

## CONFIDENTIALITY AND EXCHANGE OF DATA AGREEMENT

THIS CONFIDENTIALITY AND EXCHANGE OF DATA AGREEMENT (this "Agreement") is entered into on the 1<sup>st</sup> day of December 2010, among ACT, Inc., an Iowa not-for-profit corporation, with a principal place of business and post office address at 500 ACT Drive, PO Box 168, Iowa City, Iowa 52243-0168 ("ACT"), and the Arkansas Department of Education ("ADE"), with a principal place of business and post office address at #4 Capitol Mall, Little Rock, Arkansas 72201, and the Arkansas Department of Higher Education ("ADHE"), with a principal place of business and post office address at 114 East Capitol, Little Rock, Arkansas 72201.

### BACKGROUND

ACT continues to amass a confidential database of ACT examinee records containing cognitive and non-cognitive information.

ADHE has an extensive database on students attending Arkansas 2 and 4 year public institutions, which includes students' college major, grade point average, and grades in specific entry-level courses. ADE maintains an electronic transcript of school coursework and other educational information on grades 7-12 students.

ACT, ADE, and ADHE desire to exchange information in their databases so as to allow each party to advance research in the fields of college access and success, as detailed in Exhibit A, "Statement of Work."

Subject to the terms and conditions set forth in this Agreement, the parties agree to exchange confidential data for the purpose of advancing their respective research goals. Prior to exchanging information, each party requires all others to sign this Confidentiality and Exchange of Data Agreement.

### AGREEMENT

For services provided and to induce the other party to disclose confidential information, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. The term "Confidential Information" shall mean any data file and the contents thereof provided by one party ("Disclosing Party") to the other ("Recipient"), which includes, but is not limited to, personally identifiable and other information on students, including name, social security number, date of birth, ACT test scores, grade point average, college major and other information. Confidential Information shall not include information independently in Recipient's possession (even if such information is the same as information supplied by Disclosing Party to Recipient).
2. The Disclosing Party agrees to disclose to Recipient certain Confidential Information for certain limited purpose(s) (the "Business Purpose"), as set forth in Exhibit A.

3. The parties shall each have responsibilities with respect to the exchange of Confidential Information. The obligations of each party are set forth herein and in the Statement of Work attached hereto as Exhibit A.
4. With respect to the Confidential Information, Recipient agrees to the following, provided, however, that the following shall not be construed to restrict the disclosure of research studies or reports that are generated from the Confidential Information that lack personally or institutionally identifiable information:
  - (a) use the Confidential Information only for the specific Business Purpose(s) set forth herein;
  - (b) restrict disclosure of the Confidential Information solely to those employees or representatives of Recipient with a "need to know" and who are also bound by confidentiality agreement protecting the Confidential Information;  
  
For purposes of this Agreement only, a "need to know" means that the employee requires the Confidential Information in order to perform his or her responsibilities in connection with the Business Purpose.
  - (c) advise those employees who gain access to Confidential Information of their obligations with respect to the Confidential Information;
  - (d) not disclose the Confidential Information to any other person or entity without the prior written consent of the Disclosing Party;
  - (e) not share copies of machine readable records or printed material of any of the Confidential Information for any reason whatsoever except with the prior written consent of the Disclosing Party. Any copies of Confidential Information will be the sole property of the Disclosing Party and will be returned to the Disclosing Party, destroyed and/or deleted from any hardware or other equipment upon the first of the following to occur: (i) completion of the use of the same for the Business Purpose(s) described herein; or (ii) at the written request of either party.
  - (f) protect the Confidential Information using the same standard of care Recipient uses to protect its own confidential and proprietary information, but in any event not less than a reasonable degree of care; and
  - (g) immediately notify the Disclosing Party in writing in the event of any unauthorized use or disclosure of the Confidential Information and assist in remedying such unauthorized use or disclosure, as requested by the Disclosing Party (which shall not limit other remedies as provided herein and by applicable law).
5. Recipient and the Disclosing Party may mutually agree to expand the Business Purpose to add additional research projects. Such agreement shall be in writing signed by both parties, and shall require such documentation as the parties may require from time to time

