



monroe one
EDUCATIONAL SERVICES

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: May 16, 2023

The purpose of this memo is to request that at our May 25, 2023, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- Talking Points – East Irondequoit CSD – Regional Information Center - per attached
- Talking Points – Ithaca CSD – Regional Information Center - per attached
- Gaggle – Regional Information Center - per attached
- Casewood – Student Services Department - per attached
- Popiols – Regional Program & Services Department - per attached

Should you have any questions please contact me prior to our May 25 meeting. Thank you.

TalkingPoints-Ithaca City School District Software Services and Support Agreement (2023/2024)

1. Overview

This Software Services and Support Agreement (“Agreement” or “Contract”) is entered into by and between TalkingPoints, a California corporation and Monroe 1 BOCES for Ithaca City School District (hereinafter “Ithaca City School District” or “District”).

TalkingPoints product

TalkingPoints’ product is a two-way, multi-lingual texting platform that allows for fast, cheap and accessible communication between districts, schools and teachers with parents and students. Schools use a web application to send text messages to parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone.

TalkingPoints allows for instant translation (machine and human-driven) both outbound and inbound, opening up a communication channel for parents who do not speak English. Schools can also send interactive messages drawn from pre-written text message programs, conduct surveys (with data visualization), send multiple-choice questions, and send automatic follow up messages depending on how the parent replies. Analytics dashboards are also available to track engagement statistics of parents.

TalkingPoints organization

TalkingPoints is a non-profit organization with the mission to meaningfully connect teachers, parents and students across technological and language barriers to increase parent engagement. We believe that parent engagement is critical to student success, yet is often challenging. TalkingPoints helps change this to drive parent engagement through opening up communication channels that build relationships. TalkingPoints was born out of Startup Weekend Education Oakland that OUSD co-sponsored, and won the Teachers’ Pick Prize for Parent Engagement. Our product development has been heavily influenced by OUSD teachers. TalkingPoints was a top 10 finalist in the Google Impact Challenge: Bay Area in 2015. Our current philanthropic funders include [Google.org](https://www.google.org), AT&T Aspire, Stanford University, Echoing Green and Walton Family Foundation.

2. Scope of work

TalkingPoints will license the use of its multi-lingual texting platform (“Software”) to Ithaca City School District for the 2023-24 school year for 5,145 students.

This Agreement includes data import support, system maintenance, system support, and user support to Ithaca City School District for the length of the Agreement. It also includes ongoing system upgrades at no additional cost to Ithaca City School District.

3. Data import

TalkingPoints will import certain specified Ithaca City School District data for the purposes of text message communication for the participating schools. This data can be obtained from a variety of sources, which would include Ithaca City School District Student Information System (“SIS”) or prepopulated data files. TalkingPoints will import Ithaca City School District’s clean data at no additional cost, but Ithaca City School District and its schools will have access to online import tools if it wishes to control its own data imports. TalkingPoints will charge for any data clean up required. If Ithaca City School District opts to have TalkingPoints import its data, it will take a minimum of two (2) weeks and up to a maximum of six (6) weeks to import all data, provided that TalkingPoints has access to clean, high quality data.

4. Fees and Payments

TalkingPoints’ fee breakdown for the 2023-24 school year is as follows:

2023-23 school year

For a minimum of 5,145 students

- \$5.50 per student for implementation and licensing the TalkingPoints software.

Total cost at \$28,297.50 (“Annual License Fee”) for the 2023-2024 school year.

Payment Schedule

The fees will be paid by Ithaca City School District within 30 days of receipt of an invoice from TalkingPoints (but no sooner than 30 days after execution of this Agreement by the parties). Invoices will be generated within 14 days of signing this Agreement and to be paid upfront for the minimum number of students, in this case 5,145 students, with additional payment with regards to additional students due at the start of each quarter, as may be agreed upon by the parties.

- (a) Failure to Make Payment. In the event Ithaca City School District fails to pay the Annual License Fee or other fees due hereunder when due it will constitute a material breach of this Agreement and, upon notice from TalkingPoints, Ithaca City School District agrees to immediately cease, and to cause Ithaca City School District Users to cease, using the Software and TalkingPoints will have no further obligation to provide any maintenance or support to Ithaca City School District or Ithaca City School District Users.

