



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: February 8, 2022

The purpose of this memo is to request that at our February 17, 2022, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- Thought Exchange. – Regional Information Center – per attached

Should you have any questions please contact me prior to our February 17 meeting. Thank you.

**Fulcrum Management Solutions Inc.
 ThoughtExchange® Terms of Service Agreement**

This document and its related documents form an agreement between Fulcrum Management Solutions Inc. and you, Monroe #1 Board of Cooperative Educational Services. This document provides the specifics of your agreement; the following documents are incorporated by reference into your agreement: Attachment 1 is a description of the services you have purchased, Attachment 2 is our terms of service, and Attachment 3 is a Compliance With New York State Education Law Section 2-d Contract Addendum. In the event of a disagreement between this document and the attachments, Attachment 3 and then this document take(s) precedence.

This is not an invoice. See below for invoicing details.

Pricing

ThoughtExchange Services	Pricing*
1 ThoughtExchange Small Room (up to 5 Leaders) - \$2,000.00 per month	\$24,000.00
1 ThoughtExchange Medium Room (up to 10 Leaders) - \$3,000.00 per month	\$36,000.00
1 ThoughtExchange Large Room (up to 15 Leaders) - \$4,000.00 per month	\$48,000.00
1 Additional Leader to a Room - \$500.00 per month	\$6,000.00
<i>Additional rooms per District are available at a 50% discount (Discount is applied to Room of equal or lesser value)</i>	
First Year Total	\$

*Pricing in US Dollars

Payment, Term and Termination

Your ThoughtExchange Services subscription begins on February 1, 2022 and is automatically renewed for a year term at the Annual Subscription Price, subject to the quoted 4% annual increase, on your Anniversary Date of July 1 for each subsequent year (starting July 1, 2022), unless you provide us with 60 days' notice of cancellation prior to the Anniversary Date. This agreement (and all related attachments and documents) may be terminated at any time and for any reason upon sixty (60) days' notice. In such case, you shall be reimbursed on a pro rata monthly basis.

The price shown on this agreement is guaranteed until the July 1, 2023 payment. After this payment, we will provide you with minimum 120 days' notice, prior to the Anniversary Date, of any price increases.

An invoice, showing relevant taxes, if any, will be provided upon issuance of a Purchase Order by Monroe #1 BOCES.

This agreement must be accepted by February 15, 2022 to be valid.

Purchase Through Agreement

You acknowledge and agree that you will hold the ThoughtExchange Services subscription purchased under this agreement and, except as expressly set out in a separate agreement, you may sell account-level access to the ThoughtExchange Services solely to the following school district (the "District"):

District Name

As a consequence:

- Your ThoughtExchange Services subscription will be governed by our Terms of Service, attached as Attachment 2 (the "Customer Agreements");
- Except as expressly set out in a separate agreement, none of your member school districts have license or other rights under the Customer Agreements; and
- Except as expressly set out in a separate agreement, Fulcrum has no obligation to any other entity, including to you or any of your other member school districts.

You acknowledge and agree that we have no obligation to provide software or services to the District unless and until (1) payment has been received from you, and (2) the District has provided us with written acceptance of the Customer Agreements.

We may agree to have the District adopt the Customer Agreements. If we don't so agree, you will verify that the District complies with all customer and exchange leader obligations set out in such Customer Agreements. You agree to indemnify, defend and hold us and our officers, directors, shareholders, employees and consultants (our "Indemnified Parties") harmless from any and all liability, loss, damages, reasonable costs and reasonable fees (including, without limitation, attorneys' fees) that are incurred by us or our Indemnified Parties as a result of any intentional or negligent acts or omissions of the District that would constitute a breach of the Customer Agreements.

The District shall be entitled to rely on Section 10 of Attachment 2.

Acceptance

Please indicate your acceptance of this agreement (including the attachments) by signing below and returning this cover page to us. By signing you represent that you are authorized to agree to this agreement on behalf of Monroe #1 Board of Cooperative Educational Services. Payment also indicates acceptance of these terms.

Monroe #1 Board of Cooperative Educational Services

By: 

Daniel T. White
Print Name Above

District Superintendent
Title

2 / 8 / 2022
Date

Fulcrum Management Solutions Inc.

