SCHOOLTOOL

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "Agreement") is made this 14th day of July, 2021, by and between Mindex, a New York corporation, having its principal offices located at 250 Alexander Street, Rochester, New York 14607 ("Vendor"), and Albany-Schoharie-Schenectady-Saratoga BOCES, having its principal offices located at 900 Watervliet Shaker Road, Albany, NY 12205 ("Customer"), herein collectively referred to as the "Parties" or referred to in a singular sense as a "Party".

<u>RECITATIONS</u>

WHEREAS, Customer wishes to enter into a master agreement pursuant to which Customer will pay license fee and purchase implementation, training, maintenance and support for SchoolToolTM software; and

WHEREAS, all licenses purchased by Customer will be purchased for allocation to a specific member school district of Customer (each a "Customer Member School District"); and

WHEREAS, it is expressly contemplated by both parties to this Agreement, that for each Customer Member School District to which Customer allocates a license, there will be a separate Schedule C (defined below) to which the terms and conditions of this Agreement shall apply.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Vendor and Customer hereby agree as follows:

1. **Definitions.**

    1.1. **"Authorized User"** means Customer Member School District users who are (i) authorized by Customer to access and use the Services in accordance with Sections 2.2 through 2.4 of this Agreement; and (ii) for whom access to the Services has been purchased hereunder.

    1.2. **"Documentation"** means Vendor documentation, in all forms, relating to the Services (e.g., user manuals, on-line help files, etc.).

    1.3. **"Schedule C"** means a document entered into between Vendor and Customer specifying the services to be provided a Customer Member School District thereunder. Each reference to a Schedule C shall be interpreted to be a reference to that particular schedule applicable to the Customer Member School District to which the specific license at issue has been or will be allocated by Customer.

    1.4. **"Service Fees"** means the fees for the Services specified on a Schedule C.

1.5. **"Services"** means Vendor's SchoolTool platform, a student management system for grading, tracking, and reporting, together with any services as more particularly described on a Schedule C.

1.6. **"Vendor Content"** means the Vendor's templates, documents, materials, reports, or other information included in the Service or shared with Customer during the sales process or during the Term of this Agreement.

2. Services.

2.1. **Use.** Subject to the Customer's payment of Service Fees for the Service as set out on the Schedule C, during the Term (defined below), Customer may provide Authorized Users with access to the Services in accordance with Sections 2.2-2.4 of this Agreement and Vendor will provide the Services to Customer's Customer Member School District in accordance with this Agreement.

2.2. **Use of Vendor Content.** Subject to the terms and conditions of this MSA, during the Term and after expiry of this MSA, Vendor grants to Customer and Customer's Authorized Users a worldwide, non-exclusive, non-transferable (except as explicitly permitted in this Agreement) right to use the Vendor Content included in the Services for its internal use only. The Customer does not have a right to license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercialize to any third party such content in any way.

2.3. **Authorized Users Only.** This Agreement restricts Vendor's provision of Services to Authorized Users. Customer may grant only use Authorized Users access to the Services, up to the number of users specified in the applicable Schedule C. An Authorized User account must not be shared among users. Additional Authorized Users may be added by paying the applicable fees to Vendor at Vendor's then-current rate or as otherwise specified in a Service Order.

2.4. **Use Restrictions.** Customer will not, and will not permit any other person to, access or use the Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer will not, and will not permit a user of the Services to, except as the Agreement expressly permits: (i) copy, modify, or create derivative works or improvements of the Services; (ii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part; bypass or breach any security device or protection used by the Services or access or use the Services other than by an Authorized User through the use of his or her own then valid Access Credentials; input, upload, transmit, or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code; (vi) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Vendor systems, or Vendor's provision of services to any third party, in whole or in part; (vii) remove, delete, alter, or obscure any trademarks or other intellectual property or proprietary rights notices from any Services, including any copy thereof; (viii) access or use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party, or that violates any applicable law; or (ix) access or use the Services or Vendor for purposes of competitive analysis of the Services or

Vendor documentation, the development, provision, or use of a competing software service or product or any other purpose that is to the Vendor's detriment or commercial disadvantage; or (xi) otherwise access or use the Services beyond the scope of the authorization granted under the Agreement. Customer will remain solely responsible and liable for all use of the Services due to Customer's acts or omissions.