(b) Taxes. The fees in Statement of Work Section 4 do not include sales, use or similar taxes which may be applicable. District is solely responsible and liable for payment of all sales, use, excise, value added or similar taxes, duties or charges imposed by any federal, state or

local government or jurisdiction with respect to any fees or other payments to be made by District to TalkingPoints under this Agreement, excluding taxes based on TalkingPoints' overall net income.

(c) Additional cost If the recipient of the service incurs additional carrier charges for receiving text messages, such as text message fees or data fees, then additional carrier charges are payable by the recipient or District Users

5. Responsibilities

TalkingPoints is responsible for all development and provision of Software to Ithaca City School District and its schools, and for maintenance and support for the Software.

Ithaca City School District's responsibilities are

- Selection of schools to participate in the initiative
- Involvement in the stakeholder engagement process, including introduction of key stakeholders to TalkingPoints, as determined by the District
- Providing access to contact information via SIS or otherwise for data import

6. Excluded Services

Other than the services outlined above, TalkingPoints is not responsible for any other activities, unless mutually agreed to in writing.

7. Client Obligations

In order to fulfill the scope of services described herein, TalkingPoints relies on Ithaca City School District and its schools to provide timely, accurate and complete information, to cooperate reasonably with TalkingPoints and to timely complete all tasks assigned to Ithaca City School District pursuant to the mutually agreed project plan developed at the outset of the project.

8. Product Maintenance and Support

TalkingPoints agrees to provide maintenance and support of the TalkingPoints Software. Maintenance and support of the Software is provided at no additional cost to Ithaca City School District. However, TalkingPoints will not be responsible for, nor will it have any liability resulting from (a) modifications to or alterations of the Software or databases by Ithaca City School District or Ithaca City School District users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Ithaca City School District's or Ithaca City School District users' equipment or Software.

9. Term, Termination and Extension

The Term of this Agreement is from July 1, 2023 to June 30, 2024.

Either party may also terminate this Agreement at any time with written notice for any reason, provided that a pro-rata amount of fees are paid, based on time elapsed from signature of this Agreement until termination. In this event, TalkingPoints is not responsible for producing any of the deliverables under the Agreement. If Ithaca City School District terminates this Agreement without cause as provided for in this paragraph, TalkingPoints will refund Ithaca City School District any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

Either party may terminate this Agreement prior to the expiration of the Term, effective immediately upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, if such breach remains uncured for more than thirty (30) days after written notice thereof. In addition, either party may terminate this Agreement upon ten (10) days written notice to the other party upon the occurrence of any one or more of the following: (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; or (iii) the other party's dissolution. If Ithaca City School District terminates this Agreement as provided for in this paragraph, TalkingPoints will refund Ithaca City School District any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

In addition, TalkingPoints may terminate this Statement of Work immediately upon written notification, if Ithaca City School District violates any of the Ithaca City School District Responsibilities, listed above. However, if TalkingPoints terminates this Agreement as provided for in this paragraph, TalkingPoints will refund Ithaca City School District any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

10. License of Software to District; Third Party Services.

(a) **License.** Subject to the terms of this Agreement, TalkingPoints hereby grants to Ithaca City School District a limited, non-exclusive, non-sublicensable and non-transferrable license for Ithaca City School District employees and staff, and their students or parents or guardians (collectively, "***District Users***") to use the Software during the Term with respect to each of the Ithaca City School District locations as selected by Ithaca City School District. The Ithaca City School District Users may not use the Software other than with respect to the locations set forth and defined as Ithaca City School District locations or for other than Ithaca City School District operations. Ithaca City School District is responsible for verifying that only authorized Ithaca City School District Users are provided access to the Software,

and that access of Ithaca City School District Users authorized by Ithaca City School

District is limited to that portion of the Software and Ithaca City School District Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement. By agreeing to license the Software, Ithaca City School District is also agreeing to comply with the Privacy Policy, attached to this Agreement as **Exhibit “A”** and incorporated herein by reference.

