

ASSESSMENT TECHNOLOGY, INCORPORATED:
ELECTRONIC SERVICES AGREEMENT

Use of Electronic Services: Assessment Technology, Incorporated (“ATI”), an Arizona corporation, is willing to provide a nonexclusive, nontransferable license for access to and use of certain electronic applications accessed remotely (“Electronic Services”) to the “User” for a period of one year (12 months) from date of contract with renewal at the option and discretion of the User. The Electronic Services are designed to assess or test student learning and/or assist User in planning, implementing or reporting on courses of study, lessons, assignments or other learning activities. This Electronic Services Agreement (the “Agreement”) states the terms and conditions that govern both the access to and use of ATI Electronic Services and the client-end responsibilities associated with access and use of ATI Electronic Services.

The licensed Electronic Services covered by this agreement include both direct services and information accessible through ATI, including but not limited to:

- ATI’s proprietary applications:
 - Galileo K-12 Online including K-12 Student/Parent Center and Online Course Center
 - Galileo Pre-K Online including Pre-K Parent Center and Online Reporter
- ATI Scanline and Mercury applications
- Support related to the use of ATI applications
- Any other computer, telephonic or wireless services or information system that ATI permits User to access, including successors to the systems described above.

User Agreement: This Agreement replaces any prior agreement between the User and ATI regarding use of ATI Electronic Services except for any Contract executed with this Agreement. If there are differences between this Agreement and an ATI proposal/bid response to the User’s RFP/RFB/RFI/RFR, the written proposal/bid responses constitute the controlling document. Acceptance of this Agreement is implied by the User’s acceptance of ATI’s written proposal/bid responses under the User’s RFP/RFB/RFI/RFR. The User agrees to comply with the terms and conditions of this Agreement. The User further agrees to abide by any rules, procedures, standards, requirements or other conditions ATI may establish in connection with the access to or use of ATI Electronic Services or any other electronic communications services made available by ATI.

Services Provided by ATI: Through this Agreement, ATI grants the User limited permission, renewable annually, to access ATI Intellectual Property. ATI Intellectual Property is routinely enhanced for all Users and the most recent enhancements are automatically provided to these Users. ATI Intellectual Property includes patent rights (U.S. Patents 6,322,366, 6,468,085 B1, and 7065,516 with others pending), copyrights and trade secrets covering software, display screens, layouts, forms, item banks, learning activities, instructional dialogs, and professional development materials used to provide ATI Electronic Services. The permission is limited to access and/or use of ATI Electronic Services provided for the purposes of assessing or testing student learning and/or promoting curriculum design or enhancement including, but not limited to, entering educational and family services information, processing the User’s inputted information in the database, and generating reports based on the User’s inputted data. Permission regarding the access to and use of ATI item banks is limited to activities related to test construction, test review, printing test materials, test scheduling, test administration, test scoring, and reporting test results. ATI formative item banks can also be accessed and/or used in the construction of Instructional Dialogs. Use of tests constructed from ATI item banks in any manner determined by ATI to violate accepted industry standards regarding appropriate test use

is prohibited. Permission related to instructional materials and other content in the application is limited to display, printing, and instructional use.

At no point in time is User permitted to remove, conceal or alter any copyright, trademark or other proprietary notices on any component of ATI Intellectual Property. Upon expiration or termination of User's right to access or use ATI Electronic Services, all rights to access or use ATI Intellectual Property are severed and the User shall no longer have the right to access or use any aspect of ATI Intellectual Property, including property protected by patent and/or copyright. ATI patent rights and copyrights cover ATI software, display screens, layouts, forms, learning activities, instructional dialogs including user-modified dialogs, and ATI item banks including all user-made item modifications, all tests, and all test items in instructional dialogs constructed from the ATI item banks.