6. All Confidential Information provided by Disclosing Party, including all permitted copies, shall be deemed and shall remain the property of the Disclosing Party. Recipient will protect the confidentiality of students in reports prepared for review by any third party.
7. Recipient agrees that an impending or existing violation of any provision of this Agreement would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and that the Disclosing Party shall be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it. Recipient expressly agrees that it shall bear all costs and expenses, including attorneys' fees and costs, incurred by the Disclosing Party in enforcing the provisions of this Agreement.
8. Recipient will be solely and entirely responsible for its acts and the acts of its agents, employees and representatives during the performance of this Agreement.
9. Any payments made by the ADE to another party of this Agreement shall be in compliance with all applicable State of Arkansas purchasing guidelines.
10. This Agreement shall be effective as of the date first written above and shall continue until terminated by either party upon thirty (30) days prior written notice. Paragraphs 4, 5, 6, 7, 8, 11, 12, 13, 14, and 16 of this Agreement shall survive any termination of this Agreement in perpetuity, if so allowed by law.
11. This Agreement may not be assigned by either party without the prior written consent of the other. No permitted assignment shall relieve a party hereto of its obligations prior to the assignment. Any assignment in violation of this Paragraph shall be void. This Agreement shall be binding upon the parties and their respective permitted successors and assigns.
12. If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible achieves the parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.

13. Notices under this Agreement shall be duly made when in writing and will be deemed given to the other party upon delivery to the address set forth below if delivered personally (including by courier) or mailed by registered or certified mail, postage prepaid, or upon confirmation if transmitted by telex, telecopy, or other means of facsimile:

If to ACT: Chief Financial Officer  
ACT, Inc.  
500 ACT Drive  
P.O. Box 168  
Iowa City, IA 52243-0168

With a copy to: General Counsel  
ACT, Inc.  
500 ACT Drive  
P.O. Box 168  
Iowa City, IA 52243-0168

If to ADE: Mr. James Boardman  
Assistant Commissioner  
Research and Technology  
ADE Technology Center  
8221 Ranch Blvd.  
Little Rock, AR 72223

If to ADHE: Rick Jenkins  
Associate Director for Planning and Accountability  
Arkansas Department of Higher Education  
114 E. Capitol Avenue  
Little Rock, AR 72201

14. Each party represents and warrants (a) that it has the 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.
15. This Agreement and any attachments hereto represent the entire understanding between the parties with respect to the subject matter hereof and supersede all prior communications, agreements and understandings related thereto. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by the authorized representatives of both parties. No written waiver will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach. This Agreement shall be governed in all respects by the laws of the State of Arkansas without reference to its conflict or choice of law, rules or principles.

16. The exchange of data among ADE, ADHE, and ACT is a limited initiative. Results of analysis undertaken on Arkansas students as a part of this Agreement by ACT shall be identified as joint research initiatives undertaken by ADE, ADHE, and ACT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above written.

Arkansas Department of Education:

ACT, Inc.

By: James Boardman

By: Cyndie B Schmeiser

Name: James Boardman

Name: Cyndie Schmeiser

Title: Assistant Commissioner

Title: President/COO Education Division

Date: 12-1-2010

Date: November 11, 2010

Arkansas Department of Higher Education:

By: Rick Jenkins

Name: Rick Jenkins

Title: Associate Director for Planning and Accountability

Date: 12-1-2010

**Exhibit A**  
**Statement of Work**

**A. BUSINESS PURPOSE:**

ACT will use the Confidential Information to:

1. Track the college success experience of ACT-tested Arkansas public high school graduates who enrolled in the public post-secondary institutions in Arkansas, beginning with the entering class of fall 2006.
2. Expand research on the relationships between pre-college and college-level factors and academic success beyond the first year of college.
3. Expand ACT's understanding and identify the types of information that are of value to institutions as they develop strategies and procedures for working with students from a variety of educational and cultural backgrounds.