2.5. Modification of Services. Vendor reserves the right, in its sole discretion, to make any changes to the Services and Documentation that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Vendor's services to its customers; (ii) the competitive strength of or market for Vendor's services; or (iii) the Service's cost efficiency or performance; or
(b) to comply with applicable law. Notwithstanding the foregoing, Vendor will not make any changes that will materially diminish the functioning of the Services. Without limiting the foregoing, either party may, at any time during the Term, request a modification to the Services, and any proposed modification of the Services must be reviewed and accepted by both Parties in writing. If the Party requesting the change is Customer, then Customer must submit to the Vendor, in writing, a detailed explanation of the desired modification. Vendor shall, within five (5) days following receipt of such request, submit to Customer in writing reasonable time and cost estimates at Vendor's current hourly rates for such modifications. If Vendor's estimates are accepted in writing by Customer, Vendor shall perform such modified services in accordance with such time and cost estimates. If the Party requesting the change is Vendor, Vendor shall submit to Customer, in writing, a detailed description of and explanation for the modification to Services along with reasonable time estimates for the modification to Services. If accepted in writing by Customer, Vendor shall perform such modified services in accordance with such time estimate. Any costs in addition to those set forth on Schedule C which result from a modification of the Services shall be the responsibility of the Party requesting such modification. The performance of modified services by Vendor shall be governed by the terms and conditions of this Agreement.

3. Project Management and Personnel

3.1. Independent Contractor. Vendor hereby acknowledges and agrees that the relationship created by this Agreement is that of an independent contractor. Nothing contained in this Agreement shall be construed to constitute Vendor as an employee, agent, representative, partner or joint venturer of or with Customer, nor shall Vendor have any right or authority to bind Customer in any respect, it being intended that Vendor shall remain an independent contractor responsible for its own actions. Neither Vendor nor its employees are entitled to any of the benefits provided by Customer to its employees, including without limitation workers' compensation coverage, unemployment insurance, group health or life insurance and pension benefits. Vendor hereby acknowledges and agrees that it will be responsible for its own federal, state and local withholding and income taxes

3.2. Project Managers. Vendor shall appoint a duly authorized Project Manager ("PM") to administer the project and act as a liaison between the Parties. Customer shall appoint a duly authorized Customer Representative ("CR") to administer the project and act as a liaison between the Parties. The designated PM and CR shall be the single point of contact for each Party on matters regarding this Agreement. Exhibit A specifies the PM, CR, and contact information for each Party. Vendor may change its PM and Customer may change its CR selection by providing

48 hours prior written notice to the other Party, provided that no such change shall impair the timely completion of the Services.

3.3.   **Adequate Staff.** Vendor will provide adequate staff to successfully complete the Services.

3.4. Progress Reports and Meetings. Vendor shall contact or meet with Customer on a mutually acceptable schedule to report all tasks completed, problems encountered, and recommended changes relating to SchoolTool. Customer will fully cooperate in supplying any information necessary for Vendor to perform the Services hereunder.

4. Fees.

4.1 Service Fees. The Vendor fees for the Services are set forth in the applicable Schedule C. All Service Fees and other fees indicated in the Schedule C are exclusive of any sales tax, value added tax (VAT), goods and services tax (GST) or other taxes and duties that may be applicable. When obliged under applicable tax legislation to add any of the aforementioned taxes or duties to its fees, the Vendor shall do so by computing the applicable tax and including it on the invoice for the Service Fees and other fees.

4.2 Taxes. Customer shall be responsible, on behalf of itself and its Affiliate(s), for the payment of all taxes and fees, including any sales, use, excise, value-added or comparable taxes, but excluding taxes: (i) for which the Customer has provided a valid resale or exemption certificate, or (ii) imposed on Vendor's income or arising from the employment relationship between Vendor and its employees. Should any payments become subject to withholding tax, the Customer will, to the extent Customer is expressly required by law to do so, deduct these taxes from the amount owed and pay the taxes to the appropriate tax authority in accordance with the applicable tax laws. Customer represents that it is a tax exempt organization and will provide Mindex with a valid exemption certificate upon execution of this Agreement and upon Mindex's reasonable request thereafter. Customer will notify Mindex immediately if its tax-exempt status changes.

