testing</i>	Used for all examinees during the pre-test session.	
Barcode Labels for the ACT/ACT	Printed from data provided in Pre-ID file. Barcode labels for the ACT are yellow.	
Administration Manual for State and District Testing the ACT taken Online	ACT will calculate based on the school's enrollment numbers. There are separate manuals for the ACT taken online.	
Pre-Test Instructions for The ACT Online Administration	ACT will calculate based on the school's enrollment numbers.	
Scratch Paper for The ACT Online Administration	ACT will calculate based on the school's enrollment numbers.	

Secure Materials Shipments

There are three secure material shipments made according to the Milestone Schedule.

Name/Type	Sent To	Other	Freight
Secure test booklets for the standard time Initial Test Date The ACT	TC	Includes all required administration forms and instructions for returning materials at the conclusion of testing. ACT will calculate and provide an overage based on the school's enrollment numbers.	ACT pays outbound / inbound shipping by standard delivery (FedEx) of
Secure test booklets for the Makeup Test Date The ACT	TC	Orders for makeup test materials are based on school's orders for these materials submitted to ACT <u>by close of business</u> the day following initial testing. Late makeup orders will not be filled.	

Name/Type	Sent To	Other	Freight
Secure materials for accommodated testing The ACT	TC	Includes as appropriate, individually packaged accommodations materials for each ACT-approved examinee (e.g., Braille, large print, audio DVDs, and reader’s script) including test books, instructions, supervisor manuals, roster, and necessary instructions. Includes all required administration forms and instructions for returning materials at the conclusion of testing.	materials orders and returns.

NOTE: Test booklets are serialized and tracked by school, and therefore, cannot be exchanged between schools.

Test Accommodations for the ACT

ACT is committed to ensuring that official ACT scores reported to colleges and other entities from State and District testing are comparable to scores earned through other forms of ACT testing involving the application of ACT’s test accommodations policies. Therefore, ACT supports the following two models of accommodations on the ACT, when it is administered as part of statewide assessment:

ACT-Approved Accommodations

These approved accommodations result in ACT scores that are fully reportable to colleges, scholarship agencies, and other entities *in addition to* being used for state and district testing purposes. Only examinees with professionally diagnosed and documented disabilities and who receive accommodations in school should apply for ACT-approved accommodations. Examples of accommodations that may be requested include extended time, alternate test formats, stop-the-clock breaks, and authorization to test over multiple days. Requests will be reviewed by ACT staff, and if appropriate, by other expert disability consultants, to ensure they meet ACT’s established eligibility criteria and include the same supporting documentation required for approving all other ACT accommodations requests.

ACT Review of Requests for Accommodations on the ACT

The school’s appointed Test Coordinator will coordinate submitting individual requests for test accommodations to ACT via the online Test Accessibility and Accommodations System (TAA). ACT will review requests for ACT-approved accommodations by applying the Americans with Disabilities Act (ADA) standards. Approval is contingent on submission of all required documentation by the stipulated deadline and review by ACT.

It is possible for ACT to approve an accommodation for one examinee, while the same accommodation may be denied for a different examinee. ACT has sole authority to decide whether an application for ACT-approved accommodations will be approved or denied. The School/District should refer all inquiries regarding ACT’s accommodations decisions received from schools or parents to ACT for response. ACT-approved accommodations are specific to the ACT.

Non-College Reportable Accommodations (formerly State-Allowed Accommodations)

Examinees who do not meet ACT-approved accommodations eligibility requirements (e.g., English language learners with no disabilities) or whose requested accommodations are denied by ACT, may test under standard conditions or the school can order ACT non-college reportable accommodations materials.

Schools can order ACT non-college reportable accommodations in paper format and do so without ACT review or approval. Therefore, these accommodations result in scores used only for state testing purposes. The results earned are not college reportable. The school's appointed Test Coordinator will submit one group request for ACT non-college reportable accommodation materials to ACT.

ACT College Reportable Score - Late Accommodations Request Timelines (Optional)

The State can include a Late Accommodation Request service for an additional fee. ACT can process ACT-approved accommodations requests after the established deadlines for certain special situations for an additional fee (per examinee).

The special situations which might be considered are:

- late transfers between schools
- new examinees who arrive after the deadline to submit requests
- late onset of medical conditions
- late identifications of examinees who have disabilities

The special situations service is not available for applications or situations that could have been met under the normal deadlines. It is only for situations that are beyond the control of the schools, and each case must meet specific criteria for consideration.

If the State wishes to participate in this service, ACT must receive written notification by May 31 of the year prior to spring testing.

