



MASTER AGREEMENT

THIS MASTER AGREEMENT (this "Agreement") is made this 31st day of October 2023 ("Effective Date"), by and between Mindex, a New York corporation, having its principal offices located at 250 Alexander Street, Rochester, New York 14607 ("Vendor"), and The Greater Southern Tier BOCES, having its principal offices located at 459 Philo Road, Elmira, NY 14903 ("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 license fee and purchase implementation, training, maintenance, hosting, and support for SchoolTool™ 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; Vendor's hosting services; and 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 Services 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 content in any way.
- 2.3. **Authorized Users Only.** This Agreement restricts Vendor's provision of Services to Authorized Users. Customer may grant only 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 an Authorized User 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, after giving written notice to Customer and confirming it's acceptable to Customer, 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, except to the extent written notice is required under Section 12.10 of 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 Service Fees for the Services are set forth in the applicable Schedule C. For clarity, each Schedule C is designed to provide Service Fees that run concurrent with one or multiple school years, depending on the schedule, and Vendor will provide new Schedule C's with associated Service Fees for additional school years until this Agreement terminates or expires. 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.

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 term of this Agreement shall commence on the Effective Date and shall continue until the earlier of (i) the expiration of 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 or any active Schedule C at any time upon at least three (3) months' written notice to the other Party. Either Party may terminate this Agreement or any active Schedule C in the event that the other Party materially defaults in performing any obligation under this Agreement (including a Schedule C) 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 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. 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; Security

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 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 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. Furthermore, Vendor shall comply with all laws, rules and regulations pursuant to the Family Educational Rights and Privacy Act, 20 USC 1232g ("FERPA") and acknowledges that certain information about the Customer's students is contained in records maintained by Vendor and that this information can be confidential by reason of FERPA and related Customer policies. Both parties agree to protect these records in accordance with FERPA. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities. For the

avoidance of doubt, Customer has determined that Vendor constitutes a School Official under FERPA, 20 U.S.C. § 1232g(b)(1)(A), and has legitimate education interests, including the educational interests of each student receiving instruction via Customer participant school districts. The following exhibit and attachments are attached hereto and incorporated herein: Attachment A: Parents' Bill of Rights for Data Privacy and Security and its Appendix – Supplemental Information Addendum; Exhibit B: Vendor Data Security and Privacy Plan; Attachment B: Supplemental Information About the Agreement Between Customer and Mindex Technologies, Inc. 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.

6.3. Security. To the extent that Vendor hosts and maintains Personally Identifiable Information, as that term is defined in Exhibit B "Data Protection Addendum" ("Exhibit B"), Vendor will comply with its Data Security and Privacy Plan as described in Exhibit B.

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.

7.2. 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. **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 modifications thereto. The Parties agree that 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 all services provided by Vendor hereunder will be performed in a good, professional, workmanlike manner, and in accordance with industry customs and practices and that Vendor will adhere to all applicable New York State and federal law and regulations governing the performance of Services under this Agreement.

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, 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 directly arises out of the grossly negligent or intentional (i) operations, (ii) acts, or (iii) omissions of the Indemnifying Party relating to or arising out of such party's performance of its obligations under this Agreement; and any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of the indemnified party in connection with the defense of such claim. Notwithstanding the foregoing, no party shall be liable to any other party hereunder for any claim covered by insurance, except to the extent of any deductible and to the extent that the liability of such party exceeds the amount of such insurance coverage.

11. Disclaimer 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. EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, THE MAXIMUM LIABILITY FOR DAMAGES, OR BREACH OF REPRESENTATIONS AND WARRANTIES OF A PARTY 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.
- 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 all of the Schedules and Exhibits 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.
- 12.9. Order of Precedence.** If there is any conflict between this Agreement, and any Exhibits, Attachments, or Schedules hereto, the conflict will be resolved in the following order: (i) Exhibit B, (ii) this Agreement, except in relation to price, quantity, dates of performance, product and shipping which are controlled by each Schedule C; (iii) the relevant Schedule C; and (iv) all other Exhibits, Attachments or Schedules. Notwithstanding anything in this Agreement to the contrary, Exhibit B will control in the event of any conflict between this Agreement and Exhibit B.
- 12.10. Notice.** All notices that are required under this Agreement shall be in writing and shall be effective when delivered in hand, when mailed by registered or certified mail, return receipt requested, postage prepaid, or when sent by a third party courier service where receipt is verified by the receiving party's acknowledgement to the address set forth within this Agreement. Any party may designate a different address by notice to others given in accordance herein.