4.3 Invoices and Payments. Vendor shall invoice Customer in accordance with the billing terms set forth and detailed on the applicable Schedule C. Unless otherwise specified on the applicable Service Order, (i) all charges, fees, payments and amounts hereunder will be in United States dollars, and (ii) all amounts due hereunder are payable within thirty (30) calendar days from the date of Customer's receipt of an invoice (the "Invoice Due Date"). For the avoidance of doubt, Customer's failure to comply with this Section 4 is a material breach of the Agreement.

5. Term, Renewal and Termination.

5.1. Term. The initial term of this Agreement shall commence on August 9, 2021 and shall continue until June 20, 2023, after which the Parties may mutually elect to renew the Agreement for three (3) additional one (1) year periods (the "Term"). Notwithstanding the foregoing, the Parties may mutually elect to terminate the Agreement at any time during the Term upon mutually agreeably terms.

5.2. Termination. Either Party may terminate this Agreement at any time upon written notice to the other Party no less than three (3) months prior. Either Party may terminate this Agreement or any active Service Order in the event that the other Party materially defaults in performing any obligation under this Agreement (including a Service Order) and such default continues un-remedied for a period of thirty (30) days following receipt of written notice of default from the non-breaching party. If this Agreement or any active Service Order is terminated by Vendor as a result of Customer's breach, Customer will not be entitled ot a refund or credit of any prepaid Service Fees.

5.3. Effect of Termination. In the event of termination or expiration of this Agreement for any reason, Customer Member School Districts will have the right to enter into a direct agreement with Vendor to receive the Services. Vendor agrees to apply a credit to such Customer Member School District's payable Fees, calculated as the amount of Fees already paid by Customer for such Customer Member School District.

6. Confidentiality and Non-Disclosure

6.1. Confidential Information. In connection with this Agreement each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Recipient Party") if necessary to perorm its rights or obligations under the Agreement. Confidential Information means any non-public business information, in any form or medium (whether, oral, written, electronic or other) that the disclosing Party considers confidential, business sensitive, or proprietary, including information consisting of or relating to the disclosing Party's technology, business operations, plans, strategies, customers, pricing, know-how, intellectual property, and trade secrets in any form, information with respect to which the disclosing Party has contractual or other confidentiality obligation, including any information regarding that Party's product plans, terms of this Agreement, Personally Identifiable Imformation as that term is defined in NYS Education Law 2-d and any modifications and amendments thereto, and any other information a reasonable person should understand to be confidential, which is disclosed by or on behalf of either Party or its Affiliates to the other Party or its Affiliates, directly or indirectly, whether or not marked, designated or otherwise identified "confidential" in writing, orally, or by inspection of tangible objects, and whether such information is disclosed before or after the Effective Date. Confidential Information excludes information that (a) is publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party through no action or inaction of the receiving Party; (b) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party, as shown by the receiving Party's files and records provided that receiving Party provides such notice to the disclosing Party upon disclosure of information; (c) is obtained by the receiving Party from a third party without a breach of the third party's obligations of confidentiality; or (d) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information, as shown by contemporaneous documents and other competent evidence in the receiving Party's possession. For purposes of clarity, Vendor hereby acknowledges that all Customer Data is Confidential Information of Customer.

6.2. Protection of Confidential Information. Each Party hereby agrees that any Confidential Information received by it will be used solely for purposes relating to the performance of its

obligations under this Agreement, and that such information will be kept confidential by the Recipient Party; provided, however, that any such information may be disclosed to the Recipient Party's directors, officers, employees, representatives or advisors who need to know such information for purposes relating to the performance of its obligations under this Agreement; and provided, however, that the Recipient Party may disclose such Confidential Information if required by law, pursuant to a subpoena or order issued by a court of competent jurisdiction or by a government or administrative body or pursuant to a requirement of any applicable regulatory authority; provided, further, that the Recipient Party shall provide prior written notice to the Disclosing Party of the existence, terms and circumstances surrounding such a request so that the Disclosing Party may seek a protective order or other appropriate remedy, at its sole cost and expense.