11. Ownership of Software; Third Party Materials. TalkingPoints and its licensors are and will remain the exclusive owners of all right, title and interest in and to the Software and all derivative works, and in the materials licensed by TalkingPoints from third parties (“*Third Party Materials*”), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist now and/or hereafter come into existence, subject only to the rights of third parties in open source components and the limited license granted under this Agreement. In addition, TalkingPoints shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by TalkingPoints pursuant to this Agreement (“*Specific Developments*”). Ithaca City School District will have no rights in the Software, any derivative works, the Specific Developments or Third Party Materials, except the license and related rights expressly set forth in this Agreement. Ithaca City School District agrees not to (i) alter, merge, modify, adapt or translate the Software or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the Software or Third Party Materials to a human perceivable form, (ii) sell, rent, lease or sublicense the Software or Third Party Materials or (iii) create derivative works based upon the Software or Third Party Materials.

12. Software Implementation, Data Conversion, Hosting and Training Services.

TalkingPoints agrees to provide the services associated with the implementation of the Software, data conversion, hosting and training of Ithaca City School District employees on the use of the Software as follows:

(a)**Hosting.** The Software and Ithaca City School District’s data will be hosted on TalkingPoints’s servers (included in the Annual License Fee).

(b)**Importing of Data.** TalkingPoints will assist Ithaca City School District with importing Ithaca City School District’s data into the Software within 45 business days after TalkingPoints is provided reasonable access to usable Ithaca City School District Data.

(c)**Initial Training.** TalkingPoints will provide up to five (5) days of initial training to Ithaca City School District in the basic use of the Software to be presented as both parties mutually agree.

13. Ownership and Control of Ithaca City School District Data. Ithaca City School District will retain ownership of, and the ability to control, all East

Irondequoit City School District data imported into the Software (“*Ithaca City School District Data*”). Ithaca City School District Data includes pupil records and student data, as defined in California Education Code §49073.1(d)(5) and New York Education Law Section 2-d, respectively (“*Pupil Records*”). TalkingPoints may, however, internally use Ithaca City School District Data that has been de-identified in order to improve its educational products. Upon the expiration or termination of this Agreement, to the extent Ithaca City School District Data resides on TalkingPoints servers, TalkingPoints agrees to assist in the transfer all Ithaca City School District Data back to Ithaca City School District in an industry standard open format (if legally compliant), such as CSV, at no charge.

14. Responsibilities of Ithaca City School District. Ithaca City School District agrees to prepare and furnish to TalkingPoints upon request such information as is reasonably requested by TalkingPoints in order for TalkingPoints to perform its obligations under this Agreement.

15. TalkingPoints Software Maintenance and Support. TalkingPoints agrees to provide maintenance and support of the Software. Such maintenance and support will include coverage in the form of bug fixes and other corrections to the Software; telephone and e-mail support for questions regarding operations of the Software; change the Software as necessary to incorporate upgrades and new features; support to Ithaca City School District in resolving problems/errors resulting from misuse or hardware/software failure; and telephone or web conferences with Ithaca City School District to address future growth or modifications to the Software. Maintenance and support of the Software is provided at no additional cost to Ithaca City School District. TalkingPoints’ maintenance of the Software will be at complete discretion of TalkingPoints other than bug fixes. TalkingPoints is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the Software or databases by Ithaca City School District or Ithaca City School District Users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Ithaca City School District or Ithaca City School District Users equipment or software.

16. Confidentiality.

(a) **Confidential Information Defined.** Each party (the “*Disclosing Party*”) may from time to time during the Term disclose to the other party (the “*Receiving Party*”) certain information regarding the Disclosing Party’s business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information (“*Confidential Information*”). The Software, Third Party Materials and related know-how, technology, system designs, layouts, software, concepts, techniques, data and files will be considered Confidential Information of TalkingPoints. Ithaca City School District Data will be considered Confidential Information of Ithaca City School District.

(b) **Protection of Confidential Information.** The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature, with no less than reasonable care, and in accordance with the Education

Law

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Section 2-d Addendum attached hereto as **Exhibit “B”** and incorporated herein by reference. In the event of a conflict between the Agreement or its exhibits and the Education Law Section 2-d

Addendum, the Education Law Section 2-d Addendum shall control. Ithaca City School District

acknowledges that the Software is maintained as a trade secret by TalkingPoints, and agrees to use reasonable care in preserving such secrecy, including making such information available only to those Ithaca City School District Users required to have access in order to fulfill the purposes of this Agreement.

