



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: June 27, 2022

The purpose of this memo is to request that at our July 7, 2022, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- EFRP Group – Business Office - per attached
- PikMyKid – Regional Information Center – per attached
- PLS 3rd Learning Agreement – per attached
- Casewood Group – Office of Student Programs & Services - per attached
-

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

Amendment to PLS 3rd Learning Agreement

AMENDMENT ONE, made this 21st day of June, 2022, to the 2021 Agreement (“Agreement”) by between the Monroe 1 Board of Cooperative Educational Services (hereinafter referred to as “BOCES”) and PLS 3rd Learning (hereinafter “Vendor”);

WHEREAS, the parties entered into an Agreement effective July 1, 2022 through June 30, 2022, establishing the rights and responsibilities of BOCES and Vendor for services to be provided by Vendor to BOCES and Participating School Districts; and

WHEREAS, the parties desire that the Agreement be modified to extend the term; and

NOW, THEREFORE, based upon the mutual covenants and understandings between the parties, it is understood and agreed:

FIRST: EFFECT OF THE AMENDMENT

All the terms and provisions set forth at length in the 2021 PLS 3rd Learning Agreement shall continue in full force and effect, except as expressly modified herein.

SECOND: EXTENSION OF THE AGREEMENT

The original term of this Agreement was from July 1, 2021, to June 30, 2022. This Agreement and each Addendum are hereby extended to June 30, 2023 and shall automatically renew for one (1) year periods thereafter, unless terminated by either party upon sixty (60) days’ notice. This Agreement and each Addendum may be terminated by either party at any time and for any reason upon sixty (60) days’ notice. In the event of early termination, there shall be an equitable pro rata adjustment between the parties relative to authorized fees and expenses incurred for services rendered through the effective date of termination.

THIRD: PRICING

Appendix A, the 2020-21 SuperEval Pricing Guide is hereby superseded and replaced by the attached Appendix A, updated pricing guide.

FOURTH: This Amendment to the PLS 3rd Learning Agreement is subject to approval by the BOCES Board of Education and shall have no force or effect until approved by the Board.

Monroe 1 Board of Cooperative Education Services

By: 
Daniel T. White, Superintendent of Schools

Date: 6/29/22

PLS 3rd Learning

By: Colin Freeburg
Colin Freeburg, Chief Financial Officer

Date: 6/21/2022

SuperEval Pricing July 1, 2022 - June 30, 2023

Updated December 3, 2021

Fee	Price																																																				
<p align="center">Platform Fee</p> <p>The Platform fee includes one evaluation, usually used for the superintendent, and includes accounts for the superintendent, executive assistant, district clerk, and all board members.</p>	<p align="center">\$2,025.00</p>																																																				
<p align="center">One-time Set-up Fee</p> <p>This fee includes creating the accounts in the system, setting up proper evaluation relationships, and rubric selection. Also included are two 1-hour onboarding Zoom sessions.</p>	<p align="center">\$395.00</p>																																																				
<p align="center">Additional per license price</p> <p>Each educational leader, administrator, director or support staff being evaluated in the system needs an additional license. There is no additional cost for the evaluator, only the evaluatee.</p>	<table> <tr><td>1</td><td>\$ 599.00</td><td>up to</td><td>3 licenses</td></tr> <tr><td>4</td><td>\$ 549.00</td><td>up to</td><td>6 licenses</td></tr> <tr><td>7</td><td>\$ 499.00</td><td>up to</td><td>9 licenses</td></tr> <tr><td>10</td><td>\$ 449.00</td><td>up to</td><td>14 licenses</td></tr> <tr><td>15</td><td>\$ 390.00</td><td>up to</td><td>19 licenses</td></tr> <tr><td>20</td><td>\$ 340.00</td><td>up to</td><td>24 licenses</td></tr> <tr><td>25</td><td>\$ 290.00</td><td>up to</td><td>34 licenses</td></tr> <tr><td>35</td><td>\$ 250.00</td><td>up to</td><td>39 licenses</td></tr> <tr><td>40</td><td>\$ 220.00</td><td>up to</td><td>49 licenses</td></tr> <tr><td>50</td><td>\$ 190.00</td><td>up to</td><td>74 licenses</td></tr> <tr><td>75</td><td>\$ 170.00</td><td>up to</td><td>99 licenses</td></tr> <tr><td>100</td><td>\$ 150.00</td><td>up to</td><td>249 licenses</td></tr> <tr><td>250</td><td>\$ 130.00</td><td>up to</td><td>licenses</td></tr> </table>	1	\$ 599.00	up to	3 licenses	4	\$ 549.00	up to	6 licenses	7	\$ 499.00	up to	9 licenses	10	\$ 449.00	up to	14 licenses	15	\$ 390.00	up to	19 licenses	20	\$ 340.00	up to	24 licenses	25	\$ 290.00	up to	34 licenses	35	\$ 250.00	up to	39 licenses	40	\$ 220.00	up to	49 licenses	50	\$ 190.00	up to	74 licenses	75	\$ 170.00	up to	99 licenses	100	\$ 150.00	up to	249 licenses	250	\$ 130.00	up to	licenses
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<p align="center">One-Time Fee for Installing District's Custom Evaluation Rubric</p> <p>Some districts prefer to use a locally developed rubric in the evaluation process. These custom forms and instruments can be included in the system for an additional fee.</p>	<p align="center">\$1,495.00</p>																																																				
<p align="center">Instrument/Rubric Royalty</p> <p>The use of some of the rubrics in the library come with an additional cost for royalty agreements. For example, use of the McREL instruments will an additional \$175 per evaluation, per administrator.</p>	<p align="center">Not to exceed \$500 per instrument, per user</p>																																																				



