Daniel T. White
District Superintendent

Lisa N. Ryan
Assistant Superintendent for Finance & Operations

TO: Members of the Board of Education
        Mr. Daniel White

FROM: Lisa N. Ryan

SUBJECT: Contract Approvals

DATE: April 28, 2020

The purpose of this memo is to request that at our May 7, 2020 Board of Education meeting the Board adopt a resolution to approve the following contracts:

- School Tool/ Mindex – Regional Information Center –per attached
- Paradigm Environmental Services, Inc. – Business Office – per attached

Should you have any questions please contact me prior to our May 7 meeting.   Thank you.

SCHOOL**TOOL**

MASTER AGREEMENT

THIS MASTER AGREEMENT (this "Agreement") is made this _20_ day of April, 2020, by and between Mindex, a New York corporation, having its principal offices located at 250 Alexander Street, Rochester, New York 14607 ("Vendor"), and Monroe 1 BOCES, having its principal offices located at 41 O'Connor Road, Fairport, New York 14450 ("Customer"), herein collectively referred to as the "Parties" or referred to in a singular sense as a "Party".

RECITATIONS

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

WHEREAS, each license purchased by Customer will be purchased for allocation to a specific member school district of Customer or another BOCES through a cross contract (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 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 Schedule C.

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 own 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, as explained to Customer in advance, 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 solely responsible for its own federal, state and local withholding and income taxes, as well as for the payment/provision of wages and benefits to its employees and agents.

   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 any applicable 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 otherwise 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.

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 Schedule C, (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 term of this Agreement shall commence on the Effective Date (i.e., the date the Agreement is fully-executed by the parties) and shall continue until the earlier of (i) the expiration or termination of all Schedule C's hereunder and (ii) the termination of this Agreement in accordance with the provisions hereunder (the "Term").

   5.2. **Termination.** Either Party may terminate this Agreement and/or any active Schedule C at any time and for any reason, upon ninety (90) days' prior written notice directed to the respective titles included in the signature blocks of this Agreement. In the event of termination, no fee(s) shall be due to Vendor for services beyond the ninety-day (90-day) notice period. Any and all fees paid to Vendor in advance for services beyond the ninety-day (90-day) notice period will be reimbursed to Customer on a *pro rata* basis. If this Agreement or any active Schedule C is terminated by Vendor as a result of Customer's breach, Customer will not be entitled to 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. In the event that a Customer Member School District elects this option, 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 perform its rights or obligations under the Agreement. Confidential Information means any non-public business, student or other 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 Information ("PII") as that term is defined in NYS Education Law 2-d, its implementing regulations 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 (including, but not limited to PII) 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.

6.3. **Order of Interpretation and Control.** Vendor agrees that any and all PII will be stored and maintained in a secure location and solely on designated servers in accordance with New York Education Law Section 2-d, its implementing regulations and the Data Protection Addendum attached hereto as Exhibit B. In the event of a conflict between this Agreement, any other document or exhibit and the Data Protection Addendum, the Data Protection Addendum shall control.

6.4. **Training.** All of Vendor's personnel are trained on information security and Education Law Section 2-d compliance. Vendor's information security policy requires that all personnel who come into contact with Customer Data and PII receive training on the proper techniques for handling such data. Such training is required and shall occur on at least an annual basis.

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. Customer data belongs to Customer and not Vendor.

   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. (This Agreement is subject to the approval of Customer's Board of Education);

        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, as applicable; 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, its implementing regulations and any amendments or modifications thereto. The Parties agree that the Data Protection Addendum, attached to this Agreement as Exhibit B, will govern 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.

        c. In its performance of this Agreement, Vendor warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, marital status, national origin or any other protected category and will comply with all applicable laws, rules and regulations. Vendor has trained its employees regarding sexual harassment prevention and non-discrimination in accordance with legal requirements. Vendor shall at all times comply with all federal, state and local laws, ordinances, regulations, and orders that are applicable to the operation of its organization, and this Agreement and its performance, including, but not limited to, those related to wage and hour compliance and equal opportunity/non-discrimination/non-harassment.