(c) Exceptions. The Receiving Party's obligations under this section with respect to any Confidential Information of the Disclosing Party will terminate if the Receiving Party can demonstrate that such information: (i) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of the Receiving Party has become, generally available to the public; or (iv) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

(d) Return of Confidential Information. In addition to TalkingPoints's obligations under Section 13, promptly upon the written request of the Disclosing Party following termination of this Agreement, the Receiving Party will either, at Disclosing Party's option, return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and certify in writing that it has fully complied with its obligations under this Section.

(e) Use of Confidential Information. The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose prohibited by law or Exhibit "B" or other than as required or specifically permitted by this Agreement. TalkingPoints further agrees it will not use any personally identifiable information in Ithaca City School District Data to engage in or facilitate targeted advertising.

(f) Injunctive Relief. Because monetary damages may not be sufficient to remedy a violation of the provisions of this section, a Disclosing Party shall be entitled, upon becoming aware of any such violation and without waiving any other rights or remedies it may have, to seek injunctive or other equitable relief it may deem appropriate.

(g) Non-Retention Certification. TalkingPoints certifies that, in accordance with this Agreement, Pupil Records shall not be retained or available to TalkingPoints or its employees or agents upon completion of the terms of this Agreement. This certification may be enforced by any lawful means, including, without limitation, through civil action.

17. Privacy and Collection of District Data.

(a) Compliance with Law. TalkingPoints and Ithaca City School District each represents and warrants that it, and its officials, agents, employees and subcontractors have and

will continue to receive training so as to be familiar with the provisions of the Family Educational Rights and Privacy Act (“*FERPA*”) and equivalent state provisions (including, but not limited to New York Education Law Section 2-d), and each party agrees that it will comply with such provisions and take all reasonable measures necessary to protect student education records from unauthorized acquisition or release. In the event that any unauthorized acquisition or release of student education records occurs, each party agrees to advise the other promptly upon discovery of such unauthorized acquisition or release and, if required by law, Ithaca City School District will notify the affected parent, legal guardian or student (if at least 18 years of age), as applicable, in writing of such unauthorized acquisition or unauthorized release. TalkingPoints acknowledges that Pupil Records must be protected and will take all legally required actions, including the designation and training of responsible individuals, to ensure the security and confidentiality of Pupil Records. TalkingPoints will identify those employees and subcontractors who will have access to Pupil Records and ensure such individuals receive appropriate instructions as to how to comply with the security and confidentiality requirements of this Agreement and its exhibits with respect to Pupil Records and student data. TalkingPoints warrants that all Pupil Records will be encrypted in transmission using encryption as required by Exhibit “B,” New York Education Law Section 2- d and its implementing regulations. In addition, TalkingPoints will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement. The parties agree that the commitments agreed to in this section are to ensure compliance with California Education Code Section 49073.1. If TalkingPoints experiences an unauthorized acquisition or release of Ithaca City School District’s student education records, other than through the fault of Ithaca City School District, TalkingPoints shall take reasonable steps to immediately limit and mitigate such breach, including immediately notifying Ithaca City School District.

(b) Sharing of Ithaca City School District Data. TalkingPoints will not share Ithaca City School District Data with, or disclose it to, any third party except (i) as directed by Ithaca City School District or Ithaca City School District Users, (ii) to Ithaca City School District Users as contemplated by this Agreement,

(iii) to TalkingPoints’s subcontractors who need access to fulfill TalkingPoints’ obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (iv) as required by applicable law, regulations and the Exhibits hereto. When TalkingPoints believes that any disclosure is required by applicable law, it shall promptly notify Ithaca City School District prior to the disclosure and give Ithaca City School District a reasonable opportunity to object to the disclosure.

(c) Storage and Process. TalkingPoints will store and process Ithaca City School District Data in accordance with commercially reasonable and lawful practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

(d) Right to Correct. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the student’s education records and correct erroneous information by serving a written request for access or description of the erroneous information and written request for correction upon Ithaca City School District and

furnishing Ithaca City School District, upon request, such information as is reasonably requested

to respond to the request. Ithaca City School District is responsible for correcting all such erroneous information and TalkingPoints agrees to fully

cooperate with Ithaca City School District to make such corrections.

