

PRIVACY AGREEMENT

This Privacy Agreement (this “Agreement”) is made and entered into, effective as of August 19, 2020, by and between Champlain Valley BOCES (“BOCES”) and Assessment Technologies Institute, L.L.C. (“ATI”).

WHEREAS, ATI provides certain products and services to BOCES;

WHEREAS, ATI is committed to protecting the confidentiality, integrity and security of student, school and instructor data, consistent with the provisions of New York Education Law §2-d (the “Act”); and

WHEREAS, the parties desire to memorialize certain privacy and data protection matters related to the Act as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. ATI’s Representations and Obligations.

- a. ATI’s platform and its personnel place great emphasis on the protection of personally identifiable information collected from students and their educational records (“PII”). ATI has stringent safeguards to protect against unauthorized use and disclosure of PII that are aligned with industry best practices, including use of encryption and other safeguards to protect PII from unauthorized disclosure. This information includes both records that directly relate to a student’s use of ATI products and services, as well as all identifiers (e.g. name, email address, etc.).
- b. Only ATI staff with a “legitimate educational interest” and “need to know” have access to PII. ATI’s Privacy Policy and Terms of Use (which can be found on ATI’s website) disclose ATI’s collection and use of data consistent with the Act. ATI does not sell PII. Notwithstanding any other language to the contrary, to the extent that a term or provision of this Agreement relating to the subject matter hereof conflicts with any other terms of use, privacy policy, web based documents, or any other agreements purporting to define the relationship between BOCES and ATI, the applicable term or provision of this Agreement shall govern and control (solely with respect to the parties hereto). In accordance with Section 2(c) of this Agreement below, each party agrees that it has no authority to unilaterally change the terms of this Agreement.
- c. ATI’s policies and practices shall comply with all provisions of applicable state and federal laws relating to the confidentiality of PII, including the Act, BOCE’s Parents Bill of Rights for Data Privacy and Security (the “BOR”), and 8 N.Y.C.R.R. Part 121, which policies and practices include maintaining strict administrative, technical and procedural safeguards necessary to protect the security, confidentiality and integrity of PII in its custody. The BOR is hereby incorporated as part of this Agreement.

- d. ATI complies in all regards with any “access” to records requested of BOCES pursuant to the Act and the BOR. ATI will not disclose PII to any other party without the prior written consent of the parent or eligible student unless required by statute or court order and ATI provides notice of the disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order.
- e. ATI will direct that any subcontractors that it may use in fulfilling its obligations to BOCES adhere to its policies and practices as described in Section 1(c) above.
- f. Upon termination of all relationships, contracts, and purchase orders between ATI and BOCES without any successor in place or contemplated, this Agreement shall terminate and ATI, upon written request from BOCES, will, at its option, either destroy or return any PII (and all copies, extracts or other reproductions thereof) obtained or possessed by ATI, and, if so requested, confirm such destruction. Notwithstanding the foregoing, ATI may (i) retain any information or data required by law or bona fide record retention policy, (ii) retain information and data as is reasonably necessary for the protection of its intellectual property rights regarding access to ATI products, particularly its proprietary resources and assessments and (iii) use aggregate, anonymized, de-identified data for its general business operations.

2. Miscellaneous.

- a. Indemnification. Subject to this Section 2(a), ATI shall indemnify BOCES and its employees from and against any losses resulting from a breach of this Agreement by ATI; provided however, that ATI shall have no obligation or liability under this Section 2(a) (i) if the loss arises out of or in connection with the gross negligence, willful misconduct, bad faith, or fraud of BOCES or any of its employees, or (ii) for punitive, consequential, special, incidental, or indirect damages.
- b. Governing Law. This Agreement and all related actions and proceedings shall be governed by the laws of the State of New York without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or UCITA. The parties hereby waive any rights to a jury trial for any claim or cause of action arising out of this Agreement.
- c. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings and agreements, whether written or oral, with respect thereto. This Agreement will not be supplemented or modified by any course of dealing or usage of trade. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification from BOCES or ATI will be of no effect, unless otherwise expressly provided for in this

Agreement. This Agreement may be amended or modified only by a writing signed by both parties hereto.

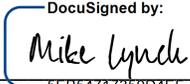
- d. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign or transfer this Agreement, in whole or in part, without the other party's prior written consent; provided, however, that either party may assign this Agreement to its successor in an acquisition, merger, consolidation or other change in control, including, without limitation, the sale of all or substantially all of the assets or equity of a party. Any attempt by either party to transfer or assign this Agreement without such prior written consent will be null, void and without effect.
- e. Severability. If any term, provision, covenant or condition of this Agreement is held invalid or unenforceable for any reason, the remainder of the terms, provisions, covenants and conditions will continue in full force and effect as if this Agreement had been executed with only the invalid portion eliminated. The parties further agree to substitute a valid provision, covenant or condition that most closely approximates the intent and economic effect of the invalid provision, covenant or condition.
- f. Headings. The headings provided in this Agreement are for convenience only and will not be used in interpreting or construing this Agreement.
- g. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. This Agreement will become effective when duly executed by each party hereto.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date first set forth above.

ATI:

ASSESSMENT TECHNOLOGIES INSTITUTE, L.L.C.

By:  _____
Signature

Mike Lynch

Printed Name

EVP

Title