By: 
59D1EF904717423

Joe Baker
Print Name Above

VP Corporate Development
Title

February 1, 2022 | 15:19:40 PST
Date



ThoughtExchange® Services – Attachment 1

ThoughtExchange

ThoughtExchange is a hosted Software-as-a-Service platform. ThoughtExchange allows Exchange Leaders to engage with Participants in structured online interactions. We call each of these interactions an Exchange. Each Exchange is created by an "Exchange Leader" designated by you, our customer. A "Participant" is any other person who participates in the Exchange.

Exchange Leaders and Participants can access ThoughtExchange via most popular web browsers on standard desktop and mobile platforms (see <https://get.thoughtexchange.help/hc/en-us/articles/226950227-Supported-browsers-and-devices> for a list of supported platforms).

Room Subscription

ThoughtExchange Rooms are virtual environments allowing Exchange Leaders to launch Exchanges to engage participants in meaningful conversations about decisions impacting them.

You have purchased one or more Room Subscriptions. A Room allows the number of Exchange Leaders (specified on the cover page) to create unlimited Exchanges, any of which can be active at the same time. Rooms are collaborative environments. Exchange Leaders who have access to a given Room are able to access and work with all Exchanges created in the Room.

Core Features and Services

Exchange Leaders: Each holder of an Exchange Leader account can create their own Exchanges and have access to special ThoughtExchange features.

Unlimited Participants per Exchange: Exchanges have no limit on the number of participants, although Exchanges including more than a few thousand participants we recommend contacting our customer support team.

Unlimited Exchanges: An Exchange Leader can create an unlimited number of Exchanges.

Unlimited Report Creation: Create an unlimited number of printable, downloadable, or web-based reports.

Multilingual: The ThoughtExchange user interface runs natively in either English, French, or Spanish. Exchanges can be created where Participants can participate in the same Exchange in any language that Google Translate supports.

Analytics and Data Visualization: You have access to analytics and data visualization that is automatically generated by the software. This includes our presentation mode functions and AI-generated theming technology.

Phone, Chat, and Email Support: These are available to you during regular working hours.

Access to Customer Success: Ensures your Exchange Leaders get the training, support, and access to resources in order to run successful Exchanges.

Access to Events and Resources: Engage with your peers, learn from industry leaders, and identify new ideas to better engage with your community and organization.



Administrative Controls: Increased security controls to provide maximum protection. Adjust Room names, registration requirements, set domain restrictions, and add/remove Exchange Leaders.

Machine Moderation: Access to our machine moderation technology which can review thoughts that appear toxic, or that name people explicitly, before they are shared in the Exchange. This allows Exchange Leaders additional security and an opportunity to keep the Exchange a safe space.

Survey Questions: Up to 10 survey-style (multiple choice) questions, allowing for additional filtering of your Exchange data for deeper analysis.

Custom Logo: Add your logo on your exchanges and Summary Reports.

Participant Grouping: Create custom participant groups within a single exchange to keep participant thoughts and ratings contained and be able to compare trends between groups.

Thoughtexchange® US Services Agreement

Thoughtexchange® US Service Terms – Attachment 2

1. Scope of Agreement

1.1 Fulcrum Management Solutions, Inc., a Washington corporation (“Fulcrum” or, alternatively, “we” or “us”), markets and sells subscriptions to the online software platform called Thoughtexchange and various online services offered as part of the platform (“Software Services”). We provide one or more types of subscription each having its own set of Software Services. These Software Services are described more fully in Attachment 1.

1.2 This document is attached to signed cover pages and Attachment 1 that incorporates these terms. The cover pages set forth the price and other details of the subscription that you have purchased, and Attachment 1 identifies the particular Software Services you have purchased. The cover pages, together with this document, constitute our Agreement for any Software Services that we provide to you.

2. Precedence of Terms

2.1 While this Agreement sets forth the terms under which we provide Software Services to you our customer, the use of the Thoughtexchange online platform by individuals to whom you provide access to lead or participate in an exchange, is governed by our Participant and Leader Terms of Use (the “Terms of Use”).

2.2 The Terms of Use provides protections for Participant privacy, prevents abuse of the platform by Participants and limits our liability and yours to Participants and Leaders. We intend for this Agreement, and not the Terms of Use, to govern the relationship between us. Accordingly, if there is conflict between a term set forth in this Agreement and a term set forth in the Terms of Use, this Agreement shall control and govern.

