

DATA PRIVACY AGREEMENT

This Data Privacy Agreement ("**DPA**") is incorporated into, governed by, and made a part of the ATI Complete Partnership Agreement by and between Orange Ulster BOCES ("**Nursing Program**") and Assessment Technologies Institute, LLC ("**ATI**") (Nursing Program and ATI, each a "**Party**" and, collectively, the "**Parties**"). Unless defined herein, capitalized terms will have the same meaning as ascribed in the Agreement.

WHEREAS, ATI is the owner or licensor of ATI Products and Services utilized by Nursing Program with its nursing Students pursuant to the Agreement.

WHEREAS, ATI and Nursing Program recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 CFR Part 99); the California Consumer Privacy Act ("**CCPA**"); the Children's Online Privacy Protection Act ("**COPPA**") at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations including NY Education Law 2-d and

WHEREAS, ATI and Nursing Program desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

NOW THEREFORE, for good and valuable consideration, Nursing Program and ATI agree as follows:

1. A description of the categories of Student Data that may be provided by Nursing Program to ATI, and other information specific to this DPA are contained in the Standard Clauses hereto.
2. In the event there is conflict between the terms of the DPA and any other writing between the Parties, including, but not limited to the Agreement, the terms of this DPA shall control.
3. This DPA shall stay in effect for the later of three (3) years or the full duration of the Agreement.
4. The services to be provided by ATI to Nursing Program are as set forth in the Agreement, inclusive of all schedules, appendices and exhibits thereto (the "**Services**").
5. **Notices**. All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for Nursing Program for this DPA is:

Name: Mark Coleman Title: Assistant Superintendent for Finance and Management Services

Address: 4 Harriman Drive, Goshen, NY 10924

Phone: 845-291-0100 Email: mark.coleman@ouboces.org

The designated representative for ATI for this DPA is:

Name: Whit Farrington. Title: Sr. Director Information Security & Compliance

Address: Ascend Learning, LLC 11161 Overbrook Road, Leawood, KS 66211

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Student Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, ATI shall be considered a School Official with a legitimate educational interest, and performing Services otherwise provided to Nursing Program. ATI shall be under the direct control and supervision of Nursing Program, with respect to its use of Student Data
2. **Student Data to Be Provided.** In order to perform the Services described above, Nursing Program may provide Student Data as defined herein.
3. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit A**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of Nursing Program.** All Student Data transmitted to ATI pursuant to the Agreement is and will continue to be the property of and under the control of Nursing Program. ATI further acknowledges and agrees that all copies of such Student Data transmitted to ATI, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Agreement, shall remain the exclusive property of Nursing Program. For the purposes of FERPA, ATI shall be considered a School Official, under the control and direction of Nursing Program as it pertains to the use of Student Data, notwithstanding the above. Notwithstanding the forgoing, ATI reserves the right to use aggregated, anonymized and De-Identified Data ("**Aggregate Data**") to monitor ATI systems, for diagnostic and technical use, to assess usage and site volume or load, for support and development, and for ATI's general business operations.
2. **Parent Access.** To the extent required by law, Nursing Program shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data to correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. ATI shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for a Nursing Program to respond to a parent or student, whichever is sooner) to Nursing Program's request for Student Data in a student's records held by ATI to view or correct as necessary. In the event that a parent of a student or other individual contacts ATI to review any of the Student Data accessed pursuant to the Services, ATI shall refer the parent or individual to Nursing Program, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by ATI, ATI shall, at the request of Nursing Program, transfer, or provide a mechanism for Nursing Program to transfer, said Student-Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities ("**Requesting**

Party(ies)”) contact ATI with a request for Student Data held by ATI pursuant to the Services, ATI shall notify Nursing Program in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform Nursing Program of the request.

