

All references in this Agreement to "County" shall include and be fully applicable to the Monterey County Workforce Development Board.

ACT Career Curriculum, hereinafter referred to as "CONTRACTOR" agrees to provide the County of Monterey, through its Workforce Development Board, hereinafter referred to as "COUNTY" with a one (1) year subscription for access to ACT Career Ready 101 for the purpose of skill remediation and training.

**A. Pricing and License:**

<b>ACT CAREER READY 101</b>	Item Number	# of Sites	Price per Site*	Total
ACT Career Ready 101 one (1) year main site** license	04203012FE	1	\$7,600	\$7,600
<b>ACT CAREER READY 101 SATELLITE SITES***</b>				
ACT Career Ready 101 one (1) year satellite license	04200512FE	5	\$1,265	\$6,325
Total Subscription Agreement Amount				\$13,925

\* Such amounts are due and payable on or before the date thirty days from the date of the invoice from ACT, together with any applicable state and local sales tax. For sales tax and payment information, refer to <http://www.act.org/orderinfo>.

\*\* A main site is an administrative site that is an organizational parent site or a standalone site using the Curriculum.

\*\*\* A satellite site is a minor site, such as a branch office, a community college secondary or branch campus, or other geographically separated site that reports organizationally to the parent site.

For course descriptions, technical requirements and other information go to [www.keytrain.com](http://www.keytrain.com).

Bill to Organization Name:		Monterey County Workforce Development Board		
Attention:	Joyce Aldrich	If Known, fill in ACT Customer Number	n/a	
Address:	PO Box 2448			
City:	Salinas	State:	CA	Zip: 9390593902-2448
Email:	aldrichj@co.monterey.ca.us	Phone:	(831) 759-6644	

**B. Terms and Conditions:**

This Agreement as defined in, and hereby made subject to, the Terms and Conditions attached hereto and incorporated herein by this reference.

**C. Site Information:**

The following includes the Authorized Locations for the Main Site and Satellite Sites. The site address information is the same as the bill to information above.

**ACT Career Ready 101 one (1) year main site license at:**

<b>Legal Name of MAIN Site:</b>	<b>Monterey County Workforce Development Board</b>
Site Address:	America's Job Center of California, 730 La Guardia Street
Site City, State, Zip:	Salinas, CA 93905
Primary Contact Name:	Joyce Aldrich
Primary Contact Phone Number:	(831) 759-6644
Primary Contact Email Address:	aldrichj@co.monterey.ca.us

**ACT Career Ready 101 one (1) year satellite licenses at the following six (6) locations:**

<b>Legal Name of Satellite Site #1:</b>	<b>Monterey County Workforce Development Board</b>
Site Address:	America's Job Center of California, 730 La Guardia Street
Site City, State, Zip:	Salinas, CA 93905
Primary Contact Name:	Joyce Aldrich
Primary Contact Phone Number:	(831) 759-6644
Primary Contact Email Address:	aldrichj@co.monterey.ca.us

<b>Legal Name of Satellite Site #2:</b>	<b>Monterey County Workforce Development Board</b>
Site Address:	MBEST, 3180 Imjin Road #102
Site City, State, Zip:	Marina, CA 93933
Primary Contact Name:	Joyce Aldrich
Primary Contact Phone Number:	(831) 759-6644
Primary Contact Email Address:	aldrichj@co.monterey.ca.us

<b>Legal Name of Satellite Site #3:</b>	<b>Monterey County Workforce Development Board</b>
Site Address:	Greenfield City Hall, 599 El Camino Real
Site City, State, Zip:	Greenfield, CA 93927
Primary Contact Name:	Joyce Aldrich
Primary Contact Phone Number:	(831) 759-6644
Primary Contact Email Address:	aldrichj@co.monterey.ca.us

<b>Legal Name of Satellite Site #4:</b>	<b>San Luis Obispo County Workforce Development Board</b>
Site Address:	America's Job Center of California, 880 Industrial Way
Site City, State, Zip:	San Luis Obispo, CA 93401
Primary Contact Name:	Tammy Aguilera
Primary Contact Phone Number:	(805) 781-1838
Primary Contact Email Address:	taquilera@co.slo.ca.us