- (e) Social Security Numbers. Ithaca City School District agrees that it will not send, upload or transmit social security numbers to TalkingPoints.

18. TalkingPoints Warranty.

- (a) Software Warranty. TalkingPoints warrants to Ithaca City School District that the Software as delivered, will materially comply with the published specifications of TalkingPoints for such Software. TalkingPoints's obligations under this warranty are limited to providing Ithaca City School District with a copy of corrected Software. TalkingPoints does not warrant that the operation of the Software will be uninterrupted or error-free. IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY,

TALKINGPOINTS AND Ithaca City School District ACKNOWLEDGE THAT THE SOFTWARE IS NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SOFTWARE OF THIS TYPE.

- (b) No Other Warranty. EXCEPT AS EXPRESSLY SET FORTH ABOVE, TALKINGPOINTS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO ALL TECHNOLOGY, THIRD PARTY MATERIALS, SOFTWARE OR DERIVATIVE WORKS PROVIDED OR OTHERWISE LICENSED TO Ithaca City School District IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.

19. Rights in Law and Equity Remain.

The foregoing rights to terminate as set forth in Section 9, above, are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.

20. Miscellaneous.

- (a) Governing Law & Venue. This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of New York, without regard to its principles of conflicts of laws. The Monroe County Supreme Court and District Court for the Western District of New York shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement, as applicable.
- (b) Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This

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Agreement confers no rights upon either party except those expressly granted herein.

- (c) Interpretation. This Agreement will be construed without regard to any presumption or rule

requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

(d) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(e) Limitation of Liability. In no event will either party be liable to the other party or to any third party for any incidental, special, indirect, exemplary, punitive or consequential damages arising out of or relating to this Agreement, including any damages for business interruption, loss of use, or lost or damaged data, whether arising out of breach of contract, tort (including negligence) or otherwise, even if such party or any of its authorized representatives has been advised of the possibility of such damages. Each party's aggregate liability arising out of or relating to this Agreement for any damages, costs, judgments, expenses or loss resulting from any claims, demands, or actions arising out of or relating to this Agreement will not exceed the fees paid or due payable by Ithaca City School District to TalkingPoints during the preceding twenty-four (24) months pursuant to this Agreement. Ithaca City School District also agrees that the TalkingPoints Software is not intended or designed for use in high-risk activities or highly-sensitive information, or in any situation where failure of delivery or limited performance (including translational quality of the Software) or any error in the Software could lead to death, damage to property, personal injury or where other damages could result if an error occurred. Notwithstanding the foregoing, this Limitation of Liability Section 21(e) shall have no effect on or applicability to the indemnification obligations as set forth in Section 21(f), below.

(f) Indemnification: TalkingPoints agrees to hold harmless, indemnify, and defend Ithaca City School District and its officers, agents, and employees from any and all claims or losses accruing or resulting from misconduct, gross negligence, injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. TalkingPoints also agrees to hold harmless, indemnify, and defend Ithaca City School District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to TalkingPoints in connection with the performance of this Agreement. This provision survives termination of this Agreement.

(g) Force Majeure. Neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. Performance times will be considered extended for a period of time equivalent to time lost because of any such delay by providing prompt written notice of such expected delay to the other party.

(h) Assignment: The obligations of TalkingPoints under this Agreement shall not be assigned by TalkingPoints without the express prior written consent of Ithaca City School District. 15

(i) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:

TalkingPoints certifies to the best of his/her/its knowledge and belief, that it and its principals

are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>)

- (j) Incorporation of Recitals and Exhibits: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. TalkingPoints agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern, except that Exhibit "B," the Education Law Section 2-d Addendum shall control above all other documents and exhibits.
- (k) Insurance: 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.
- (l) Legal Compliance: 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 wage and hour compliance and equal opportunity/non-discrimination/non-harassment.
- (m) Integration/Entire Agreement of Parties: This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- (n) Counterparts: This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- (o) Due Authority of Signatories. Each individual signing this Agreement on behalf of a party represents and warrants that he or she has been duly authorized by appropriate action of such party to execute, and thereby bind such party to, this Agreement.
- (p) Contract Contingent on Governing Board Approval: Ithaca City School District shall not be bound by the terms of this Agreement until it has been formally approved by Monroe 1 BOCES' Governing Board, and no payment shall be owed or made to TalkingPoints absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
- (q) Agreement Publicly Posted: This Agreement, its contents, and all incorporated documents are public documents and will be made available by Ithaca City School District to the public online via the Internet.