2.3 Our current form of Terms of Use can be found at <https://terms.thoughtexchange.com>. We may change our Terms of Use from time to time, and we will notify you as early as is commercially reasonable (no later than ten (10) business days after a change decision is made) of any upcoming change. No such change will have the effect of changing this Agreement.

3. Exchange Leaders

3.1 Thoughtexchange is a hosted Software-as-a-Service platform. Thoughtexchange allows users to engage with others in structured online interactions. We call each of these interactions an Exchange. Each Exchange is created by an “Exchange Leader.” A “Participant” is any other person who participates in the Exchange.

3.2 Access to Exchange Leader features is through one or more accounts authorized by you, our customer, and associated to an email address. At any given time, you may only provide access through the number of email addresses for which you have purchased Exchange Leader accounts. You can add or change the email addresses designated as Exchange Leader accounts. There is no limit on how often you can change these addresses.

3.3 Cancellation, or failure to renew your subscription, will result in suspension of any accounts that you have purchased, either at the time of cancellation or at the end of your current Subscription Period.

Thoughtexchange® US Services Agreement

4. Term of Software Services

4.1 The services described in this Agreement are only available to you during the Subscription Period provided on the cover page. If your subscription is terminated for any reason, our obligation to provide services terminates on the effective date of termination of your subscription.

4.2 In providing services to you, our relationship to you is that of an independent contractor. It is not the intent of either party to create a relation of employment, partnership, agency or joint venture. Except as specifically set forth in the cover page, we will bear all expenses incurred in connection with the services. No employee of Fulcrum Management Solutions, Inc., shall be considered an employee of yours or any school district for any purpose whatsoever, including, but not limited to, wage and hour, workers' compensation, and/or disability insurance.

4.3 You may cancel your subscription at any time during your Subscription Period in accordance with the terms set forth in the Terms of Service Agreement. We may cancel your subscription at any time upon sixty (60) days' notice and will issue a refund pro-rated based on the number of months remaining to the end of your Subscription Period.

5. Ownership of Content

5.1 You own all visual, written or audible communications and any other material that is produced by you and your Exchange Leaders, stored under your account or published in one or more of your Exchanges. You also own the rights to content created or provided by Participants as part of an Exchange that is licensed to you under the Terms of Use. (All of the foregoing is collectively referred to as "Content.") As part of your subscription, we provide hosting for your Content as well as the tools to create and manage your Content.

5.2 Other material specific to you that we create in providing your services (including, but not limited to, text, graphics, logo, pictures, audio and video) is also owned by you, and you have the right to use it as you see fit following termination of this Agreement.

5.3 All designs, templates, general graphics (i.e. graphics not directly pertaining to your organization) or method of presenting data (e.g. infographics), whether or not created with your input and or assistance, to the extent they do not contain content specific to you, are our property and can be re-used by us for any purpose.

5.4 By way of example, and not limitation, of the foregoing:

- a) You own the specific results and the specific visualizations of the results of your exchanges. We retain ownership of the analytic processes and mechanisms of visualizations even if these were developed or improved in conjunction with you.
- b) Once a customized report or presentation of your exchange results has been completed, it is your property and you may make use of it as you wish. We retain ownership of the design of the report to use as a template for other reports with other customers, even if the design was developed or improved in conjunction with you.

6. Responsibility for Content

6.1 You are solely responsible for any liability arising from your Content. We do not guarantee the accuracy, integrity or quality of any Content.

Thoughtexchange® US Services Agreement

6.2 While we make a reasonable effort to be compliant with the data access laws in all jurisdictions (and will comply with the requirements and standards set forth in Education Law Section 2-d, any implementing regulations and the Compliance With New York State Education Law Section 2-d Contract Addendum) in which we have a significant number of customers, you are ultimately responsible for following the laws in your state, province or country, including any legal requirements concerning data access. We do not guarantee the availability of our Software Services in all countries and they may not be available for use in any specific jurisdiction.

6.3 You and your Leaders and Participants also control the privacy of your Content. We have no responsibility for Content disclosed by you, your Leaders or Participants.