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: June 8, 2021

The purpose of this memo is to request that at our June 17, 2021, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- PLS 3rd Learning – RIC – per attached
- ImPact – RIC – per attached

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

PLS 3RD LEARNING AND MONROE 1 BOCES

AFFILIATION AGREEMENT

AGREEMENT made as of June __, 2021 by, between, and among PLS 3rd Learning located at 678 Main Street, Buffalo, NY 14202, (hereinafter referred to as "PLS 3rdL") and The Monroe One Educational Services 41 O'Connor Road, Fairport, New York, 14450 (hereinafter referred to as "Monroe 1 BOCES"). PLS 3rdL enters this Agreement as an independent contractor and will remain as an independent contractor throughout the term of this agreement. PLS 3rdL employees shall not be entitled to any rights, payments or benefits afforded to Monroe 1 BOCES employees.

1. Scope. (a) PLS 3rdL and Monroe 1 BOCES will enter into affiliation solely for the purpose of offering school districts SuperEval Services. Through the affiliation, school districts will be able to select services that they receive based on their individual district's needs. These services will be provided by PLS 3rdL and supported by Monroe 1 BOCES.

(b) PLS 3rdL will be responsible for providing and assisting districts with software and collaborating with Monroe 1 BOCES to provide professional development services in working with superintendents, boards of education and administrators on the topics of evaluation.

(c) Monroe 1 BOCES will provide marketing materials, facilitation of ongoing communication between school districts and PLS 3rdL including providing space for meetings during the year, as well as clerical support and billing for the districts. Monroe 1 BOCES represents that it has sufficient staff available to perform the services to be provided under this Agreement and that all such individuals have the licensure, background, training and experience to perform all such services properly.

2. Terms and Termination. This Agreement shall begin on July 1, 2021 and terminate at June 30, 2022, however, that either of the parties may terminate this Agreement at any time and for any reason upon sixty (60) days prior written notice to the other party. In the event of such termination, there shall be an equitable pro-rata adjustment between the parties relative to authorized fees and expenses incurred for services rendered through the effective date of termination.

3. Financial Terms. Monroe 1 BOCES will bill participating districts the total costs for the services provided to the respective district by PLS 3rdL and/or Monroe 1 BOCES based on the district's specific needs, using the attached 2021-2022 SuperEval Pricing Guide (attached as Appendix A and incorporated herein by reference). Monroe 1 BOCES will pay PLS 3rdL on behalf of participating districts 100% of the agreed upon fees. Monroe 1 BOCES will invoice the respective districts for such fees (and including any administrative expenses determined by BOCES at its discretion) for use of software. Monroe 1 BOCES will charge districts fees based on agreed-upon rates for trainings.

4. Renewal. The parties may renew this Agreement by written mutual agreement sixty (60) days prior to the end of the term.