7. Technology Rights and Ownership

7.1.   Vendor Ownership.

a. All intellectual property rights relating to the Services and Documentation, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Vendor in connection with the Services or otherwise comprise or relate to the Services or, methods, software, material, and processes, belong to the Vendor. No such rights are transferred on the basis of this Agreement to the Customer.

b. Customer may not delete, amend, or cover any signs of copyright, trademark or other intellectual property rights, nor in any other way change the Services or any documentation relating to the Service without the written consent of Vendor.

c. Customer hereby agrees that any intellectual property rights in the development of ideas and findings or know-how (whether presented orally or in written form by the Customer or the Vendor) pertaining to the Services ("Feedback") and any materials on which such Feedback is imprinted on belongs to and vests in the Vendor, and that the Customer will not be entitled to any additional compensation in relation to Feedback.

7.2. **Customer Rights and Ownership.** All intellectual property rights relating to any content, reports, configuration, notes, materials, business processes, documents, or other information which the Customer uploads or adds to the Services belong to the Customer. The Vendor agrees that all information which the Customer uploads on the system shall remain the sole and exclusive property of the Customer and that nothing contained herein shall be considered as granting the Vendor any proprietary rights in such information.

8. Representations and Warranties

8.1.   Mutual Representations & Warranties. Each Party represents to the other Party that:

a. It is duly organized, validly existing and in good standing as a limited liability company or other entity as represented herein under the laws of its jurisdiction of formation and organization;

b. It has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

c. The execution of this Agreement by its representative whose signature is set forth at the end of hereof has been duly authorized by all necessary organizational action of the Party;

d. When executed and delivered by such Party, this Agreement shall constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and

e. Its collection, access, use, storage, disposal and disclosure of its own Confidential Information does and will comply with all applicable federal, state, local, and foreign privacy and data protection laws; and

f. It will comply with applicable data protection laws in its performing its rights and obligations under this Agreement, including NYS Education Law Section 2-d and any amendments or modiciations thereto. The Parties agree that the Data Sharing and Confidentiality Agreement, attached to this Agreement as Exhibit B, will apply with respect to Vendor's obligations under Section 2-d.

8.2. **Vendor Representation and Warranty.** Vendor represents and warrants that:

a. All services provided by Vendor hereunder will be performed in a good, professional, workmanlike manner, and in accordance with industry customs and practices; and

b. The Services provided will conform to all material aspects of the Schedule C.

Customer Representation and Warranty. Customer represents and warrants to Vendor that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Personally Identifiable Information, including by presenting, complying with, and enforcing all appropriate disclosure and notice requirements at the point of collection of Personally Identifiable Information, so that, as accessed, received, and processed by Vendor in accordance with the Agreement and this Addendum thereto, it does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or any privacy or other rights of any third party or violate any applicable law, including without limitation the Family Educations Rights and Privacy Act and NYS Education Law Section 2-d.

9. Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, ALL SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS." VENDOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, VENDOR MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR

VENDOR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

10. Indemnification. Each party shall indemnify, defend and hold harmless the other party and its officers, directors, agents, and employees as well as the other party's Affiliates and their respective officers, directors, agents, and employees from and against any and all claims by, or liability to, any third party, for loss, damage or injury to persons or property, or infringement of a United States patent or copyright (each, a "Claim") that is directly arises out of the indemnifying party's negligence in the performance of its obligations under this Agreement.

11. Dislclaimer of Damages; Limitation of Liability.

11.1. DISCLAIMER OF INDIRECT DAMAGES. NEITHER PARTY IS LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PRODUCTION, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF CONTRACTS, COST OF REPLACEMENT SERVICE OR FINANCIAL GAIN, THE REDUCTION OF REVENUES OR PRODUCTION, THE FAILURE TO PERFORM OBLIGATIONS TO A THIRD PARTY OR OTHER SIMILAR INDIRECT DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2. LIMITATION OF LIABILITY. THE MAXIMUM LIABILITY FOR DAMAGES, OR BREACH OF REPRESENTATIONS AND WARRANTIES OF VENDOR SHALL UNDER ALL CIRCUMSTANCES BE LIMITED TO THE PRIOR TWENTY-FOUR (24) MONTHS' SERVICE FEES OF CUSTOMER.