ADHE will use the Confidential Information to:

1. Track the college success of ACT-tested public high school Arkansas students who enrolled in a public college/university in Arkansas, beginning with the entering class of fall 2006.
2. Identify those pre-college experiences of Arkansas public high school students that have implications for college readiness and eventual success in college.
3. Identify and compare pre-college characteristics of Arkansas college students at local campuses with those of Arkansas college students enrolled in all of the public colleges and universities in Arkansas. Any additional elements in the study will be by mutual agreement of ADHE, ADE and ACT, Inc.
4. Compare the characteristics of ACT-tested Arkansas students who persist and graduate across all public higher education institutions in Arkansas.
5. Study the first-year college success of Arkansas ACT-tested students by high school.

ADE will use the Confidential Information to:

1. Include the ACT scores of public high school Arkansas students in the K-20 database now being developed by ADE.
2. Study the associations between courses taken and grades earned in secondary school and data collected on ACT-tested students.

**B. THE DATA FILES**

Because data from ADE, ADHE, and ACT will be combined to form the research file, careful attention will be made to insure the confidentiality of both student and institution records. This section outlines the process to ensure confidentiality. Timelines for this process are provided on p9.

For first-time entering students in fall 2006 through 2012, ADHE will provide term-by-term college outcomes to ADE for a period of six consecutive years for each student cohort. After the initial data file is created, each summer ADHE will provide to ADE updated college success information for each cohort of students, to complete six consecutive years of data for each student. The updated information will be sent to ACT each year by Arkansas ID. For example, for those students who first entered in fall 2006, ADE will provide to ACT a matched file that contains college success information for each term through summer 2012, and update these students' college outcome data the following year.

ADE will work with ADHE to annex initial and subsequent updated college outcomes data (see attached record format) to the high school transcript data being collected by ADE. ADE will access the needed data from the ADHE data files, and then create a single research file that contains the college success information, the ACT record, and the high school transcript data. Student identification will be replaced with an assigned Arkansas ID. ADE will provide a copy of the matched records by Arkansas ID to ACT.

All matched working data files received by ACT, ADHE, and ADE will be moved promptly to a secure environment and maintained securely (as stated in 4f) by the Recipient, in accordance with this Agreement. The working files at ACT will be maintained by Arkansas ID. Annual updated college success data submitted to ACT by ADE will be linked to the original matched files via the Arkansas ID. ADE will maintain a linkage file that contains both the SSN (where available) and Arkansas ID of each student. Any data submitted to ACT for analysis will always be linked to ACT research files via the Arkansas ID.

## C. DELIVERABLES

### I. ACT Deliverables

a) ACT shall provide the following to ADE:

- Annual machine readable files of ACT scores and data for public high school graduates.
- 

b) ACT shall provide the following to ADHE:

- Annual Freshman Class Profile Reports for each eligible public campus.
- Annual Composite Freshman Class Profile Reports based on all public postsecondary institutions.

### 2. ADE Deliverables

a) ADE shall provide to ADHE:

- Electronic course/grade transcript files for students enrolled in the public secondary schools of Arkansas who enrolled as first-time freshmen in the public colleges of Arkansas beginning in fall 2006. The record for each student will contain the SSN and a unique Arkansas ID.

b) ADE shall provide to ACT:

- For each entering cohort of ACT-tested freshmen starting with fall 2006, a matched file (identified by a uniquely assigned Arkansas ID) of Arkansas public high school ACT-tested students attending an Arkansas public postsecondary institution that includes six consecutive years of college outcomes, as described on pages 13-14 of this agreement, as well as the high school transcript information for each student.
- Annual updates of college outcome data for entering freshmen cohorts, to complete six consecutive years of outcome data for each student.

3. ADHE Deliverables

a) ADHE shall provide to ADE:

- Annually, starting with fall 2006, a file of first-time enrolled freshmen who are graduates of Arkansas public high schools.