[signature page follows]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective

David N. [Signature]
Date: Talking Points Monroe 1 BOCES

By: **Dimetri Duckrey**

Name: Dimetri Duckrey

Title: Partner Success Manager

Date: May 12, 2023

Exhibit B
Education Law Section 2-d Addendum

The parties to this Contract Addendum are the Monroe 1 Board of Cooperative Educational Services ("BOCES") and TalkingPoints ("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 Vendor is a third party contractor, as that term is used in Section 2-d. BOCES and Vendor have entered into this Contract 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 Contract Addendum, the terms of this Contract 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 Ithaca City School District or 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.

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“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, agents and subcontractors that are determined to have legitimate educational interests in accessing the data within the meaning of Section 2-d 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 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 ²³ 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, and that comply with 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 below;

(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 belongs to and is owned by the 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 Contract Addendum first and then the Agreement (with Exhibits) shall be given precedence; and

(k) 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.

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 21d 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
Monroe #1 BOCES
41 O'Connor Road
Fairport, NY 14450

Supplemental Information About Agreement Between TalkingPoints and BOCES

(a) The exclusive purposes for which the personally identifiable information will be used by Vendor is to provide the Services described in the Software Services and Support Agreement to a Participating School District.

(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 the effective date of the Software Services and Support Agreement and this Contract Addendum shall remain in effect as long as the Software Services and Support Agreement Remains in effect.

(e) Upon expiration or termination of the Software Services and Support 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

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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.

(h) A copy of Vendor's Data Privacy and Security Plan, which vendor affirms complies with 8 N.Y.C.R.R. 121.6 is attached hereto as Attachment 1 and is incorporated herein by reference as if fully set forth herein.

It is understood that a further Contract Addendum may be necessary to ensure compliance with Education Law Section 2-d and its implementing regulations, following promulgation by the New York State Education Department, and the parties agree to take such additional steps as may be necessary at that time.

ATTACHMENT 1 - CONTRACTOR'S DATA PRIVACY AND SECURITY PLAN

CONTRACTOR'S DATA PRIVACY AND SECURITY PLAN

The Educational Agency (EA) is required to ensure that all contracts with a third-party contractor include a Data Security and Privacy Plan, pursuant to Education Law § 2-d and Section 121.6 of the Commissioner's Regulations. For every contract, the Contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state. **While this plan is not required to be posted to the EA's website, contractors should nevertheless ensure that they do not include information that could compromise the security of their data and data systems.**

1	Outline how you will implement applicable data security and privacy contract requirements over the life of the Contract.	TalkingPoints' complete privacy and security practices and documentation can be found on our website: https://talkingpts.org/privacy-and-security/
2	Specify the administrative, operational and technical safeguards and practices that you have in place to protect PII.	TalkingPoints' complete privacy and security practices and documentation can be found on our website: https://talkingpts.org/privacy-and-security/ . TalkingPoints is SOC2 Type II Certified.
3	Address the training received by your employees and any subcontractors engaged in the provision of services under the Contract on the federal and state laws that govern the confidentiality of PII.	Employees partake in security training. TalkingPoints' complete privacy and security practices and documentation can be found on our website: https://talkingpts.org/privacy-and-security/
4	Outline contracting processes that ensure that your employees and any subcontractors are bound by written agreement to the requirements of the Contract, at a minimum.	All employees and contractors sign a confidentiality agreement holding to these terms. See TalkingPoints' complete privacy and security practices our website: https://talkingpts.org/privacy-and-security/
5	Specify how you will manage any data security and privacy incidents that implicate PII and describe any specific plans you have in place to identify breaches and/or unauthorized disclosures, and to meet your obligations to report incidents to the EA.	We will follow procedure outlined in the service agreement; in addition, TalkingPoints' complete privacy and security practices and documentation can be found on our website: https://talkingpts.org/privacy-and-security/

