

ASSESSMENT TECHNOLOGY, INCORPORATED: ELECTRONIC SERVICES AGREEMENT

Use of Electronic Services: Assessment Technology, Incorporated (ATI) is willing to provide certain software applications accessed remotely ("Electronic Services") to you (the "User"), for a period of one year (12 months) from date of purchase with renewal at the option and discretion of the User. For users whose electronic services are associated with ATI CDROM software, the electronic services will be provided with the same expiration date as the software to which it is associated. 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 the access to and use of ATI Electronic Services. The Electronic Services include services and information accessible through ATI, including but not limited to:

- ATI's proprietary application Galileo Online including Galileo Online Student/Parent Center, and Online Course Center
- ATI's Scanline and Mercury applications
- Technical support related to the use of ATI applications
- Any other computer, telephonic or wireless services or information system that ATI permits the 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 this Agreement accompanies an ATI proposal response to the User's RFP and if there are differences between this Agreement and ATI's proposal responses, the proposal responses constitute the controlling document. Acceptance of this Agreement is implied by the User's acceptance of ATI's proposal responses under the User's RFP or by the User's purchase of the right to access and use ATI Electronic Services. 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 includes patent rights (U.S. Patent 6,322,366, U.S. Patent 6,468,085 B1, and U.S. Patent 7,065,516 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 and for other purposes. 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.

Upon expiration or termination of User's right to access or use ATI Electronic Services, all rights to access or use of 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 and ATI item banks including all tests constructed from the item banks.

ATI welcomes User 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. Customization services are available through ATI for an hourly fee. All changes to ATI applications/intellectual property 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.

ATI assumes no responsibility for User hardware or User software.

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.

Privacy Policy: ATI is committed to protecting User privacy. Please see ATI's separate *Privacy Policy*.

User Restrictions: 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 may modify or produce derivative assessment scales, assessment items, learning activities, lesson plans, instructional dialogs, and professional development materials. All such modifications remain the intellectual property of ATI. User may make those modifications or derivatives available electronically or in printed form to other Users within their District/Agency. Modifications or derivatives may be shared with other 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 or 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 in ATI Software 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 CA. All rights to the code are reserved by Design Science. Use in Galileo Online permitted under license authorized by Design Science. Scanline for Multiple Function Units contains portions of imaging code owned and copyrighted by Accusoft Pegasus Imaging Corporation, Tampa, FL. All rights to this code are reserved by Accusoft Pegasus. Scanline for ScanTools contains code under the following copyrights:

ScanTools®Plus Link SDK

Copyright© 2002, 2004, 2005, 2006, 2007 Pearson Education, Inc. or its affiliate(s). All rights reserved. Use permitted only under license as specifically authorized by PearsonNCS.com.

ScanTools®Plus

Copyright© 1993 - 2007 Pearson Education, Inc. or its affiliate(s). All rights reserved. Use permitted only under license as specifically authorized by PearsonNCS.com.

Imaging Technology provided under License by Accusoft Corporation. ImageClear© 1996-2004. All Rights Reserved.

Limitations of Liability: Under no circumstance, and under no legal theory, tort, contract or otherwise, shall ATI be liable to the User for any damages, including any lost profits, lost data, or other indirect, special, incidental or consequential damages, 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. Some states do not allow the exclusion or limitation of incidental or consequential damages so this limitation and exclusion may not apply.

The User agrees to defend, indemnify and hold harmless ATI and their employees, contractors, officers, and directors, from all liabilities, claims and expenses, including attorney's fees that arise from User's use or misuse of ATI Electronic Services. Misuse includes but is not limited to User input of copyrighted material into the ATI database without written permission from the owner(s) of such copyrighted material.

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.

In the event that there are instances in which the ATI Electronic Services provided within the scope of a proposal generated contract do not conform to ATI's responses to the specifications in the proposal provided to the User, ATI agrees to implement software service maintenance to correct the deficiencies. ATI responses to specifications in the proposal will govern the warranty. ATI Electronic Services provided outside the scope of a proposal generated contract are provided "As-Is" and the User accepts the entire risk as to the quality and performance of the services. To the maximum extent permitted by applicable law, ATI disclaims all warranties, expressed or implied, by statute or otherwise, regarding the Electronic Services, including the fitness for a particular purpose, quality, merchantability, or their non-infringement. 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.

Username, Passwords, and Security: The User will be responsible for the confidentiality and use of the Username(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 Username(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 Username(s), password(s) and/or account number(s); or
- Any unauthorized use of the Username(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 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 software 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 scales 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 of Electronic Services: ATI may terminate the User's access to Electronic Services for reasons including, but not limited to, the unauthorized use of the User's account access information, improper use of copyrighted materials, misuse of the interactive components of the electronic services, or any breach of the contract between the User and ATI. ATI shall have no liability to the User for terminating the User's access to ATI's Electronic Services for cause.

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

If you have any questions concerning this Agreement, you may contact ATI directly by phone or mail. If you do not wish to abide by this Agreement, you may not avail yourself of ATI Electronic Services.

The User acknowledges that, in providing ATI Electronic Services, ATI relies upon the User to read this Agreement, understand it, and agree to be bound by its terms.

ACCEPT ELECTRONIC SERVICES AGREEMENT
DO NOT ACCEPT ELECTRONIC SERVICES AGREEMENT

© 2009 Assessment Technology, Incorporated. All rights reserved.