## D. TIMETABLE FOR DELIVERABLES

### 1. ACT Deliverables

a) End of September

A summary file of the most recent ACT test record for all public high school graduates each year that includes the SSN or ACT ID of each student plus other personal identifying information. The machine readable encrypted (password protected) file will be sent to the ADE by the end of September each year of the Agreement.

b) January 1

Annual Freshman Class Profile Reports to each public postsecondary institution (institution reports) and ADHE (composite reports) for the current year's ACT-tested freshmen, a Class Profile Composite across all public Arkansas 2-year colleges, all public Arkansas 4-year colleges/universities, and a Composite across all public Arkansas postsecondary colleges.

### 2. ADE Deliverables

a) January 1

For each cohort of freshmen beginning with fall 2006, selected college outcome data will be delivered to ACT and ADHE for six consecutive years on each entering cohort of freshmen. The files will also include high school transcript data for each student.

### 3. ADHE Deliverables

a) September 30

A file to ACT and ADE that contains the SSN of the previous year's enrolled freshmen. The file will include those data elements needed to produce High School To College Success Reports.

b) November 30

On an annual basis, updated college outcomes data for cohorts beginning with fall 2006, will be delivered to ADE to complete six consecutive years of data for each cohort.

For each cohort of new freshmen, the SSNs of students who enrolled at the individual public college campuses will be sent to ACT in order that Freshman Class Profile Reports can be prepared and delivered to the individual college campuses. Composite Class Profile Reports will also be developed from the data.

## E. REPRESENTATIVES

The following designated individual will be the contact from ACT for the technical direction of this Agreement:

Dr. Robert Ziomek  
ACT, Inc.  
500 ACT Drive  
PO Box 168  
Iowa City, IA 52243  
phone: 319/337-1131  
e-mail: robert.ziomek@act.org

The following designated individual will be the contact from ADHE and ADE for the administration and technical direction of this Agreement:

For ADHE:	Rick Jenkins Associate Director for Planning & Accountability Arkansas Department of Higher Education 114 E. Capitol Avenue Little Rock, AR 72201	For ADE:	Mr. James Boardman Assistant Commissioner Research and Technology ADE Technology Center 8221 Ranch Blvd. Little Rock, AR 72223
-----------	--	----------	---

## Exhibit B

### DATA EXCHANGE PROCEDURES AND FORMATS

1. ACT staff will develop files that contain the ACT record for each Arkansas ACT-tested public high school graduate beginning with the graduating years of 2006, 2007, 2008, 2009, 2010, 2011, and 2012. As described in Exhibit C, the ACT record for each student will exclude responses to Student Profile Section items 178-189, the high school code, and the six ACT college choice codes (positions 703-738). The files will be delivered to the appropriate ADE staff person, who will arrange to match the files against the student information history files of ADE to annex high school courses taken, and where available, final grades in the courses for each matched record (the match done on SSN or other available matching variables). The appropriate ADHE staff person will provide to ADE a file to annex selected information to those matched ACT-ADE records of students enrolled in the public postsecondary institutions of Arkansas (see attached record format). The initial matches will be done on first-time freshmen for fall 2006 through fall 2012. ADE will work with ADHE to annex the college performance information on each entering student cohort for a period of six consecutive years. ADE will assign a unique Arkansas ID to each matched record, with SSN and other personal identifying information deleted. A copy of the matched research file will be made available to ACT electronically, with proper password protections observed. A copy will also be made available to the proper ADHE staff.

In late summer, beginning with the freshman cohort from fall 2006, ADE will update the research file for each freshman cohort to complete six consecutive years of college success information, and make a copy available to both ACT and ADHE. ACT, ADHE, and ADE will maintain the updated records for each student in a secure environment, with access to the information by only those working on the research issues identified by ACT/ADE/ADHE. The yearly updated information for each student will include, by term: CIP code; cumulative hours attempted and completed; cumulative GPA; and campus code of enrollment (please see attached record format). ACT will annex the updated information on each student to the initial research file for the students in the cohort. The updates will be done using the assigned Arkansas ID. All personal identifying information will be removed from files sent to ACT.

ADE will maintain a "linkage" file with both SSN and the assigned Arkansas ID for each record sent to ACT and ADHE.