Ordering Paper Materials

The School Test Coordinator must ensure eligible examinees participate in the available weekday test administrations. ACT will coordinate directly with school Test Coordinators (TC) to facilitate the test materials ordering process.

The TC will submit individual requests online for ACT-approved and non-college reportable accommodations test materials. For the ACT-approved accommodations, the request will follow the strict approval process as designated by ACT's policy for consistent national testing.

Shipments and Return of Paper Materials

According to the orders received, ACT will apply applicable overages and distribute test materials, barcode labels (if applicable), answer documents, and supporting program materials to schools' sites. ACT will provide each school site with pre-paid shipping labels for completed answer documents and secure test materials for the ACT. Upon completion of testing, school staff must follow instructions to package, ship, and return materials to ACT.

The ACT materials must be packaged in compliance with instructions provided by ACT. The school Test Coordinator will then ensure that completed answer documents arrive at ACT by the deadline for standard answer document processing. Please note that answer documents that do not arrive at ACT by the deadline stated will not be scored.

ACT will scan, score, and report on the examinee answer documents received within the published deadlines. Secure test materials will be received for scanning and tracking of missing materials as appropriate per ACT policy.

Test Administration

Schools are required to conduct ACT State and District Testing, including onsite maintenance of the ACT testing materials, in compliance with ACT’s test administration policies and procedures as documented in this Agreement and the Administration Manuals as well as training materials.

At ACT’s discretion, unannounced observers from ACT may visit testing sites on the designated test dates. Any non-ACT observers (apart from designated principals and test coordinator staff) must be pre-approved by ACT Program Management to assure test security protocols are followed.

Pre-Test Session:

Schools must complete supervised in-school pre-test sessions prior to the Initial Test Date. These are typically completed in 45 minutes for the ACT in the homeroom or study hall and must be completed in the same mode (paper or online) as the test will be administered for that examinee.

Schools must lead the examinee through a supervised pre-test session prior to the test date for the ACT. During these sessions, examinees will complete their basic identifying information, respond to non-cognitive questions including, for The ACT, the Interest Inventory and Student Profile Section, and indicate their college choices.

Reporting

ACT will distribute examinee reports and aggregate score data as specified.

The ACT

ACT reporting for the ACT will include a set of standard reports that are distributed at the examinee and high school levels. The standard turn times only apply to batches of answer documents returned to ACT according to the procedures outlined in the administration manual. Batches requiring additional ACT investigation may not ship within the timeframes below. The following is a list of reports, distribution and delivery information.

THE ACT STANDARD REPORTS			
Report	Description	Distribution	Delivery By Date
Student Shipments			
ACT Student Report	Printed paper report containing college reportable scores with <i>Using Your ACT Results</i> booklet.	One (1) paper copy mailed to the examinees at the address provided in non-cognitive pre-test session	3-8 weeks following receipt of examinee test responses
Scores Online – Student Accounts			
ACT Student Online Scores	Web page containing college reportable scores.	Examinee logs on to www.actstudent.org to access a variety of services through his/her ACT web account. If an examinee needs to create a new account, the examinee must enter the ACT ID from the printed score report to view the state scores.	Scores will be available online about one week after the examinee receives the printed score report in the mail.

THE ACT STANDARD REPORTS			
Report	Description	Distribution	Delivery By Date
School Shipment			
ACT High School Check List Report	List of examinees for whom paper reports and score labels are included in the shipment of college reportable score reports.	One (1) paper copy mailed to Director of Counseling, reflecting the order in which a group of reports is shipped, alphabetically within grade in school. Checklists are not cumulative.	3-8 weeks following receipt of examinee test responses from each school.
ACT High School Report (student level score data)	Printed paper report containing college reportable scores.	One (1) paper copy mailed to the Director of Counseling in batches until all reports are delivered.	3-8 weeks following receipt of examinee test responses from each school.
ACT Student Score Labels	Printed label for college reportable scores.	Two (2) printed labels per examinee sent to the Director of Counseling; used to place college reportable test results on an examinee's high school transcript/permanent record.	3-8 weeks following receipt of examinee test responses from each school.
College Shipments			
ACT Student College Report(s)	College reportable scores are reported to the colleges selected by the examinees' (up to 4).	Colleges determine frequency and format of receiving scores (e.g., paper, CD, internet).	3-8 weeks following receipt of examinee test responses from each school.

THE ACT ADDITIONAL SCHOOL LEVEL DELIVERABLES (State Contracts)			
Deliverable	Description	Distribution	Delivery Date
ACT Profile Report – High School	An aggregate report that provides trends and averages of the High School based on the state-tested grade 11 examinee population NOTE: This includes records of examinees who tested with ACT non-college reportable accommodations.	One (1) paper copy mailed to the Test Coordinator.	No later than July 29, 2016 <i>(shipped separately from other school reports and at the same time to all schools in State)</i>
ACT Non-College	Printed letters containing scores achieved using	Two (2) printed copies per examinee mailed to the High	No later than July 29, 2016.