12. General

12.1. **Access to Facilities.** When a Party's personnel are invited into the facilities of the other Party, the Party owning the facility shall provide the visiting Party's Personnel with reasonable, free and safe access to the facility. The visiting Personnel shall comply with the owning Party's reasonable prevailing rules for visitor conduct and safety that are disclosed to the visiting Party in advance and the visiting Personnel shall otherwise conduct themselves in a businesslike manner.

12.2. **Insurance.** Throughout the term of this Agreement, Vendor shall procure and maintain, at its own cost and expense, insurance policies covering general casualty and liability, and other appropriate hazards with an insurance company authorized to do business in New York State in amounts and with coverage limits that are consistent with prudent business practices and industry norms. Upon Customer's written request, Vendor shall provide documentary evidence of the insurance coverage required by this Section 12.2 to Customer. Vendor shall notify Customer in writing thirty (30) days prior to the cancellation, termination or material modification of any such insurance policy.

12.3. **Survival.** The respective rights and obligations of both Parties hereunder that by their nature are intended to survive this Agreement shall survive any termination hereof.

12.4. **Governing Law.** This Agreement shall be governed in all respects by the substantive laws of the State of New York and the County of Monroe, without regard to said state's conflicts of law provisions. The Parties agree that any suit, action or proceeding related to, in connection with, or arising out of this Agreement shall be brought in a court, Federal or State, located in the County of Monroe, State of New York, and the Parties consent to the jurisdiction and venue of such Federal or State Court as the sole and exclusive forum for the resolution of claims by the Parties arising under or relating to this Agreement. Each Party hereby waives any venue defenses or other objections which it may have now or hereafter to the laying of the venue of such action or proceeding and irrevocably submits to the jurisdiction of any such Federal or State Court in any such suit, action or proceeding. The Parties also waive any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

12.5. **Modifications to Agreement.** No modification, amendment or supplement this Agreement, or any part thereof, shall be binding upon the parties hereto unless made in writing and signed by both Parties hereto.

12.6. **Waiver.** No failure or delay in exercising any right, power or remedy hereunder by either Party hereto shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof or the exercise of any other right, power or remedy. The rights provided hereunder are cumulative and not exclusive of any rights provided by law.

12.7. **Appropriation and Availability of Funds.** This Agreement shall be deemed executory only to the extent of monies appropriated and available to the Customer and/or its clients for the purpose of this Agreement, and no liability on account thereof shall be incurred by the Customer beyond the amount of such monies. The Agreement is not a general obligation of the Customer. Neither the full faith and credit nor the taxing power of Customer are pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available from the purpose of this Agreement.

12.8. **Force Majeure.** The Parties agree that neither Party shall be liable for any delay or failure to perform under this Agreement if such delay or failure is due to any contingency beyond its control including, but not limited to, acts of God, war, explosion, fire, flood or civil disturbance, but not including public health emergencies; provided, however, that the Party whose performance is affected by the force majeure event uses commercially reasonable efforts to mitigate the delay.

12.9. **Complete Agreement.** This Agreement, together with all of the Schedules incorporated herein by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals,

understandings or other agreements, whether oral or written, between the parties relating to the subject matter hereof, including without limitation the Master Services Agreement by and between the parties executed April 21, 2020, provided that any claims arising on or before August 8, 2021 will be governed by the aforementioned agreement.
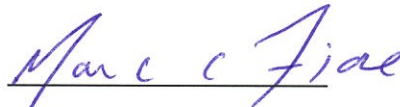
12.10. **Judgment of Invalidity of Any Term.** If any such term of this Agreement is found invalid, such finding shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The Parties agree that if any provision is deemed not enforceable, such provision shall be deemed modified to the extent necessary to make it enforceable.