2. The initial research file created jointly by ADE and ADHE will contain the following data elements annexed to the ACT record, by term:
  - a. ACT institutional code of enrollment
  - b. Assigned student ID number (9 digits)
  - c. Cohort year (i.e., year of initial enrollment – 200607 for school year 2006-2007)
  - d. Educational level/status (1=Fr, 2=Soph, 3=Jr, 4= Sr, 5=undergraduate more than 4 years, 6=graduate student)
  - e. Enrollment term (1=Summer, 2=Fall, 3=Winter, 4=Spring, 5=Other)

- f. Enrollment term year (calendar year of enrollment, YY)
  - g. High school transcript information – courses taken and final grade in the course for grades 9, 10, 11, and 12. In particular, transcript information will include courses taken and grades earned in English, mathematics, social studies, science, and foreign languages. If possible, it would be desirable to have the same course title recorded in the same field location for each student. In other words, all students who completed a course like Algebra I would have their final grade and course title recorded in the same field location of the electronic transcript.
3. Using the research file and its yearly updates, ACT shall provide copies of statewide and institution-specific College Freshman Class Profile Reports to ADHE for the entering cohort of fall first-year students. A sample report is set forth in Exhibit D. The report summarizes the characteristics of ACT-tested enrolled students as well as those who sent scores to the local postsecondary institution but who did not elect to enroll at the institution.

ACT shall also provide to ADHE Statewide Freshman Class Profile Reports that will include separate composite reports for 2- and 4-year institutions.

This document details a file layout that identifies key student outcome data elements. ACT's intent is to provide a generic data exchange format that will expedite the transfer and analysis of ADHE data. If data files in this specific format are not feasible, we hope the data elements identified and their descriptions will assist you in compiling a similar file. The information on the high school transcript would be added to the proposed data file. The format of the electronic transcript is not known by ACT. All data elements required for the ADHE-ACT partnership are identified with an asterisk (\*). All other data elements are optional.

The file layout shown on the next three pages describes student academic information defined by the term of enrollment. Data elements requested include basic institution information, student identifiers, term identifiers, and term academic information. When providing data for multiple terms for a given student, provide each term's data in a separate record (on a separate row).

## Institution and General Student Information File Layout by Term<sup>1</sup>

Start	End <sup>2</sup>	Length	Element	Description	Format <sup>3</sup>	Example
<b><i>Institution Information</i></b>						
1	4	4	ACT institution code or local code	4 character ACT college code; if ACT code not available, provide local code and crosswalk for identifying code to school name.	9999	4022
6	55	50	Institution name	university or college; include location if satellite	alpha	University of Alpha
57	58	2	State of institution	2 character alpha state abbreviation	alpha	TN
60	62	3	Institution type	2-year or 4-year institution	9	2=2yr; 4=4yr
64	65	2	Institution's definition of undergraduate full time	indicate the minimum number of hours for undergraduate full time status	99	12
<b><i>General Student Information</i></b>						
67	75	9	Student Social Security number	SSN preferred (numeric-nine digits with no hyphens or spaces); (optional).	999999999	222334444
77	91	15	Student ID Number	Supply if different than SSN	alpha or numeric	86ZZ2397
93	122	30	Student last name	Include hyphens for multiple names	alpha	Jones-Smith
124	153	30	Student first name		alpha	Mary
155	155	1	Student middle initial		alpha	M
157	164	8	Student date of birth	Provide as much information as available using this format	yyyymmdd	19851015
166	172	7	Cohort year	Initial year of enrollment for first time freshman	999999	200405 (school year 2004-2005)
174	174	1	Educational level	0=high school (concurrently enrolled in secondary and postsecondary classes), 1=freshman, 2=sophomore, 3=junior, 4=senior, 5=undergraduate program designated longer than 4 yrs, 6=graduate level	9	1 (freshman)
176	176	1	Enrollment term code	1=summer, 2=fall, 3=winter, 4=spring, 5=other <sup>4</sup>	9	4 (spring)
178	179	2	Enrollment term year	Calendar year of enrollment term (in previous field)	yy	05
181	186	6	Term start date	Starting enrollment date for term	yyyymm	200408
188	193	6	Term end date	Ending enrollment date for term	yyyymm	200412
195	195	1	Transfer student indicator	For enrollment term, incoming student transfer indicator	alpha	Y=Yes; N=no; U=unknown
197	197	1	Return indicator	term from which student returned	9	1=summer 2=fall, 3=winter, 4=spring, 5=other

<sup>1</sup> Provide all information for each term in a new record (on separate rows).