    8.3 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 Educational 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, AND TITLE, 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 tortious action, misconduct and/or 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, EXCEPT WITH REGARD TO DEFENSE AND INDEMNIFICATION REQUIREMENTS SET FORTH ABOVE IN PARAGRAPH 10, BE LIMITED TO THE PRIOR TWENTY-FOUR (24) MONTHS' SERVICE FEES OF CUSTOMER. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT AND EXHIBITS HERETO TO THE CONTRARY, VENDOR'S MAXIMUM LIABILITY RELATED TO VENDOR'S DATA PRIVACY AND SECURITY OBLIGATIONS WILL IN NO EVENT EXCEED $1,000,000, UNLESS OTHERWISE REQUIRED BY LAW OR REGULATION.

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 and with limits not less than $1,000,000 per occurrence and $2,000,000 annual aggregate. 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. **Complete Agreement.** This Agreement, together with Exhibits A and B and Schedules C, which are expressly incorporated herein by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous proposals, understandings or other agreements, whether oral or written, between the parties relating to the subject matter hereof.

12.8. **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.

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

[signature page follows]

MINDEX

By: _Marc C. Fiore (signature)_

Printed Name: Marc C. Fiore

Title: President

Date: _1/23/2020_

CUSTOMER

By: _____

Printed Name: Daniel T. White

Title: District Superintendent

Date: _____

MINDEX

By: _____

Printed Name: Marc C. Fiore

Title: President

Date: _____

CUSTOMER

By: _____

Printed Name: Daniel T. White

Title: District Superintendent

Date: _____

EXHIBIT A

Project Manager, Customer Representative

and Contact Information for Each Party

For Mindex:

Christian Riggalls

Phone Number (585-424-3590)

Billing Contact Name: Andrea Fiore

Phone Number (585-424-3590)

For Customer:

Ms. Lisa Ryan, Assistant Superintendent for Finance & Operations

Phone Number (585-387-3832)

Exhibit B

Data Protection Addendum

The parties to this Data Protection Addendum are the Monroe 1 Board of Cooperative Educational Services ("BOCES") and Mindex ("Vendor"). BOCES is an educational agency, as that term is used in Section 2-d of the New York State Education Law ("Section 2-d") and its implementing regulations, and Vendor is a third party contractor, as that term is used in Section 2-d and its implementing regulations. BOCES and Vendor have entered into this Data Protection Addendum to conform to the requirements of Section 2-d and its implementing regulations. To the extent that any term of any other agreement or document conflicts with the terms of this Data Protection Addendum, the terms of this Data Protection Addendum shall apply and be given effect.

Definitions

As used in this Addendum and related documents, the following terms shall have the following meanings:

"Student Data" means personally identifiable information from student records that Vendor receives in connection with providing Services under this Agreement.

"Personally Identifiable Information" ("PII") as applied to Student Data, means personally identifiable information as defined in 34 CFR 99.3 implementing the Family Educational Rights and Privacy Act (FERPA), at 20 USC 1232g.

"Third Party Contractor," "Contractor" or "Vendor" means any person or entity, other than an educational agency, that receives Student Data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including, but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs.

"BOCES" means Monroe #1 Board of Cooperative Educational Services.

"Parent" means a parent, legal guardian, or person in parental relation to a student.

"Student" means any person attending or seeking to enroll in an educational agency.

"Eligible Student" means a student eighteen years or older.

"State-protected Data" means Student Data, as applicable to Vendor's product/service.

"Participating School District" means a public school district or board of cooperative educational services that obtains access to Vendor's product/service through a cooperative educational services agreement ("CoSer") with BOCES, or other entity that obtains access to Vendor's product/service through an agreement with BOCES, and also includes BOCES when it uses the Vendor's product/service to support its own educational programs or operations.

"Breach" means the unauthorized access, use, or disclosure of personally identifiable information or Educational Agency Data.

"Commercial or marketing purpose" means the sale of PII; and the direct or indirect use or disclosure of State-protected Data to derive a profit, advertise, or develop, improve, or market products or services to students.

