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: June 14, 2022

The purpose of this memo is to request that at our June 23, 2022, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- Tobii Dynavox – Regional Information Center – per attached
- Don Johnston Incorporated – Regional Information Center – per attached
- Project Search – Office of Student Programs & Services – per attached
- Day Automation – Operations and Maintenance Department – per attached
- Summer Advanced Manufacturing Experience (SAME) – EMCC – per attached

Should you have any questions please contact me prior to our June 23 meeting.   Thank you.

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

The parties to this Agreement are the Monroe 1 Board of Cooperative Educational Services ("BOCES") and Don Johnston, Incorporated ("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) 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.monroe.edu/domain/1478)

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

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

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

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.
2. Parents have the right to inspect and review the complete contents of their child's education record. The procedures for exercising this right can be found in Student Records Policy 6320. (https://www.monroe.edu/6320)
3. State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
4. A complete list of all student data elements collected by the State is available at http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx and a copy may be obtained by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing, to:

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

or
Monroe One Data Protection Officer
William Gregory
Monroe #1 BOCES
41 O'Connor Road
Fairport, NY 14450

Supplemental Information About Agreement Between Don Johnston Incorporated 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 examination 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 immediately and the Agreement shall remain in effect 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.

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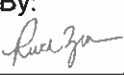
Monroe 1 BOCES

By:

_____

Daniel T. White, District Superintendent

Date

Don Johnston Incorporated

By:

_____

Ruth Ziolkowski, President

May 25, 2022

Date

Don Johnston Incorporated Data Procedures
for Organizational Licenses

1. Data Destruction Policy

Organizational Licenses: Upon completion of the terms of service agreement, and in the case that the pupil has no active grants, all records are automatically removed in 30 days and 65 days within all backups. Deletion of data shall be in such a manner that it is permanently irretrievable in the normal course of business.

2. Data Storage and Encryption

- All data is located in geographically discrete locations within the United States.
- AWS hosts all data, and is an ISO 27001 certified provider. In the event that payment is processed online, we use Stripe, a PCI Service Provider Level 1, to process such payments.
- Data at Rest - All data at rest is encrypted with AES-256 encryption algorithm.
- Data in Transit - All data being transmitted is protected with Secure Socket Layer and password hashing.

3. Sub-Contractors

- Comply with all Security Policies and Procedures.
- Participate in formal annual risk assessment.
- All activities of third party associates are monitored.
- AWS has the most stringent physical safeguards that has earned it ISO 27001 compliance, a Department of Defense Impact Level 4 Provisional Authorization, over 400 National Institute of Standards and Technology security controls, and a PCI DSS Level 1 certification among other security standards and therefore we do not do specific monitoring or specific training for this organization.
- Attend annual training and participate in ongoing design for security.

4. Request for Review of Personally Identifiable Information (PII) for Parent, Legal Guardian or Eligible Pupil

The Parent, Legal Guardian or Eligible Pupil will contact the district license administrator or another staff designated by the school district.

The school district can use the tools built in to review data and make changes. Changes to student sign in or deleting student data can be addressed by the district directly.

If other data needs to be corrected, the district will contact their Implementation Specialist to address needed changes. The district will verify the request from the parent, legal guardian or eligible pupil. Don Johnston will require written confirmation of the request from the district and from the parent, legal guardian or eligible pupil to make any changes to an individual student.

Don Johnston's Implementation Specialist can also support the district in understanding the tool to meet these needs.

5. Data Transfer-Organization

The Organization has access to the data throughout the life of the subscription. It is the Organization's responsibility to download all data prior to expiration. Data will not be transferred in any other methodology. This approach provides access at all times to the organization and eliminates the need to create additional security measures for transferring data.

6. Breach Notification

DJI will promptly notify the Board, in accordance with New York State Education Law §2-d, when there has been an unauthorized release, disclosure or acquisition of student data. Such notification will include the following steps:

   a) Notification by DJI to the Board's designated Web Administrator.
   b) Notification will include known information on what happened, when it happened, the extent of data affected and what actions are being taken to mitigate and identify the disclosures

7. Data Transfer: Student-generated content

Students can transfer pupil-generated content to a personal account under the following conditions:
   1. Organizational account must be active or within 30 days of termination.
   2. Student has an active account outside of the Organization.

Complete this form and send to legal@donjohnston.com from the License Administrator's email.

Request to Transfer Student Generated Content

I represent and warrant that I am authorized on the behalf of _____
[Organization's Name] to request the transfer of Student Generated Content. Please transfer the
following contact(s).

Transfer From: (email address)	Transfer To: (email address)

Signature: _____   (License Administrator)

Name: (print) _____

Title: _____

Organization: _____

Date: _____

Signature: _____

(Legal Guardian of Student or Student if over 18 years old or New License Administrator)

Name: (print) _____

Title: _____

Organization: _____

Date: _____

8. Purpose of Data Collection

Snap & Read Universal is a Text Reader to read aloud materials as well as support students in comprehending materials. Description of Services are also covered in the Terms of Service and the Privacy Policy located at: https://snapandread.com/tos

Co:Writer is a Word Prediction, Speech to Text and Translation tool to support struggling writers. Description of Services are also covered in the Terms of Service and Privacy Policy located at: https://cowriter.com/tos

uPAR (Universal Protocol for Accommodations in Reading) is a data tool to help educators match students to reading accommodations. Description of Services are also covered in the Terms of Service and Privacy Policy located at: https://login.donjohnston.net/tos/privacy-policy/par

Word Bank Universal extracts words, places, people, facts and dates into a meaningful format. Description of Services are also covered in the Terms of Service and Privacy Policy located at: https://wordbank.io/tos

Monroe.1.BOCES.Don.Johnston.Section.2-d.Agreement.2022 (4853-8628-8417 1)

Final Audit Report   2022-05-25

Created:	2022-05-25
By:	Christine Bjorklund (cbjorklund@donjohnston.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAArAQ_inX3_3thzV4576VkvANH2viqHEja

"Monroe.1.BOCES.Don.Johnston.Section.2-d.Agreement.2022 (4853-8628-8417 1)" History

📄 Document created by Christine Bjorklund (cbjorklund@donjohnston.com)
2022-05-25 - 4:49:09 PM GMT

📧 Document emailed to Ruth Ziolkowski (rziolkowski@donjohnston.com) for signature
2022-05-25 - 4:49:58 PM GMT

📧 Email sent to ann.baehr@boces.monroe.edu bounced and could not be delivered
2022-05-25 - 4:50:00 PM GMT

📄 Email viewed by Ruth Ziolkowski (rziolkowski@donjohnston.com)
2022-05-25 - 5:27:29 PM GMT

✍️ Document e-signed by Ruth Ziolkowski (rziolkowski@donjohnston.com)
Signature Date: 2022-05-25 - 5:27:39 PM GMT - Time Source: server

✅ Agreement completed.
2022-05-25 - 5:27:39 PM GMT