ATI welcomes Users' suggestions for changes to ATI's applications and/or their content. ATI evaluates suggested changes with respect to feasibility and usefulness to ATI clients as a whole. If ATI determines that a suggested change would be both feasible and broadly beneficial, the change is prioritized and placed on the Development Schedule. In some instances, Users may request changes to meet unique User needs. Customized programming and/or data input services beyond the scope of the ATI proposal/bid are available through ATI for an hourly fee. All changes to ATI applications are the sole property of ATI. ATI will not pay fees, royalties, or any other consideration related to use of User suggestions and/or commission of changes in ATI applications and/or their content.

User Responsibilities: In addition to the obligations of User as otherwise specified in this Agreement, User is solely responsible for:

- procuring all computer hardware, peripherals, third party operating systems and other third party software which may be required to operate ATI applications as listed on the ATI website. ATI assumes no responsibility for User hardware or User software.
- the use and operation of ATI Intellectual Property using personnel qualified to operate the Intellectual Property.
- limiting the distribution of ATI Intellectual Property licensed to the User. The User is authorized to share the Intellectual Property only with User's educational stakeholders including User's staff and students and not with any other third party. Under no circumstance is ATI Intellectual Property to be displayed or made accessible in any manner to those not directly part of the User's educational stakeholders (e.g., ATI Intellectual Property is not to be displayed on the User's public website nor is the Intellectual Property to be displayed through print materials, multimedia materials or in any other manner to anyone not part of the User's educational stakeholders).

Communications from ATI: In addition to the communications between ATI support staff and User, ATI will also be communicating from time to time with Users concerning general topics including information about enhancements in ATI technology, new products, user support, and invitations to company presentations. These communications may occur via electronic mail, fax, or postal mail. Users may opt-out of receiving these communications by contacting ATI in writing or responding to the opt-out language found in all electronic mail communications.

Confidential Information: ATI may disclose to User certain ATI Confidential Information, defined below. User acknowledges that the ATI Intellectual Property and accompanying documentation are commercially valuable, proprietary products of ATI, the design and development of which reflect the effort of skilled development experts, the investment of considerable time and expense, and contain Confidential Information. For purposes of this Agreement "Confidential Information" means information of ATI that is of value to its owner and is treated as confidential,

including information concerning the Intellectual Property and documentation, operating procedures, pricing, methods of doing business, trade secrets, marketing and research, mailing lists, User lists, and lists of prospective Users or accounts, financial data or plans, or any other information relating to the affairs of ATI. It is the responsibility of User to respect this information as confidential by not sharing this information without the specific approval of ATI.

Privacy Policy: In connection with the licensing of ATI Intellectual Property, ATI may receive confidential information from User. ATI is committed to protecting the privacy of its Users and shall use reasonable security and other precautions to prevent the disclosure of any confidential information received by ATI to any person or entity other than to User. ATI shall not use User confidential information for any purpose other than to provide Electronic Services to User and to conduct research as indicated in the Proprietary Rights section found later in this Agreement. All User confidential information shall be held in confidence in accordance with the Family Educational Rights and Privacy Act (FERPA) and applicable state laws and regulations.

User Restrictions: ATI Intellectual Property is licensed, not sold. All rights not expressly granted in this Agreement are reserved to ATI. No rights or licenses are granted by implication. User may not decompile, reverse engineer, disassemble, download or otherwise reduce any ATI software used in connection with the Electronic Services to human-perceivable form. The User may not copy, reproduce electronically, modify, adapt, translate, rent, sublicense, assign, lease, loan, resell, or distribute ATI software or related materials used in ATI Electronic Services or create derivative works based upon or resembling ATI software or any part thereof without the express written permission of ATI or as otherwise provided in this Agreement. User is responsible for ensuring that the individuals authorized by User to use ATI Intellectual Property comply with the terms and conditions of this Agreement.