<b>Legal Name of Satellite Site #4:</b>	<b>Workforce Development Board Santa Cruz County</b>
Site Address:	Watsonville Career Center, 18 W. Beach Street
Site City, State, Zip:	Watsonville, CA 95076
Primary Contact Name:	Andy Stone
Primary Contact Phone Number:	(831) 763-8824
Primary Contact Email Address:	Andrew.Stone@santacruzcounty.us

**Terms and Conditions – ACT Career Curriculum Products**

Customer desires to purchase and ACT, Inc. ("ACT") desires to provide, a license to the products and services ("ACT Career Curriculum Products") identified as Licensed Products on the ACT Career Curriculum Order Form to which these Terms and Conditions are attached. In consideration of the foregoing, ACT and the Customer, intending to be legally bound, agree that the following Terms and Conditions govern ACT's past, current and contemplated delivery of Licensed Products:

1. Definitions. The following terms used herein have the meanings set forth on the ACT Career Curriculum Order Form and in these Terms and Conditions.

**“Agreement”** means these Terms and Conditions and the ACT Career Curriculum 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. This Agreement supersedes any prior agreement, oral or written, between the parties with respect to the Licensed Products.

**“Licensed Product(s)”** means the ACT Career Curriculum Products identified as being licensed on the ACT Career Curriculum Order Form and any related manuals and materials.

**“Authorized Users”** means Customer-authorized students, employees or similar constituents of the Customer who are (a) attending, (b) employed at, or (c) physically utilizing a Licensed Product at, in each case in person, an Authorized Location.

**“Authorized Locations”** means those specific school, campus, Customer facilities or other identified training or administrative sites or locations identified as such on the ACT Career Curriculum Order Form.

2. **Term.** This agreement shall become effective on the date the customer signs the agreement. All licenses terminate at the calendar-quarter end (March 31, June 30, September 30, December 31) that follows the anniversary of the Authorized Customer Signature date. The length of the term is set forth on Page 1 of the ACT Career Curriculum Order Form. By way of example, a two-year license signed on April 25, 2014 will expire on June 30, 2016.

3. **Grant and Scope of License.** Subject to the terms and conditions of this Agreement, ACT hereby grants to the Customer a non-exclusive and non-transferable right during the Term of this Agreement to use the Licensed Products for the purpose of skill remediation for, and training of, the Authorized Users at the Authorized Locations (provided that, Authorized Users also may be allowed online access to Licensed Products from locations other than Authorized Locations). 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 WorkKeys® assessments, certifications such as the National Career Readiness Certificate, or Customer's own records used for any remuneration of Authorized Users. Each Licensed Product made available under this Agreement is licensed, not sold.

4. **Restrictions.** Except as expressly permitted herein, Customer may not (a) use the Licensed Product for any other purpose, (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 third party to use any Licensed Product, (d) copy, or allow anyone else to copy, in whole or in part, any Licensed Product, (e) modify, reverse engineer, decompile, or disassemble any Licensed Product, or (f) store any Licensed Product at any location other than the Authorized Location(s) (provided that, Authorized Users may be allowed online access to Licensed Products from locations other than Authorized Locations).

5. **Customer's Responsibilities.** Customer shall (a) appoint an administrator who shall have the sole authority to distribute passwords, and to set up additional accounts, (b) assure proper machine configuration, a compatible Internet browser, and Internet access, in each case, as applicable, (c) use each Licensed Product in conformance with its related manuals as published and updated from time to time, (d) restrict access to the Licensed Products to those individuals who have a “need to know” for the authorized purpose, (e) control the use of the Licensed Products, and assure that only Authorized Users are provided access, (f) comply with all other terms and conditions of this Agreement, including, but not limited to, paying, when due, all fees owed ACT, and (g) assume full responsibility for the selection of the Licensed Products to achieve any Customer purpose.

6. **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 data usage policies, as amended from time to time. With respect to CareerReady101, ACT is not currently disclosing personally identifying information to affiliates.

7. **Limitation on Damages.** ACT's liability for damages arising out of or in connection with this Agreement shall not exceed the amount Customer has paid ACT under this Agreement. In no event shall ACT be liable to Customer for special, indirect, incidental, punitive, exemplary, or consequential damages.