12.11. **Order of Precedence.** If there is any conflict between this Agreement, together with its and the applicable Schedule C, the terms of this Agreement shall control except as otherwise explicitly stated in the in relation to price, quantity, dates of performance, product and shipping. Notwithstanding anything in this Agreement to the contrary, Exhibit B "Data Confidentiality and Sharing Agreement" will control in the event of any conflict between this Agreement and Exhibit B.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

MINDEX

By: _Marc C Fiore_

Printed Name: Marc Fiore

Title: President

Date: 7/14/2021

CUSTOMER

By: _____

Printed Name: _____

Title:

Date:

EXHIBIT A

Project Manager, Customer Representative

and Contact Information for Each Party

For Mindex:

~~Christian Riggalls~~ Mike Terzis

Phone Number (585-424-3590)

Billing Contact: Mike Littlewood

Phone Number (585-424-3590)

For Customer:

Name

Phone Number

Billing Contact Name

Phone Number

Exhibit B

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY AND SUPPLEMENTAL INFORMATION ABOUT THE AGREEMENT

1.   Purpose

(a)   This Exhibit supplements the MINDEX ("AGREEMENT") to which it is attached, to ensure that the AGREEMENT conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Albany-Schoharie-Schenectady-Saratoga BOCES ("BOCES") Parents Bill of Rights for Data Security and Privacy signed by MINDEX, and the Supplemental Information about the Agreement that is required to be posted on BOCES website.

(b)   To the extent that any terms contained within the AGREEMENT, or any terms contained within any other Exhibits attached to and made a part of the AGREEMENT, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that MINDEX has online or written Terms of Service ("TOS") that would otherwise be applicable to its customers or users of its Product that is the subject of the AGREEMENT, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2.   Definitions

Any capitalized term used within this Exhibit that is also found in the AGREEMENT will have the same definition as contained within the AGREEMENT.

In addition, as used in this Exhibit:

(a)   "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that MINDEX receives from a Participating Educational Agency pursuant to the AGREEMENT.

(b)   "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d. The Parties acknowledge and agree that MINDEX does not receive Teacher or Principal Data from a Participating Educational Agency pursuant to the AGREEMENT.

(c)   "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to MINDEX's Product.

(d)   "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use MINDEX's Product pursuant to the terms of the AGREEMENT.

3.   Confidentiality of Protected Data

(a)   MINDEX acknowledges that the Protected Data it receives pursuant to the AGREEMENT may originate from several Participating Educational Agencies located across New York

State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.

(b)   MINDEX will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and the BOCES policy on data security and privacy. MINDEX will be obligated to comply with such policy only to the extent that the policy and any modifications thereto are provided to MINDEX. MINDEX acknowledges that BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, but that adoption may not occur until a date subsequent to the effective date of the AGREEMENT. BOCES will provide MINDEX with a copy of its policy as soon as practicable following adoption, and MINDEX and BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure MINDEX's continued compliance with Section 2-d. Such modifications will become binding on the Parties when made in writing and signed by both Parties.

4.   Data Security and Privacy Plan

MINDEX agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with BOCES Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by MINDEX and is set forth below.

Additional elements of MINDEX's Data Security and Privacy Plan are as follows:

(a)   In order to implement relevant state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with BOCES data security and privacy policy, MINDEX will:

• Follow policies and procedures compliant with (i) relevant state, federal, and local data security and privacy requirements, including New York State's Education Law Section 2-d Education law, (ii) this Exhibit, and (iii) BOCES' data security and privacy policy;
• No later than July 1, 2020, take measures to protect Protected Data that include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework;
• Follow policies compliant with the Parents' Bill of Rights provided in this Agreement;
• Annually train its officers and employees who have access to Protected Data on relevant federal and state laws governing confidentiality of Protected Data; and_
• In the event any subcontractors are engaged in relation to this Agreement, Vendor will manage relationships with sub-contractors to require sub-contractors to protect the security of Protected Data.

(b)   In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the AGREEMENT, MINDEX will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the AGREEMENT:
• Vendor will identify reasonably foreseeable internal and external risks relevant to its
administrative, technical, operational, and physical safeguards;
• Vendor will assess the sufficiency of safeguards in place to address the identified risks;
• Vendor will adjust its security program in light of business changes or new circumstances;
• Vendor will regularly test and monitor the effectiveness of key controls, systems, and procedures; and

(c)   Vendor will protect against the unauthorized access to or use of Protected Data. MINDEX will comply with all obligations set forth in B OCES "Supplemental Information about the AGREEMENT" below

(d)   For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, MINDEX has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Vendor will train its officers and employees annually on applicable federal and state laws.