User may modify or produce derivative assessment scales, assessment items, instructional dialogs, learning activities, lesson plans, and professional development materials. All such modifications or derivatives remain the intellectual property of ATI. User may make the modifications or derivatives available electronically or in printed form to other Users within their School District/Agency. Modifications or derivatives may be shared with other school districts/agencies with the mutual agreement of ATI and User. User may not disseminate in any manner beyond use in test review or test administration, ATI created assessment items and/or ATI created assessments/tests. User may not disseminate in any manner beyond district instructional content review of district instructional content presentation to students, ATI created instructional content. User may print, electronically disseminate, or export reports to other software applications for such purposes as additional data analysis. User may disseminate reports, including but not limited to assessment and instruction reports, and information from reports to audiences of their choosing. As a protection of confidentiality, the User further agrees that ATI has the right to refuse to provide to third parties information that the User provides ATI. The restrictions on the access and/or use of ATI Electronic Services and related materials specified in this Agreement extend to any updates, software patches, or bug fixes made accessible to the User.

In addition to content owned directly by ATI, there may be content protected by rights in intellectual property held by other owners. Such content is entered into the ATI database with the explicit permission of the owners of the intellectual property. Federal and State laws and the policies of the holders of such rights in intellectual property govern the use of such content. Galileo Online contains Equation Editor owned and copyrighted by Design Science, Incorporated of Long Beach California. All rights to the code are reserved by Design Science. Use of Equation Editor is permitted under license authorized by Design Science. Scanline for Multiple Function Units contains portions of imaging code owned and copyrighted by Pegasus

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- ScanTools®Plus
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Imaging Technology provided under License by AccuSoft Corporation. ImageClear© 1996-2004. All Rights Reserved.

Warranties: ATI warrants

- to Users that the ATI Electronic Services under written contract shall be both fit for the uses specified and conform to the written promises made within the written contract responses to User RFP or other request (e.g., RFI). The User's sole remedy for any breach of this warranty is for ATI to implement service to correct the application deficiency that does not meet the ATI written response. ATI Electronic Services for services outside the scope of the written proposal/bid are provided "As-Is" and the User accepts the entire risk as to the quality and performance of the services.
- to Users that all Implementation/Project Management and Consultation Services, application related support as offered by the ATI Field Services, Educational Management, Information Technology, and Professional Development departments, Start-Up and Data Importation/ Exportation Services as defined in the ATI written proposal in response to User's RFP or other request (e.g., RFI) shall be performed in a professional manner over the period of the contract. User's sole remedy for any breach of this warranty is for ATI to re-perform the applicable warranty-covered service.
- that ATI owns all proprietary interests in ATI Electronic Services including ATI Intellectual Property. Content within ATI Electronic Services which is protected by intellectual property rights held by other owners has been entered into the database with the explicit permission of the owners of the intellectual property. User's sole remedy for any breach of this warranty can be found in the Indemnification section of this Agreement.

Limited Warranty/Limitations of Liability. Except for the Warranties stated directly above and as expressly stated otherwise in this Agreement, to the maximum extent permitted by applicable law, ATI disclaims all other warranties, either expressed or implied, by statute or otherwise, regarding the Electronic Services, including but not limited to implied warranty of fitness for a particular purpose, quality, merchantability, or their non-infringement. ATI is not responsible for and makes no representations with regard to third party claims or claims relating to network operations, computer hardware, peripherals that are used either in conjunction with or in support of ATI Electronic Services. Under no circumstance, and under no legal theory, tort, contract or otherwise, shall ATI be liable to the User for any indirect damages, including any lost profits, lost data, or other indirect, special, incidental or consequential damages including attorney's fees, however caused, whether in contract (including failure of essential purpose), strict liability or tort (including negligence or otherwise) arising out of the access and/or use or inability to access and/or use the Electronic Services or any data supplied, even if ATI has been advised of the possibility of such damages, or for any claim by any other party. No oral or written information or advice given by ATI employees shall create warranties of any kind. Some states do not allow this exclusion of implied warranties, so the exclusion may not apply. In that event, any implied warranties are limited in duration to the period of the license.

Except for the provisions of the Indemnification section directly below, in no event shall ATI be liable to User in any amount exceeding the total fees User has paid to ATI during the most recent license term.

Please Note: Links may be included in ATI Electronic Services. Because ATI has no control over such sites, ATI is not responsible for such sites' accessibility via the Internet and does not endorse products, services, or information provided by these sites. ATI shall not be liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with, use or reliance on any content, goods or services available on or through a linked site. The inclusion of a link within ATI Electronic Services does not imply that the site has given permission for the inclusion or that there is any relationship between ATI and the linked sites. ATI is an independent operating company and reference to other companies does not imply any partnership, joint venture, or other legal connection whereby ATI would be responsible for the actions of their respective owners.