6.4 We will use commercially reasonable efforts to ensure that only Participants and Leaders authorized by you have access to your Content and to maintain the privacy of your Content stored on the Thoughtexchange platform, and will comply with the requirements and standards set forth in Education Law Section 2-d, any implementing regulations and the Compliance With New York State Education Law Section 2-d Contract Addendum.

6.5 Except as permitted by this Agreement or otherwise required by law, we will not share your Content with any third party without your permission. If you grant us permission to use this information publicly you agree this information may be used by us for all business purposes, without any accounting or any payment to you, unless otherwise arranged at the time permission was given. "Permission," as used in this agreement, means written permission including email.

6.6 You acknowledge and agree that we may cooperate with any governmental authority in connection with any investigation into your use of our services, including use in contravention of applicable laws, and may, in accordance with applicable laws, disclose any Content, and any other information pertaining to you or to your use of our services to such governmental authority if required in connection with any such investigation. Notice of our cooperation with any such investigation will be provided to you where reasonably possible.

7. Use of Content

7.1 You agree that we have the right to use Content for the following purposes:

- a) to monitor and manage usage by Leaders and other terms and conditions of this Agreement;
- b) to extract statistical summary data (numerical values summarizing usage and not including any textual information entered by your Leaders and Participants), combine the data with data from other customers, and to share this data, from which all customer identifying information has been removed and cannot be discerned, publicly;
- c) to troubleshoot problems or assist your Leaders and Participants; or
- d) to improve our products and services, provided such Content is not inappropriately shared with any third party.

7.2 You agree that we have the right to monitor your use of our services to ensure your compliance with this Agreement, or to comply with any law, order, or requirement of any court or government authority.

7.3 If you give us permission to use your Content we may then publish it for our own marketing purposes without further notice to you. You will be able to share the results with Participants or the public as you think best. If you share your Content publicly it is deemed to be in the public domain and we may then share with others as we wish.

Thoughtexchange® US Services Agreement

8. Content Deletion

8.1 We will maintain the Content from your Exchanges for six (6) months following termination of your subscription. Prior to termination of your subscription, you may obtain copies of your Content using the data download feature. After termination, providing the data has been maintained, we will provide you with a copy of your Content upon written request.

8.2 Termination of your subscription will also result in the termination of hosting of Content outside of the Thoughtexchange platform. We will maintain this hosted Content for six (6) months following termination of your subscription. Prior to deletion, you may obtain copies of your hosted website or the Content from any such service by making a written request to us.

8.3 After six (6) months we may, at our discretion, permanently delete your Content. We do not guarantee to maintain your Content after cancellation or the end of your term. We may, at our discretion, keep your Content for an indefinite amount of time so that, should you renew, you will have access to your Content. Note that the more time passes the less likely we are to maintain your Content, and even if we do maintain your Content, as time passes it become less likely that your Content will be useable due to system changes, upgrades etc.

8.4 At any time you may request in writing for us to delete your Content. We will delete all copies of your Content in our possession.

9. Confidential Information

9.1 In the course of providing services, you may provide us with certain confidential information, including but not limited to the personal information about your Leaders and Participants and information about your organization not directly related to your Exchange, that is marked confidential or is received under circumstances that would reasonably lead us to understand that it is confidential (your "Confidential Information").

9.2 Similarly, we may provide you with confidential information, including information about the Thoughtexchange platform and related services and information related to our business such as market position, customers, pricing, that is marked confidential or is received under circumstances that would reasonably lead you to understand it to be our confidential information (our "Confidential Information").

9.3 We each agree not to disclose the Confidential Information of the other to any third party without permission. We each agree to protect the Confidential Information with at least the same degree of care that we use to protect your own Confidential Information, but not less than a reasonable degree of care under the circumstances.

9.4 Neither of us shall be liable for the disclosure of the Confidential Information of the other that is:

- a) in the public domain other than by a breach of this Agreement;
- b) rightfully received from a third party without any obligation of confidentiality;
- c) rightfully known without any limitation on use or disclosure prior to its receipt;
- d) independently developed by our respective employees;
- e) generally made available to third parties by the owner without restriction on disclosure;
- or
- f) otherwise required by law to be disclosed.

Thoughtexchange® US Services Agreement

9.5 Specifically with respect to email addresses that you provide to us, we agree that we will not use such email addresses for anything other than directly providing services under this Agreement, unless, and only to the extent, you ask us to or grant us permission to do so.