5. Indemnification. Each party agrees to indemnify and hold each other and each of their officers, directors, employees agents and assigns, harmless from and against all claims, causes of action, damages, liabilities, fines, costs and expenses (including reasonable attorneys' fees) that may arise from the violation of the terms of this Agreement, violation of any applicable laws, infringement of third party proprietary and/or intellectual property rights, libel, slander and other torts including with respect to

personal injury, property damage and death arising from the negligent or willfully wrongful acts or omissions of its employees, third-party vendors, contractors, subcontractors or agents, in connection with the goods and services provided in connection with this Agreement.

6. Cooperation. The parties agree to cooperate with each other in connection with any internal investigations by PLS 3rdL or Monroe 1 BOCES of possible violation of their respective policies and procedures and any third party litigation.

7. Confidentiality. During the course of performance of the Agreement, Monroe 1 BOCES may be given access to information that relates to PLS 3rdL's past, present and future research, development, business activities, products, services, technical knowledge and employee information. All of such information shall be deemed to be "Confidential Information" unless otherwise indicated by PLS 3rdL in writing at or after the time of disclosure. Monroe 1 BOCES may use the Confidential Information only in connection with the specific duties authorized pursuant to this Agreement. Access to the Confidential Information shall be restricted to those of Monroe 1 BOCES personnel and representatives on a need to know basis solely in connection with Monroe 1 BOCES internal business. Monroe 1 BOCES further agrees that it will (i) take all necessary steps to inform any of its personnel, representatives to whom Confidential Information may be disclosed of their obligations hereunder and (ii) cause said personnel, representatives to agree to be bound by the terms of this Agreement. Monroe 1 BOCES agrees to protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event less than a reasonable manner. Monroe 1 BOCES agrees to notify PLS 3rdL of any unauthorized use or disclosure of Confidential Information by Monroe 1 BOCES, its employees or agents, and to take all actions reasonably necessary to prevent further unauthorized use or disclosure thereof. The terms of this Section shall survive the expiration or termination of this Agreement.

PLS 3rdL agrees that any and all data obtained from Monroe 1 BOCES and/or a participating school district shall be used expressly and solely for the purposes enumerated in this Agreement. Monroe 1 BOCES data and school district data shall not be distributed, used, or shared for any other purpose. PLS 3rdL shall not sell, transfer, share or process any Monroe 1 BOCES data or school district data for any purpose other than those under this Agreement, including commercial advertising, marketing, or any other commercial purpose. PLS 3rdL will comply with the terms and conditions set forth in the Education Law Section 2-d Contract Addendum, which is attached hereto as Appendix C and is incorporated by reference as if fully set forth herein. PLS 3rdL shall comply with all applicable laws, including, but not limited to verify compliance with the Family Educational Rights and Privacy Act and New York Education Law Section 2-d.

8. Independent Contractor: This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that PLS 3rdL will be an independent contractor and not the Monroe 1 BOCES employee for any purpose whatsoever, including but not limited to, the application of the Fair Labor Standards Act (FLSA), minimum wage and overtime payments, Federal Insurance Contribution Act (FICA), the Social Security Act, the Federal Unemployment Tax Act (FUTA), the provisions of the Internal Revenue Code, the New York State Revenue and Taxation laws, the New York State Workers' Compensation Law, the New York State Unemployment Insurance Law and any other payments and contributions, including contributions to a retirement system or plan. PLS 3rdL will retain sole and absolute discretion in the judgment of the manner and means of carrying out the services,

activities and responsibilities hereunder. Monroe 1 BOCES does not engage PLS 3rdL exclusively nor does it restrict PLS 3rdL from engaging in regular business with anyone of its choosing. Monroe 1 BOCES shall not be liable for any obligations incurred by PLS 3rdL or for any damages to person or property by PLS 3rdL.

9. Non-Discrimination and Legal Compliance. PLS 3rdL agrees that it will not discriminate with respect to the provision of services hereunder on the grounds of race, religion, creed, color, national origin, gender, sexual orientation, disability, marital status, veteran status or other protected category or non-merit factor, nor discriminate against any individual on such grounds. In providing the services pursuant to this Agreement, PLS 3rdL will comply with all applicable laws, rules and regulations.