<sup>2</sup> Space left between fields to accommodate delimiter if used.

<sup>3</sup> 9=numeric variable symbol; v=decimal place

<sup>4</sup> Specify in separate documentation (e.g., intercession)

**Institution and General Student Information File Layout by Term (cont.)<sup>1</sup>**

<b>Start</b>	<b>End</b>	<b>Length</b>	<b>Element</b>	<b>Description</b>	<b>Format</b>	<b>Example</b>
<i>General Student Information (continued)</i>						
215	215	1	Education status		9	1=still enrolled; 2=not enrolled; 3=completed degree/program
<i>STUDENT ACADEMIC INFORMATION</i>						
216	219	4	Term GPA	0.00 to 4.00 scale; for end of term; leave blank if not available; do <b>not</b> placeholder a missing GPA with a zero or other number	9v99	3.66
221	224	4	Cumulative GPA	0.00 to 4.00 scale; as of end of term; leave blank if not available; do <b>not</b> placeholder a missing GPA with a zero or other number	9v99	3.25
226	226	1	Full/part time status for term		alpha	F=full time; P=part time
228	233	6	Credit-bearing term hours attempted		99v99	12
235	240	6	Credit-bearing term hours earned		99v99	12
242	247	6	Credit-bearing cumulative hours attempted	Cumulative as of end of term	999v99	24
249	254	6	Credit-bearing cumulative hours earned	Cumulative as of end of term being reported	999v99	24
256	256	1	Remediation in any subject		alpha	Y=Yes;N=no;U=unknown
258	258	1	Remediation in English		alpha	Y=Yes;N=no;U=unknown
260	260	1	Remediation in math		alpha	Y=Yes;N=no;U=unknown
262	262	1	Remediation in reading		alpha	Y=Yes;N=no;U=unknown
264	264	1	Remediation in science		alpha	Y=Yes;N=no;U=unknown
266	266	1	USDE CIP code	No=local generated	alpha	Y=Yes;N=no;U=unknown
268	273	6	Term CIP code for primary major	Do not include decimal.	up to 999999	530510 or 5305
275	280	6	Term CIP code for secondary major	Do not include decimal.	up to 999999	530510 or 5305
<i>Degree Information (Provide information for all degrees earned.)</i>						
282	331	50	Degree title		alpha	Psychology
333	372	40	Degree type		alpha	Bachelors of Science
374	381	8	Date degree received		yyyymm	200305

<sup>1</sup> Provide all information for each term in a new record (on separate rows).

<sup>2</sup> Space left between fields to accommodate delimiter if used.

<sup>3</sup> 9=numeric variable symbol; v=decimal place

<sup>4</sup> Specify in separate documentation (e.g., intercession)

## **Exhibit C**

### **Data Dictionary for the ACT Record Format**

The ACT record (757-bytes) will be annexed to each merged record developed by ADE. The following data elements will be purged from the ACT record:

- The responses to SPS items 178-189 (evaluation of local high school (ACT positions 593-604)). Starting in Fall 2007, these SPS items are no longer part of the ACT data elements.
- College Choices fields 106 (ACT positions 703-738)
- High School code (ACT positions 205-210)

The 757-byte ACT record will be annexed to the merged ADE-ADHE research file, with a record length greater than 1100 bytes.

## **Exhibit D**

### **Sample Format Statewide and Institution-specific College Freshman Class Profile Reports**

The ACT Freshman Class Profile Report contains summary information of the ACT-tested graduates who sent scores to the institution and either did or did not elect to enroll at the institution. The format of the report for each eligible institution plus any 2-year and/or 4-year composite report is attached.