THE ACT ADDITIONAL SCHOOL LEVEL DELIVERABLES (State Contracts)			
Deliverable	Description	Distribution	Delivery Date
Reportable Score Notification Letter (if applicable)	ACT non-college reportable score accommodations. NOTE: These are not college reportable scores.	School Principal. One copy is provided for distribution to the examinee and one copy for the High School's records.	<i>(shipped with ACT Profile Reports)</i>

THE ACT ADDITIONAL DISTRICT LEVEL DELIVERABLES (State Contracts)			
Deliverable	Description	Distribution	Delivery Date
ACT Profile Report – District	An aggregate report that provides trends and averages of the district based on the district-tested grade 11 examinee population. NOTE: This includes examinees who tested with ACT non-college reportable score accommodations.	One (1) PDF report on an encrypted CD mailed to the District Assessment Coordinator.	No later than July 29, 2016 <i>(shipped after all schools have been processed)</i>
ACT Student Level Data File – District	A Student Data File that includes all college-reportable scores for all examinees for whom ACT processed answer responses. NOTE: This does not include examinees who tested with ACT non-college reportable accommodations.	One (1) file on an encrypted CD mailed to the District Assessment Coordinator. <i>(Placed on same CD as District Profile Reports).</i>	No later than July 29, 2016. <i>(shipped after all schools have been processed)</i>

THE ACT STATE LEVEL DELIVERABLES			
Deliverable	Description	Distribution	Delivery Date
ACT Student Level Data File – State	A Student Data File that includes all scores for all examinees for whom ACT processed test responses and includes examinees tested with ACT non-college	One (1) data file delivered electronically to the state over a secure file transfer site.	No later than June 24, 2016 <i>(after all schools have been processed)</i>

THE ACT STATE LEVEL DELIVERABLES			
Deliverable	Description	Distribution	Delivery Date
	reportable score accommodations.		
ACT Profile Report – State	An aggregate report that provides trends and averages of the state based on the state tested grade 11 examinee population. NOTE: This includes examinees who tested with ACT non-college reportable accommodations.	One (1) PDF file delivered electronically to the state over a secure file transfer site.	No later than July 29, 2016. <i>(provided after all schools have been processed)</i>

Reporting specification for the ACT

- If a school does not have an ACT reportable high school code, or the high school code is gridded incorrectly, the examinee will receive his or her score report, but ACT will not report the examinee score to the school and the examinee results will not be included in the ACT Profile Report.
- Aggregate reports are only generated if one or more examinees were tested.
- If an examinee from an alternative school tests at the main school, the alternative high school code must be manually gridded on the examinee answer document in order for the examinee score to be reported to the alternative school. If the high school code field is left blank on the alternative examinee’s answer document, ACT will report the examinee’s score to the main school. To ensure that the alternative examinee scores are reported to the alternative school only (and not the main school), all alternative schools should have an ACT high school code and the code must be manually gridded on the examinee answer document.
- Only schools affiliated with a district in the Organization File will be reflected in the district aggregate reports.
- Answer documents subject to ACT’s Late Processing Guidelines will not be scored. Therefore, these records will not be included within examinee-level or aggregate reporting.

Billing Information

It is expected that the State pay ACT invoices according to an agreed upon billing schedule. Billing is determined by the number of answer documents processed or online assessments launched for the ACT. If an examinee starts any one of the sub-tests, then the entire battery is charged.

**EXHIBIT 2
MISSISSIPPI DEPARTMENT OF EDUCATION
FEE SCHEDULE
2015-2016**

Description	Grade	Per Unit Cost 2015-2016	Estimated Enrollment 2015- 2016	Total Estimated Cost 2015-2016
I. Student Test Service				
ACT®	11 th Grade	\$35.50	36,000	\$1,278,000.00
Total Cost of Student Tests				\$1,278,000.00
Total Assessment Costs				\$1,278,000.00
II. Additional Services				
The ACT Training*		N/A	3 In-person workshops**	\$2,300.00
Total Additional Services Costs				TBD
III. Program Annual Management Fees				
Program Management Fee				\$75,000.00
IV. Projected Annual Program Cost				\$1,355,300.00

*ACT, Inc. will conduct three in-person trainings in February in conjunction with the MDE District Test Coordinator workshops.

**ACT is only charging for the travel costs associated with two ACT staff persons to attend.