Mindex
250 Alexander Street
Rochester, NY 14607

GST BOCES
Attn: District Superintendent of Schools
459 Philo Road

Elmira, NY 14903

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 F. Terzis

Printed Name: Mike Terzis Marc F. Terzis

Title: Vice President President

Date: 10/31/2023

CUSTOMER

By: _____

Printed Name: _____

Title: District Superintendent of Schools

Date: _____

EXHIBIT A

Project Manager, Customer Representative **and Contact Information for Each Party**

For Mindex:

Mike Terzis

Phone Number (585-424-3590)

Billing Contact Name: Mike Littlewood

Phone Number (585-424-3590)

For Customer:

Name

Phone Number

Billing Contact Name

Phone Number

Exhibit B

Data Protection Addendum

This Data Protection Addendum ("Addendum") is incorporated into and made a part of the Master Agreement between Mindex and Customer ("Agreement") to provide for compliance with the requirements of New York Education Law 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). Any capitalized terms not defined herein will have the meaning given to them in the Agreement.

1. Definitions.

- a. **Personally Identifiable Information:** For purposes of this Addendum, Personally Identifiable Information has the meaning ascribed to it in Section 2-d.

2. Vendor Obligations. In addition to Vendor's obligations under the Agreement and this Addendum, Vendor will:

- a. Comply with Customer's data security and privacy policy as provided to Vendor and Section 2-d;
- b. Limit internal access to Personally Identifiable Information to only those employees or sub-contractors that need access to provide the services under the Agreement;
- c. Not use the Personally Identifiable Information for any purpose not explicitly authorized in the Agreement and this Addendum thereto;
- d. Except as permitted by applicable law, including Section 2-d, not disclose any Personally Identifiable Information to any other party without the prior written consent of the parent or eligible student;
- e. Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of Personally Identifiable Information in Vendor's custody;
- f. Promptly notify Customer of any breach or unauthorized release of Personally Identifiable Information without unreasonable delay, but no more than seven (7) days after Vendor has confirmed or been informed of the breach or unauthorized release. Vendor will not be liable for any damages or costs incurred by the Customer in responding to a security breach or any loss or theft of Personally Identifiable Information unless, and only to the extent, such breach is attributable to Vendor's (or Vendor's Personnel's) failure to comply with the Agreement and this Addendum thereto or otherwise due to Vendor's acts or omissions;
- g. Use commercially reasonable encryption to protect Personally Identifiable Information in Vendor's custody while in motion or at rest; and
- h. 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.

3. Data Security and Privacy Plan

- a. **Compliance.** In order to implement all relevant state, federal, and local data security and privacy contract requirements over the life of the contract, consistent with the educational agency's data security and privacy policy, Vendor will:
 - i. Follow policies and procedures compliant with (i) relevant state, federal, and local data security and privacy requirements, including Section 2-d, (ii) this Addendum, and (iii) Customer's data security and privacy policy;
 - ii. Implement commercially reasonable administrative, technical, operational, and physical safeguards and practices to protect the security of Personally Identifiable Information in accordance with relevant law;
 - iii. Follow policies compliant with Customer's Parents' Bill of Rights and Parents' Bill of Rights Supplemental Information, attached as Attachment A to this Addendum and incorporated by reference herein;