Indemnification:

- ATI Indemnification: ATI shall defend, indemnify and hold harmless User, its affiliates, officers and employees from any and all claims, suits, actions, damages, judgments, and costs (including reasonable attorney fees), arising out of any: (i) damage, destruction or loss of any property; or (ii) injury to or death of any person; which results from or arises out of negligent or willful acts or omissions of ATI, its officers, agents and employees, in the performance of this Agreement.
- To the extent permitted by applicable law, User agrees to defend, indemnify and hold harmless ATI and its employees, contractors, officers, and directors, from any and all claims, suits, actions, damages, judgments, and costs (including reasonable attorney fees) arising out of any: (i) damage, destruction or loss of any property; or (ii) injury to or death of any person which results from or arises out of negligent or willful acts or omissions of User, its officers, agents or employees in the performance of this Agreement; or (iii) misuse of ATI intellectual Property by User, its officers, agents or employees. Misuse of ATI Intellectual Property includes but is not limited to User input of copyrighted material into ATI database through ATI electronic services without written permission from the owner(s) of such copyrighted material.

User Name, Passwords, and Security: The User will be responsible for the confidentiality and use of the User name(s), password(s), and/or account number(s). The User agrees not to hold ATI liable for any damages of any kind resulting from the User's decision to disclose the User name(s), password(s), and/or account number(s) to any third party, including, but not limited to, entities that aggregate information or persons who are or claim to be acting as the User's agent or on the User's behalf. The User agrees to immediately notify ATI if the User becomes aware of:

- Any loss or theft of the User name(s), password(s) and/or account number(s); or
- Any unauthorized use of the User name(s), password(s) and/or account number(s), or of the Electronic Services or of any information from the Electronic Services.

Data Transmissions: Data, including E-mail and electronic communications, may be accessed by unauthorized third parties when transmitted between the User and ATI through the use of the Internet, other network communications facilities, or any other electronic means. Information sent between a User and ATI Galileo Online and/or other electronic applications from ATI may be encrypted at point of origin; information sent from Galileo Online and/or other electronic applications to a User may also be encrypted if the User wishes to avoid possible access by unauthorized third parties. For this reason, the User must agree to use software produced by

third parties, including, but not limited to, “browser” software that supports a data security protocol compatible with the protocol used by ATI. Until notified otherwise by ATI, the User agrees to use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by ATI and follow ATI’s Login procedures for Electronic Services that support such protocols. The User acknowledges that ATI is not responsible for notifying the User of any upgrades, fixes or enhancements to any such third-party software or for any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet.

Electronic Communications: The ATI Electronic Services accessed by computer provide the User with the capability to send electronic communications, including and not limited to E-mail transmissions, directly to ATI and to interact within Electronic Services applications. The User agrees to the following terms with respect to the use of electronic communications through ATI Electronic Services:

- ATI will be entitled, but is not obligated, to review or retain the User’s electronic communications using ATI electronic services for, among other reasons, monitoring the quality of service the User receives, the User’s compliance with this Agreement and the security of the Electronic Services.
- ATI is entitled to disclose the User’s electronic communications to the extent that it is believed in good faith that disclosure is reasonably necessary to 1) comply with applicable laws or regulations; 2) enforce the terms of this Agreement; 3) respond to claims that content violates the rights of third parties; or 4) protect the rights, property, or personal safety of ATI, its Users, or the public.
- If the User is participating in an educational project under the auspices of another entity (e.g., a State or Federal Department), the User agrees that educational information may be shared with that entity (e.g., a State or Federal Department) in accordance with the agreements governing the User’s participation in the educational project.
- The User agrees that ATI is entitled to use information that the User enters into the system to conduct educational research and publish educational research findings for such purposes as establishing the validity and reliability of assessment content provided through ATI’s Electronic Services. This research will preserve the confidentiality of individual records.
- The User will not use any electronic communication feature of the ATI Electronic Services for any purpose that is unlawful, abusive, harassing, libelous, defamatory, obscene or threatening. The User will not use the ATI Electronic Services to solicit ATI clients or others for any purpose.
- The User will not upload, post, reproduce or distribute any information, software, or other material protected by copyright or any other intellectual property right without first obtaining the written permission of the owner of such rights.