9.6 If you grant us permission to use information publicly, you agree this information may be used by us for all business purposes, without any accounting or any payment to you, unless otherwise arranged at the time permission is given.

9.7 You agree that we may publish or disclose your name (or, if you are a company or agency, the name of your company or agency) as a client on our website or in written or verbal communications to other existing or prospective clients. No other information will be disclosed. If you do not want your name published or disclosed, you may deliver notice in writing to us and we will agree to keep this information confidential until or unless such request is revoked.

9.8 All terms of this Agreement are confidential between us, and, with the exception of our respective advisors and other agents having an obligation of confidentiality, are not to be discussed with anyone outside of our respective organizations, except as may be required by the Freedom of Information Law or other legal requirements.

10. Student Data Privacy

10.1 We acknowledge that, in order to provide the services described in this Agreement, we may receive data that are covered by the Federal Educational and Privacy rights Act ("FERPA") at 12 U.S.C. 1232g, Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232 h, New York State Education Law Section 2-d and other applicable laws, rules and regulations. A "Compliance With New York State Education Law Section 2-d Contract Addendum" is accordingly attached to this Agreement and incorporated herein by reference.

10.2 We agree that in providing the services, we will be under your direct control and supervision with respect to the use and maintenance of student records and the personally identifying information contained in those records.

10.3 We further agree that, subject to the truth and accuracy of the following representations and warranties, we are in compliance with the above laws.

10.4 In entering into this Agreement, you represent, warrant and agree that:

- a. You have hired us to perform a service for which the district would otherwise use its own employees.
- b. You have previously provided us with an accurate link to your most recent annual notification of FERPA rights, which is available here:
<https://www.monroe.edu/domain/1475>.
- c. You are not hiring us to create exchanges other than for the exclusive purpose of developing, evaluating or providing education products or services for students or schools.
- d. If you ask us to collect information governed by COPPA, that you are validly exercising consent on behalf of the parents of every student for which information is provided.

11. Indemnification

11.1 You and we each agree to defend, indemnify and hold the other harmless against and in respect of any loss, damages, obligation, penalty, deficiency or liability (including, without limitation, attorneys' fees) imposed upon, incurred by or asserted against one of us that are finally

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determined to result from the other's material breach of any provision of this Agreement or its failure to meet its obligations to or perform any acts required under this Agreement, except to the extent such loss is caused by the acts or omissions of, or misrepresentations by, the non-breaching party, its employees or agents or third parties.

11.2 If any demand, claim or suit is asserted or instituted with respect to which any party may be entitled to indemnification under this Agreement, then the party liable for indemnification shall notify the party entitled to indemnification of the full details to the extent then known. The party entitled to indemnification shall be entitled at its own expense to employ counsel to defend such demand, claim or suit or to participate in the defense of such asserted demand, claim or suit. Any proposed settlement of any such demand, claim or suit must be approved by both of us. We agree to cooperate in good faith in the defense or settlement of any such demand, claim or suit.

12. Warranty and Limitation of Liability

12.1 Because the technologies underlying Software Services such as Thoughtexchange are inherently complex, we cannot warrant that the Software Services will be entirely error-free or will operate without interruption. We warrant that during your Subscription Period the Software Services will be free from significant defects. Our sole responsibilities in the event of an error or defect in the operation of the Software Services are:

- a) to use reasonable efforts to correct significant defects without charge; or
- b) to refund a portion of the subscription price, pro-rated from the time such defects are first brought to our attention, and terminate your subscription.

12.2 All advice provided by us is "as-is" and reflects our best judgment based on the information available to us at the time. You are solely responsible for the consequences of acting on our advice.

12.3 IT IS UNDERSTOOD AND AGREED THAT EITHER PARTY'S LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSSES OR DAMAGES. THE PRICE STATED FOR THE PRODUCTS IS A CONSIDERATION IN LIMITING FULCRUM'S LIABILITY.

13. General

13.1 This Agreement constitutes the entire agreement between us and there are no covenants, representations, warranties or agreements other than those contained or specifically preserved under the terms of this Agreement. The rights and obligations under Sections 5 through 12 shall survive termination of this Agreement.