(e)   MINDEX [*check one*]_____will_X _will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the AGREEMENT. In the event that MINDEX engages any subcontractors, assignees, or other authorized agents to perform its obligations under the AGREEMENT, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in BOCES "Supplemental Information about the AGREEMENT," below.

(f)   MINDEX will manage data security and privacy incidents that implicate Protected Data, including identify breaches and unauthorized disclosures, and MINDEX will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

(g)   MINDEX will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the AGREEMENT is terminated or expires, as more fully described in BOCES "Supplemental Information about the AGREEMENT," below.

5.   Additional Statutory and Regulatory Obligations

MINDEX acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the AGREEMENT and the terms of this Data Sharing and Confidentiality Agreement:

(a)   Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b)   Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist MINDEX in fulfilling one or more of its obligations under the AGREEMENT.

(c)   Not use Protected Data for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

(d)   Not disclose any personally identifiable information to any other party, except for authorized representatives of MINDEX using the information to carry out MINDEX's obligations under the AGREEMENT, unless:
(i)   the parent or eligible student has provided prior written consent; or
(ii)   the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.

(e)   Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Data in its custody;

(f)   Use encryption technology that complies with Section 2-d, as more fully set forth in BOCES "Supplemental Information about the AGREEMENT," below.

(g)   Provide notification to BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by MINDEX or its

assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h)   Promptly reimburse BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to MINDEX or its subcontractors or assignees.

6.   Notification of Breach and Unauthorized Release

(a)   MINDEX shall promptly notify BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after MINDEX has discovered or been informed of the breach or unauthorized release.

(b)   MINDEX will provide such notification to BOCES by contacting General Counsel directly by email at Michele.jones@neric.org or by calling (518) 464-5139 (office).

(c)   MINDEX will cooperate with BOCES and provide as much information as possible directly to the General Counsel or designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date MINDEX discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the MINDEX has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for MINDEX representatives who can assist BOCES if it has additional questions.

(d)   MINDEX acknowledges that upon initial notification from MINDEX, BOCES, as the educational agency with which MINDEX contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). MINDEX shall not provide this notification to the CPO directly. In the event the CPO contacts MINDEX directly or requests more information from MINDEX regarding the incident after having been initially informed of the incident by BOCES, MINDEX will promptly inform General Counsel or designees.

(e)   MINDEX will consult directly with General Counsel or designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.

BY MINDEX:

PARENTS' BILL OF RIGHTS FOR DATA SECURITY
AND PRIVACY

Albany-Schoharie-Schenectady-Saratoga BOCES (BOCES) is committed to protecting the privacy and security of personally identifiable information about students who attend BOCES instructional programs in accordance with applicable law, including New York State Education Law Section 2-d.

To further these goals, BOCES wishes to inform parents of the following:

(1) A student's personally identifiable information cannot be sold or released for any commercial purposes.

(2) Parents have the right to inspect and review the complete contents of their child's education record.

(3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.

(4) A complete list of all student data elements collected by the State is available for public review at h t t p:/ / www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

(5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints may be directed to the NYS Chief Privacy Officer by writing to the New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be directed to the Chief Privacy Officer via email at: CPO@mail.nysed.gov.

BY MINDEX:

By: _____

Printed
Name: Marc C. Fiore
_____

Title: President
_____

Date: 7/14/2021
_____

EXHIBIT B (CONTINUED)

SUPPLEMENTAL
INFORMATION

ABOUT THE AGREEMENT BETWEEN
Albany-Schoharie-Schenectady-
Saratoga BOCES AND MINDEX

Albany-Schoharie-Schenectady-Saratoga ("BOCES") has entered into An Agreement ("AGREEMENT") with MINDEX ("MINDEX"), which governs the availability to Customer Member School Districts of the following Product(s):

[**SchoolTool**tm and
associated
implementation, training,
maintenance, and
support*list scope of
services from BOCES to
MINDEX*]

Pursuant to the AGREEMENT, Participating Educational Agencies may provide to MINDEX, and MINDEX will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law ("Protected Data").