6	Describe how data will be transitioned to the EA when no longer needed by you to meet your contractual obligations, if applicable.	This is at the choice of the EA (and within the Service Agreement) upon termination of contract. See: https://talkingpts.org/privacy-and-security/
7	Describe your secure destruction practices and how certification will be provided to the EA.	Certification is available upon request. TalkingPoints' complete privacy and security practices and documentation can be found on our website: https://talkingpts.org/privacy-and-security/
8	Outline how your data security and privacy program/practices align with the EA's applicable policies.	TalkingPoints is FERPA compliant and SOC2 Type II certified. TalkingPoints' complete privacy and security practices and documentation can be found on our website: https://talkingpts.org/privacy-and-security/
9	Outline how your data security and privacy program/practices materially align with the NIST CSF v1.1 using the Framework chart below.	PLEASE USE TEMPLATE BELOW.

ATTACHMENT 1(a) – NIST CSF TABLE

The table below will aid the review of a Contractor's Data Privacy and Security Plan. Contractors should complete the Contractor Response sections in the table below to describe how their policies and practices align with each category in the Data Privacy and Security Plan template. To complete these 23 sections, a Contractor may: (i) Demonstrate alignment using the National Cybersecurity Review (NCSR) Maturity Scale of 1-7; (ii) Use a narrative to explain alignment (may reference its applicable policies); and/or (iii) Explain why a certain category may not apply to the transaction contemplated. Further informational references for each category can be found on the NIST website at <https://www.nist.gov/cyberframework/new-framework>. Please use additional pages if needed.

Function	Category	Contractor Response
IDENTIFY (ID)	Asset Management (ID.AM): The data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes are identified and managed consistent with their relative importance to organizational objectives and the organization's risk strategy.	Yes, TalkingPoints has stringent Access Management policies. See: https://talkingpts.org/privacy-and-security/

Function	Category	Contractor Response
	Business Environment (ID.BE): The organization's mission, objectives, stakeholders, and activities are understood and prioritized; this information is used to inform cybersecurity roles, responsibilities, and risk management decisions.	Yes, TalkingPoints has clear security related roles and responsibilities. See: https://talkingpts.org/privacy-and-security/
	Governance (ID.GV): The policies, procedures, and processes to manage and monitor the organization's regulatory, legal, risk, environmental, and operational requirements are understood and inform the management of cybersecurity risk.	Yes, TalkingPoints is SOC2 Type II certified. See: https://talkingpts.org/privacy-and-security/
	Risk Assessment (ID.RA): The organization understands the cybersecurity risk to organizational operations (including mission, functions, image, or reputation), organizational assets, and individuals.	Yes, TalkingPoints is SOC2 Type II certified and employs a risk assessment and management strategy, as well as regular reviews of risk. See: https://talkingpts.org/privacy-and-security/
	Risk Management Strategy (ID.RM): The organization's priorities, constraints, risk tolerances, and assumptions are established and used to support operational risk decisions.	Yes, TalkingPoints is SOC2 Type II certified. See: https://talkingpts.org/privacy-and-security/
	Supply Chain Risk Management (ID.SC): The organization's priorities, constraints, risk tolerances, and assumptions are established and used to support risk decisions associated with managing supply chain risk. The organization has established and implemented the processes to identify, assess and manage supply chain risks.	Yes, TalkingPoints is SOC2 Type II certified. See: https://talkingpts.org/privacy-and-security/
	Identity Management, Authentication and Access Control (PR.AC): Access to physical and logical assets and associated facilities is limited to authorized users, processes, and devices, and is managed consistent with the assessed risk of unauthorized access to authorized activities and transactions.	TalkingPoints has no physical location, yes TalkingPoints has relevant authentication controls for devices. See: https://talkingpts.org/privacy-and-security/
PROTECT (PR)	Awareness and Training (PR.AT): The organization's personnel and partners are provided cybersecurity awareness education and are trained to perform their cybersecurity-related duties and responsibilities consistent with related policies, procedures, and agreements.	Yes, TalkingPoints team receives mandatory annual training. See: https://talkingpts.org/privacy-and-security/
	Data Security (PR.DS): Information and records (data) are managed consistent with the organization's risk strategy to protect the confidentiality, integrity, and availability of information.	Yes, TalkingPoints is SOC2 Type II certified and has strong data security procedures in place. See: https://talkingpts.org/privacy-and-security/

