

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 BOCES "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:

EXHIBIT B (CONTINUED)

**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 <http://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:

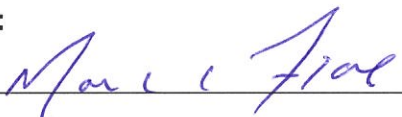
By: 
Printed Name: Marc C. Fiore
Title: President
Date: 7/14/2021

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