Government Licensee: If the User is using ATI Electronic Services on behalf of any unit or agency of the United States Government, this provision applies. The Government acknowledges ATI’s representation that the Electronic Services and documentation were developed at private expense and no part of the Electronic Services and documentation is in the public domain.

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in the Rights in Technical Data and Computer Software Regulations.

Termination Policy:

- *Scope:* The User may terminate the Contract for ATI Electronic Services for cause in the event ATI is in default as defined in the following paragraph, by giving ATI a written

“Notice of Default.” ATI shall have thirty (30) calendar days from ATI’s receipt of a written Notice of Default to correct any default. In the event ATI fails to remedy the default within that time period, the User may send ATI a written “Notice of Termination.” Upon receipt of such Notice of Termination, ATI shall cease all work immediately or on the date, if any specified in said Notice of Termination, whichever is later, and thereafter take all reasonable steps to not incur additional costs associated with this Contract, except those costs necessary to closeout business on this Contract. Additional costs shall be reviewed by the User and must be mutually deemed allowable before incurred and payment is made.

- *Termination for Default:* The User may terminate this Contract for reason of ATI’s default if: (a) a federal or state proceeding for the relief of debtors is undertaken by or against ATI, or (b) a receiver or trustee is appointed for ATI, or (c) ATI makes an assignment for the benefit of its creditors, or (d) ATI becomes insolvent, which shall be deemed to have occurred if ATI has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not ATI has committed an act of bankruptcy or is considered insolvent within the meaning of the federal bankruptcy law, or (e) ATI breaches any material term or violates any material provision of the written proposal/bid response to User’s RFP and does not cure such breach or violation within thirty (30) calendar days from ATI’s receipt of a written “Notice of Default.”

ATI may terminate this Contract for any breach of the Contract by the User, including, but not limited to, the User’s failure to make payment, the User’s unauthorized use of account access information, the User’s breach of this Electronic Services Agreement including confidentiality breach, the User’s improper use of ATI’s copyrighted materials, or the User’s misuse of the interactive components of ATI’s electronic services. Prior to termination, ATI shall give the User a written “Notice of Default.” The User shall have thirty (30) calendar days from receipt of Notice of Default to correct any breach. In the event the User fails to remedy the breach within that given time period, ATI may send the User a written “Notice of Termination.” Termination of the Contract shall be effective as of the date of the Notice of Termination. ATI shall have no liability to the User for terminating the User’s access to ATI’s Electronic Services for cause.

Please Note:

- The breach by User in exceeding the scope of the licenses granted in this Agreement or by breach of ATI confidential information shall result in irreparable harm to ATI for which no adequate remedy at law exists. Accordingly, upon any such breach, ATI shall be entitled to seek injunctive or other appropriate extraordinary relief, such relief being in addition to, and not in lieu of, any other rights and remedies, including the award of damages available at law or in equity.
- The termination of this Agreement shall terminate this Agreement as a whole, including all aspects of ATI’s written proposal to User’s RFP or other requests.

Return of Confidential Material: Upon cancellation, expiration or termination of this Agreement and at the request of the User, ATI shall return to the User or destroy any confidential information belonging to the User and still in ATI’s possession. Confidential information is considered to be any information that identifies a particular person or particular institution.

Proprietary Rights: ATI has the right to use information that the User enters into the system to conduct educational research and publish educational research findings for such purposes as establishing the validity and reliability of scales provided through ATI’s Electronic Services.

General Provisions: The internal laws of the State of Arizona will govern this Agreement. If any provision of the Agreement is held to be unenforceable, that provision will be removed and the remaining provisions will remain in full force and effect.

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