Exclusive Purpose for which Protected Data will be Used:

The exclusive purpose for which MINDEX is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. MINDEX agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the AGREEMENT. Protected Data received by MINDEX, or any of MINDEX's subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that MINDEX engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the AGREEMENT (including any hosting service provider), MINDEX will obligate its subcontractors, assignees, or other authorized persons or entities to whom it discloses Protected Data to abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations, by requiring its subcontractors to agree in their contracts with MINDEX to such data protection obligations imposed on MINDEX by state and federal law and this Agreement.

Duration of AGREEMENT and Protected Data Upon Expiration:

- The AGREEMENT commences on April [ ] , 2020 and expires on the earlier of (i) April [ ], 2023 and (ii) MINDEX no longer providing the Product to BOCES. Upon expiration of the AGREEMENT without renewal, or upon termination of the AGREEMENT prior to expiration, MINDEX will securely delete or otherwise destroy any and all Protected Data remaining in the

possession of MINDEX or its assignees or subcontractors. If requested by a Participating Educational Agency, MINDEX will assist that entity in exporting all Protected Data previously received for its own use, prior to deletion.
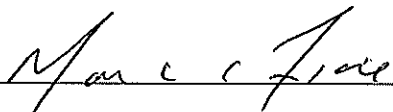
- At BOCES request, MINDEX will cooperate with BOCES as necessary in order to transition Protected Data to any successor MINDEX(s) prior to deletion.
- MINDEX agrees that neither it nor its subcontractors, assignees, or other authorized agents will retain any copy, summary or extract of the Protected Data on any storage medium whatsoever. Upon request, MINDEX and/or its subcontractors, assignees, or other authorized agents will provide a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to MINDEX, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to MINDEX by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data MINDEX receives will be stored on systems maintained by MINDEX, or by a subcontractor under the direct control of MINDEX, in a secure data center facility located within the United States. The measures that MINDEX will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: MINDEX (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.

BY MINDEX:

By: _____

Printed Name: Marc C. Fiore

Title: President

Date: 7/14/2021

Schedule C

RIC District

SchoolTool™ Pricing through 2023-2024

Year	Maintenance Fee per Student	Support Fee per Student	Cloud Hosting Fee Per Student
2021-2022	$4.77	$2.74	$6.00
2022-2023	$4.84	$2.78	$6.09
2023-2024	$4.91	$2.82	$6.18

Maintenance, Support and Cloud Hosting Fees

Maintenance and Support fees are annual fees due in July of every year. These fees are based on RWADA as listed on the latest year's published attendance output found on the NYS Aid website (https://stateaid.nysed.gov).

Since BOCES and private districts are not included on the site above, we have standardized our student count methodology for those districts to use BEDS Day (the first Wednesday in October) to determine the number of students to be invoiced for the following year. We will use the district's CRDC and BEDS Breakdown report to obtain the district's headcount across all building school levels as of BEDS Day to determine pricing for the upcoming year (e.g., a district's count on BEDS Day in October 2020 will be used for 2021-2022 pricing).

Pricing for New Districts:

☐ **There will no longer be a License fee per student.**
☐ **There will no longer be an Implementation fee.**
☐ **There will no longer be a Report Viewer fee.**
☐ **In addition, there will no longer be any pro-rated fees :**
    o **Only if the district takes advantage of the SchoolTool AWS Cloud Hosting.**

Small District Pricing for New Districts

For any district with a student count of under 250, the actual billing will be based on a minimum student count of 250.

Training Costs:

- On-site at Customer Location: $175/hour, billed in 8 hour increments with local exceptions
- On-site at Mindex Facility: $130/hour, billed in 4 hour increments.
- Distance Learning: $100/hour
- Certification Training:
  - Certification Level 1: $1,200/person, 6 days across 2 weeks
  - Certification level 2, Elementary: $600/person, 3 consecutive days
  - Certification level 2, Secondary: $800/person, 4 consecutive days
  - Certification level 2, Combined: $1,200/person, 7 days across 2 weeks

Other Fees:

- Custom Development work: $175.00/hour