"Disclose", "Disclosure," and "Release" mean to intentionally or unintentionally permit access to State-protected Data; and to intentionally or unintentionally release, transfer, or otherwise communicate State-protected Data to someone not authorized by contract, consent, or law to receive that State-protected Data.

Vendor Obligations and Agreements

Vendor agrees that it shall comply with the following obligations with respect to any student data received in connection with providing Services under this Agreement and any failure to fulfill one of these statutory or regulatory obligations shall be a breach of this Agreement. Vendor shall:

(a)   limit internal access to education records only to those employees and subcontractors that are determined to have legitimate educational interests in accessing the data within the meaning of Section 2-d, its implementing regulations and FERPA (e.g., the individual needs access in order to fulfill his/her responsibilities in providing the contracted services);

(b)   only use personally identifiable information for the explicit purpose authorized by the Agreement, and must/will not use it for any purpose other than that explicitly authorized in the Agreement;

(c)   not disclose any personally identifiable information to any other party who is not an authorized representative of the Vendor using the information to carry out Vendor's obligations under this Agreement, unless (i) if student PII, the Vendor or that other party has obtained the prior written consent of the parent or eligible student, or (ii) the disclosure is required by statute or court order, and notice of the disclosure is provided to the source of the information no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order;

(d)   maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information in its custody;

(e)   use encryption technology to protect data while in motion or in its custody (i.e., in rest) from unauthorized disclosure by rendering personally identifiable information unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted by the Secretary of the United States department of health and human services in guidance issued under Section 13402(H)(2) of Public Law 111-5 using a technology or methodology specified by the secretary of the U S.);

(f)   not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so;

(g)   notify the educational agency from which student data is received of any breach of security resulting in an unauthorized release of such data by Vendor or its assignees in violation of state or federal law, or of contractual obligations relating to data privacy and security in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after such discovery of such breach;

(h)   cooperate with educational agencies and law enforcement to protect the integrity of investigations into any breach or unauthorized release of personally identifiable information;

(i)   adopt technologies, safeguards, and practices that align with the NIST Cybersecurity Framework, Version 1.1 no later than July 1, 2020, and technologies, safeguards and practices that comply with the BOCES data security and privacy policy, as such policy and any changes thereto are provided to Vendor in advance. Education Law Section 2-d, Part 121 of the Regulations of the Commissioner of Education and the Monroe #1 BOCES Parents' Bill of Rights for Data Privacy and Security, set forth below, as well as all applicable federal, state and local laws, rules and regulations;

(j)   acknowledge and hereby agrees that the State-protected Data which Vendor receives or has access to pursuant to this Agreement may originate from several Participating School Districts located across New York State. Vendor acknowledges that the Data that is provided by BOCES or a Participating School District belongs to and is owned by the BOCES or Participating School District from which it originates;

(k)	acknowledge and hereby agrees that if Vendor has an online terms of service and/or Privacy Policy that may otherwise be applicable to its customers or users of its product/service, to the extent that any term of such online terms of service or Privacy Policy conflicts with the terms of this Addendum or the Agreement, the terms of this Data Protection Addendum first and then the Agreement (with Exhibit) shall be given precedence;

(l)	acknowledge and hereby agrees that Vendor shall promptly pay for or reimburse the educational agency for the full cost of such breach notification to parents and eligible students due to the unauthorized release of student data by Vendor or its agent or assignee;

(m)	ensure that employees, assignees and agents of Contractor who have access to student data, or teacher or principal data receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access to such data; and

(n)	ensure that any subcontractor that performs Contractor's obligations pursuant to the Agreement is legally bound by the data protection obligations imposed on the Contractor by law, the Agreement and this Addendum.

Monroe #1 BOCES Parents' Bill of Rights for Data Privacy and Security
(https://www.monroe.edu/domain/1478)

The Monroe #1 BOCES seeks to use current technology, including electronic storage, retrieval, and analysis of information about students' education experience in the BOCES, to enhance the opportunities for learning and to increase the efficiency of our operations.