5. **Subprocessors**. ATI shall enter into written agreements with all Subprocessors performing functions for ATI in order for ATI to provide the Services pursuant to the Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

ARTICLE III: DUTIES OF Nursing Program

1. **Provide Data in Compliance with Applicable Laws**. Nursing Program shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights**. If Nursing Program has a policy of disclosing Education Records and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), Nursing Program shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions**. Nursing Program shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.
4. **Unauthorized Access Notification**. Nursing Program shall notify ATI promptly of any known unauthorized access to accounts registered with ATI for use of ATI Products and Services. Nursing Program will assist ATI in any efforts by ATI to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF ATI

1. **Privacy Compliance**. ATI shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, including without limitation, CCPA, FERPA, and COPPA, and NY Education Law 2-d, all as may be amended from time to time, as well as all privacy and security provisions set forth in this DPA.
2. **Authorized Use**. The Student Data shared pursuant to the Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services, as detailed in the Agreement, or expressly authorized in writing by Nursing Program or the student about whom such Student Data pertains, and/or otherwise authorized under the statutes referred to herein this DPA.
3. **ATI Employee Obligation**. ATI shall require all of ATI’s employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Agreement.
4. **No Disclosure**. ATI acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non- public information and/or personally identifiable information contained in the Student Data other than as directed or permitted by Nursing Program or the student about whom such Student Data pertains, or as expressly permitted by this DPA. This prohibition against disclosure shall not apply to Aggregate Data, Student Data disclosed pursuant to a lawfully issued subpoena or other legal

process, disclosure to ATI Affiliates or Subprocessors performing services on behalf of ATI, pursuant to the Agreement and this DPA. ATI will not Sell Student Data to any third party.

5. **De-Identified Data:** ATI agrees not to attempt to re-identify De-Identified Student Data. De-Identified Data may be used by ATI for those purposes allowed under FERPA and the following purposes: (1) assisting Nursing Program or other governmental agencies in conducting research and other studies; (2) research and development of ATI's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; (3) for adaptive learning purpose and for customized student learning; and (4) in any manner authorized in writing by Nursing Program or the student about whom such Student Data pertains. Notwithstanding the forgoing, ATI reserves the right to use Aggregate Data as permitted herein. ATI's use of De-Identified Data shall survive termination of this DPA or any request by Nursing Program to return or destroy Student Data. Except for Subprocessors, ATI agrees not to transfer De-Identified Student Data to any party unless that party agrees in writing not to attempt re-identification. Prior to publishing any document that names Nursing Program explicitly or indirectly, ATI shall obtain Nursing Program's written approval.
6. **Disposition of Data.** Upon written request from Nursing Program, ATI shall render Student Data undecipherable within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA and written request from Nursing Program, unless otherwise necessary to protect against or deter fraudulent, illegal or harmful actions and maintain the safety, security and integrity of ATI's products and services, ATI shall render all of Student Data undecipherable within sixty (60) days of such request. The duty to render Student Data undecipherable shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The Nursing Program may employ a **"Directive for Disposition of Data"** form, a copy of which is attached hereto as **Exhibit B.** If Nursing Program and ATI employ **Exhibit B,** no further written request or notice is required on the part of either Party prior to the disposition of Student Data described in **Exhibit B.**
7. **Advertising Limitations.** Unless expressly authorized by the student about whom the Student Data pertains, ATI is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to Nursing Program. This section does not prohibit ATI from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to instructors or Nursing Program employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits.

ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Student Data shall be stored within the United States.
2. **Audits.** ATI will cooperate reasonably with Nursing Program and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of ATI and/or delivery of Services to students and/or Nursing Program, and shall provide reasonable

access to ATI's documentation, policies, staff, agents, Nursing Program's Student Data and all records pertaining to ATI's delivery of Services to Nursing Program.

3. **Data Security**. ATI agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. ATI shall adhere to any applicable law relating to data security. ATI shall implement an adequate cybersecurity framework based on at least one of the nationally recognized standards set forth in **Exhibit C**.
4. **Data Breach**. In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by ATI, ATI shall provide notification to Nursing Program within seven (7) days of confirmation of the incident. In such an event, notification shall be made within a reasonable time after the incident. ATI shall follow the following process:
 - (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by ATI and as it becomes available:
 - i. Date of the notice and A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - ii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach likely occurred.
 - iii. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
 - iv. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
 - (2) ATI agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
 - (3) ATI further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide Nursing Program, upon request, with a summary of said written incident response plan.
 - (4) Nursing Program shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
 - (5) In the event of a breach originating from Nursing Program's use of the Service, ATI shall cooperate with Nursing Program to the extent necessary to expeditiously secure Student Data.