- iv. Annually train its officers and employees who have access to personally identifiable information on relevant federal and state laws governing confidentiality of personally identifiable information; and
 - v. In the event any subcontractors are engaged in relation to this Agreement, manage relationships with sub-contractors to contract with sub-contractors to protect the security of Personally Identifiable Information in accordance with relevant law.
 - b. **Safeguards.** To protect Personally Identifiable Information that Vendor receives under the Agreement, Vendor will follow policies that include the following administrative, operational, and technical safeguards:
 - i. Vendor will identify reasonably foreseeable internal and external risks relevant to its administrative, technical, operational, and physical safeguards;
 - ii. Vendor will assess the sufficiency of safeguards in place to address the identified risks;
 - iii. Vendor will adjust its security program in light of business changes or new circumstances;
 - iv. Vendor will regularly test and monitor the effectiveness of key controls, systems, and procedures; and
 - v. Vendor will protect against the unauthorized access to or use of personally identifiable information.
 - c. **Training.** Officers or employees of Vendor who have access to student data, or teacher or principal data receive or will receive training annually on the federal and state laws governing confidentiality of such data prior to receiving access.
 - d. **Subcontractors.** Vendor will utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the Agreement. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the Agreement, it will implement policies to manage those relationships in accordance with applicable laws and will obligate its subcontractors to protect confidential data in all contracts with such subcontractors, including by obligating the subcontractor 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 and the Agreement.
 - e. **Data Security and Privacy Incidents.** Vendor will manage data security and privacy incidents that implicate Personally Identifiable Information, including identifying breaches and unauthorized disclosures, by following an incident response policy for identifying and responding to incidents, breaches, and unauthorized disclosures. Vendor will notify Customer of any breaches or unauthorized disclosures of Personally Identifiable Information promptly but in no event more than seven (7) days after Vendor has discovered or been informed of the breach or unauthorized release.
 - f. **Effect of Termination or Expiration.** Vendor will return, transit, delete and/or destroy as directed by Customer Personally Identifiable Information at such time that the Agreement is terminated or expires.
4. **Conflict.** All terms of the Agreement remain in full force and effect. Notwithstanding the foregoing, to the extent that any terms contained within the Agreement, or any terms contained within any schedules attached to and made a part of the Agreement, conflict with the terms of this Addendum, the terms of this Addendum will apply and be given effect.

ATTACHMENT A

Parent's Bill of Rights for Data Security and Privacy

GST BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community 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.nysed.gov/data-privacy-security/student-datainventory>, 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 should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/data-privacy-security/reportimproper-disclosure> and/or <https://www.gstbores.org/dataprivacy/index.cfm>.

APPENDIX

Supplemental Information Regarding Third-Party Contractors

In the course of complying with its obligations under the law and providing educational services, GST BOCES has entered into agreements with certain third-party contractors. Pursuant to such agreements, third-party contractors may have access to "student data" and/or "teacher or principal data," as those terms are defined by law.

Each contract the BOCES enters into with a third-party contractor where the third party contractor receives student data or teacher or principal data will include the following information:

- (1) the exclusive purposes for which the student data or teacher or principal data will be used;
- (2) how the third-party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;
- (3) when the agreement expires and what happens to the student data or teacher or principal data upon expiration of the agreement;
- (4) if and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and

(5) where the student data or teacher or principal data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.

BY THE VENDOR:

Marc Fide

Signature

President

Title

10/31/2023

Date

ATTACHMENT B

Supplemental Information About the Agreement Between GST BOCES and Mindex Technologies, Inc.

1. **Exclusive Purpose.** Vendor will use the Personally Identifiable Information to which it is provided access for the exclusive purpose of providing Vendor's services as more fully described in the Agreement. Vendor agrees that it will not use the Personally Identifiable Information for any other purposes not explicitly authorized in the Agreement.
2. **Subcontractors.** In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the Agreement, Vendor will obligate its subcontractors, assignees, or other authorized persons or entities to whom it discloses Personally Identifiable Information, 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 Vendor to such data protection obligations imposed on Vendor by state and federal laws and regulations (e.g., FERPA; Education Law §2-d) and this Agreement.
3. **Agreement Term & Termination.**
 - a. The Agreement commences on the Effective Date of the Agreement and expires on the earlier of (i) Vendor no longer providing services to Customer and (ii) termination of the Agreement in accordance with its terms.
 - b. Vendor will return, delete, and/or destroy as directed by Customer Personally Identifiable Information at such time that the Agreement is terminated or expires.
4. **Challenging Accuracy of Personally Identifiable Information.** Parents or eligible students can challenge the accuracy of any Personally Identifiable Information provided by a Customer to Vendor by submitting a challenge in writing to Vendor.
5. **Data Storage and Security Protections.**
 - a. **General.** Any Personally Identifiable Information Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility. Vendor will maintain reasonable administrative, technical and physical safeguards in accordance with 2-d to protect the security, confidentiality, and integrity of Personally Identifiable Information in Vendor's custody.
 - b. **Encryption.** Vendor will encrypt data in motion and at rest using methodology in accordance with 2-d.