The Monroe #1 BOCES seeks to ensure that parents have information about how the BOCES stores, retrieves, and uses information about students, and to meet all legal requirements for maintaining the privacy and security of protected student data and protected principal and teacher data, including Section 2-d of the New York State Education Law.

To further these goals, the BOCES has posted this Parents' Bill of Rights for Data Privacy and Security.

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. The procedures for exercising this right can be found in Student Records Policy 6320. (https://www.monroe.edu/6320)
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 at http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx and a copy may be obtained 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 should be directed in writing, to:

Chief Privacy Officer
New York State Education Department
Room 863 EBA
89 Washington Avenue
Albany, New York 12234.

or
Monroe One Data Protection Officer
William Gregory

41 O'Connor Road
Fairport, NY 14450

Supplemental Information About Agreement Between Mindex and BOCES

(a) The exclusive purposes for which the personally identifiable information will be used by Vendor is to provide the student data management services described in the Agreement to BOCES or other Participating School District pursuant to a Schedule C.

(b) Personally identifiable information received by Vendor, or by any assignee of Vendor, from BOCES or from a Participating School District shall not be sold or used for marketing purposes.
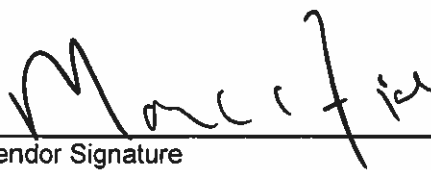
(c) Personally identifiable information received by Vendor, or by any assignee of Vendor shall not be shared with a sub-contractor except pursuant to a written contract that binds such a party to at least the same data protection and security requirements imposed on Vendor under this Agreement, as well as all applicable state and federal laws and regulations.
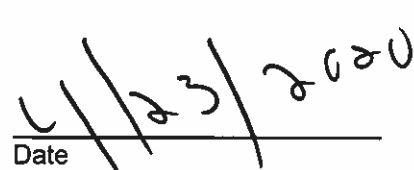
(d) The effective date of this Data Protection Addendum shall be the date the Agreement is fully-executed by the parties and the Agreement (including this Contraact Addendum) shall continue until the earlier of (i) the expiration or termination of all Schedule C's hereunder and (ii) the termination of this Agreement in accordance with the provisions hereunder (the "Term").

(e) Upon expiration or termination of the Agreement without a successor or renewal agreement in place, Vendor shall transfer all educational agency data to the educational agency in a format agreed upon by the parties. Vendor shall thereafter securely delete all educational agency data remaining in the possession of Vendor or its assignees or subcontractors (including all hard copies, archived copies, electronic versions or electronic imaging of hard copies) as well as any and all educational agency data maintained on behalf of Vendor in secure data center facilities. Vendor shall ensure that no copy, summary or extract of the educational agency data or any related work papers are retained on any storage medium whatsoever by Vendor, its subcontractors or assignees, or the secure data center facilities. To the extent that Vendor and/or its subcontractors or assignees may continue to be in possession of any de-identified data (data that has had all direct and indirect identifiers permanently removed with no possibility of reidentification), they each agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party. Upon request, Vendor and/or its subcontractors or assignees will provide a certification to the BOCES or Participating School District from an appropriate officer that the requirements of this paragraph have been satisfied in full.

(f) State and federal laws require educational agencies to establish processes for a parent or eligible student to challenge the accuracy of their student data. Third party contractors must cooperate with educational agencies in complying with the law. If a parent or eligible student submits a challenge to the accuracy of student data to the student's district of enrollment and the challenge is upheld, Vendor will cooperate with the educational agency to amend such data.

(g) Vendor shall store and maintain PII in electronic format on systems maintained by Vendor in a secure data center facility in the United States in accordance with its Privacy Policy, NIST Cybersecurity Framework, Version 1.1, and the BOCES data security and privacy policy, Education Law Section 2-d, Part 121 of the Regulations of the Commissioner of Education, and the Monroe #1 BOCES Parents' Bill of Rights for Data Privacy and Security, set forth above. Encryption technology will be utilized while data is in motion and at rest, as detailed above.

_____
Vendor Signature

_____
Date