13.2 This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to any conflict-of-laws principles. You irrevocably submit to the personal jurisdiction of the U.S. federal and state courts in Monroe County, New York for any action or proceeding arising out of, or based upon, this Agreement, and waive any objection to the laying of venue in such courts or that any such court constitutes an inconvenient forum. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

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13.3 In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the parties' original intentions and the remainder of the provisions shall remain in full force and effect.

13.4 Either party's failure to insist upon or enforce strict performance of any provision of this Agreement does not mean that either party has waived any provision or right in this Agreement.

13.5 Neither the course of conduct between you and us nor trade practice shall act to modify any provision of this Agreement. This Agreement may only be amended by written agreement between all parties. You may not assign or transfer this Agreement without our prior written consent.

13.6 This Agreement inures to the benefit of and is binding on our respective successors and assigns.

13.7 Each party hereby agrees to obtain and thereafter maintain in full force and effect during the term of this agreement general liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

13.8 Each party 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 equal opportunity/non-discrimination.

13.9 Unless specified otherwise herein: (a) all notices must be in writing and addressed to the attention of the other party's primary point of contact; and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

13.10 This Agreement is subject to the approval of the Board of Education of the Monroe 1 BOCES and the school district, to the extent approval by the district is required to effectuate this Agreement.

Attachment 3

Compliance With New York State Education Law Section 2-d Contract Addendum ("Addendum")

The parties to this Agreement are the Monroe 1 Board of Cooperative Educational Services ("BOCES") and Fulcrum Management Solutions, Inc. ("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 Agreement 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 Agreement, the terms of this Agreement shall apply and be given effect.

Definitions

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

"Student Data" means personally identifiable information from student records that Vendor receives from an educational agency (including BOCES or a Participating School District) 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.

"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 other than as may be expressly authorized by the parties in writing (the "Services").

"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 or by the parties in writing;

(c) not disclose any personally identifiable information received from BOCES or a Participating School District 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) at the direction of the Participating School District, or (iii) 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 or permitted by the secretary of the U.S.);

(f) not sell personally identifiable information received from BOCES or a Participating School District nor use or disclose it for any marketing or commercial purpose unless otherwise expressly authorized by the Services, 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, in compliance with New York law and regulation;

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

(i) adopt technologies, safeguards, and practices that align with the NIST Cybersecurity Framework, Version 1.1, that are in substantial compliance with the BOCES data security and privacy policy, and that comply with 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 State-protected Data belongs to and is owned by the Participating School District or student from which it originates;

(k) acknowledge and hereby agrees that if Vendor has an online terms of service and/or Privacy Policy that may 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 applicable law or regulation, the terms of the applicable law or regulation shall apply;

(l) acknowledge and hereby agrees that Vendor shall promptly pay for or reimburse the educational agency for the full third party cost of a legally required breach notification to parents and eligible students due to the unauthorized release of student data caused 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 legally compliant data protection obligations imposed on the Contractor by law, the Agreement and this Agreement.

Monroe #1 BOCES Parents' Bill of Rights for Data Privacy and Security

<https://www.monroc.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.monroc.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
Monroe #1 BOCES
41 O'Connor Road
Fairport, NY 14450

Supplemental Information About Agreement Between Fulcrum Management Solutions, Inc. and BOCES

(a) The exclusive purposes for which the personally identifiable information provided by BOCES or a Participating School District will be used by Vendor is to provide hosted services to BOCES or other Participating School District pursuant to a BOCES Purchase Order.

(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 Agreement shall be May 1, 2021 and the Agreement shall remain in effect for annual renewal periods, unless terminated by either party for any reason upon sixty (60) days' notice.

(e) Upon expiration or termination of the Agreement without a successor or renewal agreement in place, and upon request from BOCES or a Participating School District, 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, other than any data that Vendor is required to maintain pursuant to law, regulation or audit requirements. 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 unless Vendor is required to keep such data for legal, regulator, or audit purposes, in which case the data will be retained in compliance with the terms of this Agreement. 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.

Vendor shall store and maintain PII in electronic format on systems maintained by Vendor in a secure data center facility in the United States or Canada 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.

Fulcrum Management Solutions, Inc.

By: 
Signature
Title: VP Corporate Development

February 1, 2022 | 15:19:40 PST
Date