ARTICLE VI: MISCELLANEOUS

1. **Termination**. The Parties may, by mutual written consent, terminated this DPA. Separately, either Party may terminate this DPA if the other Party breaches any terms of this DPA. If Nursing Program terminates this DPA due to ATI's breach, Nursing Program reserves the right to also terminate the Agreement. All termination shall be in writing to the other Party.

2. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Agreement or any other writing between the Parties, the terms of this DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Agreement shall remain in effect.
3. **Entire Agreement.** This DPA and the Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
4. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
5. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to each Party in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that one of the Parties sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, it shall provide written notice to the other Party no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Agreement. The Nursing Program has the authority to terminate the DPA if it disapproves of the successor to whom ATI is selling, merging, or otherwise disposing of its business.
6. **Authority.** Each Party represents that it is authorized to bind to the terms of this DPA, and that the individual signing the Agreement has sufficient authority to commit to the terms herein on behalf of such Party. Each Party is responsible for the acts and omissions of its employees, agents, representatives and contractors acting on its behalf in connection with this DPA.
7. **Waiver.** No delay or omission by either Party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient

EXHIBIT A

DEFINITIONS

Agreement: Refers to the ATI Complete Agreement between ATI and Nursing Program, and all Schedules, exhibits, and appendices attached thereto.

ATI Affiliate(s): means Ascend Learning, LLC and each entity or brand controlled by, controlling, under common control with or sharing common ownership with, Ascend Learning, LLC.

De-Identified Data and De-Identification: Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by Nursing Program, or by a person acting for Nursing Program, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

Student Data: Student Data includes any data, whether gathered by ATI or provided by Nursing Program or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, grades, evaluations, medical records, health records, social security numbers, disabilities, socioeconomic information, individual purchasing behavior or preferences, learning behaviors, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and under any other applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations.

Student Generated Content: The term "Student-Generated Content" means materials or content created by a student in connection with use of ATI services including, but not limited to, essays, research reports, portfolios, or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

Subprocessor: For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Nursing Program or ATI, who ATI uses, under contract, for

data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Student Data.

Targeted Advertising: means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's request for information or feedback.

EXHIBIT B

DIRECTIVE FOR DISPOSITION OF DATA

Nursing Program directs ATI to dispose of Student Data obtained by ATI pursuant to the terms of the ATI Complete Agreement between Nursing Program and ATI. The terms of the Disposition are set forth below:

1. Extent of Disposition

_____ Disposition is partial. The categories of Student Data to be disposed of are set forth below:

☒ [Insert categories of data here]

_____ Disposition is Complete. Disposition extends to all categories of Student Data.

2. Nature of Disposition

☒ Disposition shall be by rendering the applicable Student Data de-identifiable and undecipherable.

_____ Disposition shall be by a transfer of Student Data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

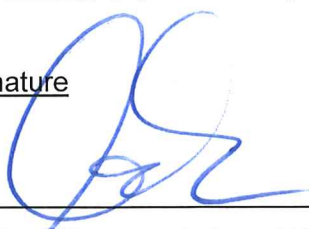
3. Schedule of Disposition

Student Data shall be disposed of as set forth above by the following date:

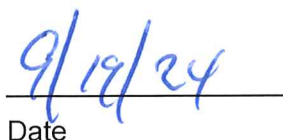
☒ As soon as commercially practicable.

_____ By [Insert Date]

4. Signature



Authorized Representative of Nursing Program



Date

5. Verification of ATI Disposition of Data

DocuSigned by:



6D8463E3631445F...

Authorized Representative of ATI

9/4/2024 | 10:59 AM CDT

Date

EXHIBIT C

ADEQUATE CYBERSECURITY FRAMEWORKS

	MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
	National Institute of Standards and Technology (NIST)	NIST Cybersecurity Framework Version 1.1
	National Institute of Standards and Technology (NIST)	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
	International Standards Organization (ISO)	Information technology — Security techniques — Information security management systems (ISO 27000 series)
	Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
	Center for Internet Security (CIS)	CIS Critical Security Controls (CSC, CIS Top 20)
	Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)