8. **Warranty and Limitations.** ACT WARRANTS THAT THE LICENSED PRODUCTS HAVE BEEN DEVELOPED IN ACCORDANCE WITH INDUSTRY STANDARDS. EXCEPT AS SET FORTH IN THIS SECTION, ACT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A

**COURSE OF DEALING OR USE OF TRADE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

9. Use After Termination. Upon termination of this Agreement for any reason, Customer shall immediately discontinue use of the Licensed Products and shall immediately destroy, or if requested by ACT, return, all copies of Licensed Products in its possession. Customer shall certify in writing its compliance with these requirements.

10. 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.

11. Updates and Modifications. ACT Career Ready 101 may be modified or updated from time to time at ACT's sole discretion. ACT shall make such modifications and updates available to County 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) to the extent that modifications or updates require revised computer configuration, Customer shall provide such hardware or software that meets the revised computer configuration requirements for the revised Licensed Products within the time frame set forth in a written (including electronic) notice from ACT detailing the timeframe of such modification or update and the revised computer configuration requirements.

12. Ownership. All title and copyrights in and to all Licensed Products (including but not limited to any images, photographs, animations, video, audio, music, text and "applets," incorporated into the Licensed Products), the accompanying printed materials, and any copies of the Licensed Products, are owned by ACT or its suppliers. All rights not specifically granted under this Agreement are reserved by ACT. ACT owns the trademarks "KeyTrain" and "Career Ready 101." Except as specifically granted in this Agreement, Customer does not acquire any right, title, or interest in or to any Licensed Product, any rights in patents and copyrights applicable thereto, or any right, title or interest in or to the trademarks "KeyTrain" and "Career Ready 101." Customer shall not use the trademarks KeyTrain or Career Ready101 without the prior written consent of ACT.

13. 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 herein

14. Computer Requirements. Customer acknowledges and agrees that ACT may establish computer configuration requirements 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 computer requirements. ACT may revise these configuration requirements from time to time in its sole discretion.

15. Use of Third Parties. In the event that one or more third parties is listed among the Authorized Location(s) (each a "Third Party"), the Customer enters into this Agreement on its own behalf and on behalf of each such Third Party. The Customer represents and warrants that it has the authority to bind each such Third Party to this Agreement and that each such Third Party is hereby bound by the terms and conditions of this Agreement as if it were the Customer. The Customer agrees that it shall be jointly and severally liable for all obligations of each and every Third Party.

16. 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 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, 4, 5, 6, 7, 8, 11, 12, 14 and 15 of these Terms and Conditions shall survive.

This ACT Career Curriculum License Order Form is part of the Agreement as defined in, and hereby made subject to the Terms and Conditions attached hereto and incorporated herein by this reference. And the Agreement is hereby agreed to by the County as of the date below.

Monterey County Board of Supervisors  
Chief Elected Official  
Monterey County Workforce Development Area

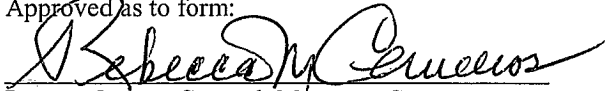
\_\_\_\_\_  
Chair, Monterey County Board of Supervisors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joyce Aldrich, Executive Director  
Monterey County Workforce Development Board

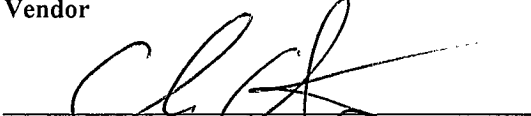
\_\_\_\_\_  
Date

Approved as to form:


  
\_\_\_\_\_  
Deputy County Counsel, Monterey County

11/15/2016  
Date

Vendor

  
\_\_\_\_\_  
Charlie Astorino, Vice President of Sales  
ACT, Inc.

10/28/16  
Date

  
\_\_\_\_\_  
Jaime Moquin, Senior Director, Sales Operations Client Relations  
ACT, Inc.

10/28/16  
Date

Reviewed as to fiscal provisions

  
\_\_\_\_\_  
Auditor-Controller  
County of Monterey 11/17/16