Function	Category	Contractor Response
	Information Protection Processes and Procedures (PR.IP): Security policies (that address purpose, scope, roles, responsibilities, management commitment, and coordination among organizational entities), processes, and procedures are maintained and used to manage protection of information systems and assets.	Yes, TalkingPoints is SOC2 Type II certified and has strong data security procedures in place. See: https://talkingpts.org/privacy-and-security/
	Maintenance (PR.MA): Maintenance and repairs of industrial control and information system components are performed consistent with policies and procedures.	N/A
	Protective Technology (PR.PT): Technical security solutions are managed to ensure the security and resilience of systems and assets, consistent with related policies, procedures, and agreements.	Yes, TalkingPoints is SOC2 Type II certified and has strong data security procedures in place. See: https://talkingpts.org/privacy-and-security/
DETECT (DE)	Anomalies and Events (DE.AE): Anomalous activity is detected and the potential impact of events is understood.	Yes, TalkingPoints conducts regular automated and human penetration testing and vulnerability assessments. See: https://talkingpts.org/privacy-and-security/
	Security Continuous Monitoring (DE.CM): The information system and assets are monitored to identify cybersecurity events and verify the effectiveness of protective measures.	Yes, TalkingPoints conducts regular automated and human penetration testing and vulnerability assessments. See: https://talkingpts.org/privacy-and-security/
	Detection Processes (DE.DP): Detection processes and procedures are maintained and tested to ensure awareness of anomalous events.	Yes, TalkingPoints conducts regular automated and human penetration testing and vulnerability assessments. See: https://talkingpts.org/privacy-and-security/
RESPOND (RS)	Response Planning (RS.RP): Response processes and procedures are executed and maintained, to ensure response to detected cybersecurity incidents.	Yes, TalkingPoints has strong response policies and plans. See: https://talkingpts.org/privacy-and-security/
	Communications (RS.CO): Response activities are coordinated with internal and external stakeholders (e.g. external support from law enforcement agencies).	Yes, TalkingPoints has strong response policies and plans. See: https://talkingpts.org/privacy-and-security/
	Analysis (RS.AN): Analysis is conducted to ensure effective response and support recovery activities.	Yes, TalkingPoints has strong response and remediation policies and plans. See: https://talkingpts.org/privacy-and-security/
	Mitigation (RS.MI): Activities are performed to prevent expansion of an event, mitigate its effects, and resolve the incident.	Yes, TalkingPoints conducts regular automated and human penetration testing and vulnerability assessments. See: https://talkingpts.org/privacy-and-security/
	Improvements (RS.IM): Organizational response activities are improved by incorporating lessons learned from current and previous detection/response activities.	Yes, TalkingPoints conducts regular automated and human penetration testing and vulnerability assessments and enacts improvements based on the results. See: https://talkingpts.org/privacy-and-security/

Function	Category	Contractor Response
RECOVER (RC)	Recovery Planning (RC.RP): Recovery processes and procedures are executed and maintained to ensure restoration of systems or assets affected by cybersecurity incidents.	Yes, TalkingPoints is SOC2 Type II certified and has a recovery process and plan in place. See: https://talkingpts.org/privacy-and-security/
	Improvements (RC.IM): Recovery planning and processes are improved by incorporating lessons learned into future activities.	Yes, TalkingPoints updates and improves these plans and processes regular to implement lessons learned. See: https://talkingpts.org/privacy-and-security/
	Communications (RC.CO): Restoration activities are coordinated with internal and external parties (e.g. coordinating centers, Internet Service Providers, owners of attacking systems, victims, other CSIRTs, and vendors).	Yes, TalkingPoints has a communications (internal and external) plan to effectively respond to incidents. See: https://talkingpts.org/privacy-and-security/

TalkingPoints

Claudine Ryan

Claudine Ryan- COO/Head of Product

5/12/2023