10. Conflict of Interest PLS 3rdL represents and warrants that: (a) it has no obligation, legal or otherwise, inconsistent with the terms of this Agreement; (b) the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; (c) it has not entered into or will not enter into any agreement, whether oral or written, in conflict with this Agreement; and (d) it, including its officers, employees and agents, do not possess any personal or professional relationship with the Monroe 1 BOCES, its officers and/or employees that would constitute a conflict of interest relative to performing this Agreement.

11. Jurisdiction. This Agreement shall be governed by the laws of the State of New York. Litigation of all disputes between the parties arising from or in connection with this Agreement shall be conducted in a court of appropriate jurisdiction in the State of New York, County of Monroe, New York.

12. Insurance. In addition to Worker's Compensation, as required by law, each party shall carry Commercial General Liability insurance in the minimum amount of three million dollars (\$3,000,000.00), covering all of such party's activities related to this Agreement. Each party's liability policies shall name the other parties as an additional insured. Each party shall provide the other party with certificates of insurance evidencing the aforesaid coverage, prior to commencing services pursuant to this Agreement. The amounts of insurance required to be obtained hereunder shall not constitute a limitation on the indemnification obligations of the respective parties hereto.

13. Order of Interpretation and Control. In the event of a conflict between this Agreement and any other document referenced herein or otherwise, the Education Law Section 2-d Contract Addendum (Appendix C) shall control, then the Agreement, then any other appendices, as each may be applicable to each party herein. PLS3rdL shall not include any term in any such form or format that contradicts the terms to which it has agreed in this Agreement or Education Law Section 2-d.

14. Notices. All notices to PLS 3rdL and Monroe 1 BOCES in connection with this Agreement shall be sent to:

Michael Homing, Jr., Executive Vice President
PLS 3rd Learning
678 Main Street
Buffalo, NY 14202

All notices to Monroe 1 BOCES in connection with this Agreement shall be sent to:

Lisa N. Ryan

Assistant Superintendent for Finance & Operations

Monroe 1 BOCES

41 O'Connor Road

Fairport, Ny 14450

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

PLS 3rdL

By: 

Dr. Michael L. Horning, Jr.

Executive Vice President

THE MONROE 1 BOARD OF COOPERATIVE

EDUCATIONAL SERVICES

By: 

Daniel T. White

District Superintendent

Appendix A

2020-2021 SuperEval Pricing Guide

Annual subscription includes: Use of platform and one evaluation = \$1,980

One-time start-up fee of \$150

Licenses include:

- Board self-evaluation**
- Superintendent evaluation
- Central office administrator evaluations
- Principal and assistant principal evaluations
- Building level administrator evaluations
- Support staff evaluations

1 – 3 additional evaluations = \$599 ea.

4 – 6 additional evaluations = \$549 ea.

7+ additional evaluations = \$499 ea.

** Considered “one” license even though there are multiple board members

No additional fee for the “Executive Assistant” role and the “District Clerk” role.

Appendix B

Terms of Service

Last updated: August, 2020

Please read these Terms of Service (“Terms”, “Terms of Service”) carefully before using and/or accessing the <http://SuperEval.com> website (the “Service”) operated by PLS 3rd Learning (“us”, “we”, or “our”) and the Customer (“you”, “your”)

Your access to and use of the Service is conditioned upon your acceptance of and compliance with these Terms. These Terms apply to all visitors, Users and others who access or use the Service.

By accessing or using the Service, you hereby agree to be bound by these Terms, which may change and/or be updated, from time to time upon reasonable advance notice to you, unless otherwise set forth in these Terms. If you disagree with any part of the terms, then you and the Users, do not have permission to access or use the Service.

These Terms are a binding legal agreement and govern your use of the Service, including all features and functionalities, applications, updates, notifications and our user interfaces, and all Content and software associated therewith.

Definitions:

“Account” means any unique User ID and password combination for a User that is included in the Service Order

“Agreement” means the terms of service outlined in the Agreement with Appendices.

“Consulting Services” means any provision of expertise or strategic advice that is presented remotely or face-to-face for consideration and decision-making.

“Content” the Service’s proprietary data, functionality, and intellectual property, including, but not limited to, all content, graphics, audio, video, pictures, trademarks, logos and other material on the Service, and its underlying software, algorithms, databases, look and feel ,and arrangement.

“Customer Data” means all information of your Service usage and any data, files, documents, or otherwise that you submit, view, or collect via the Service.

“Enrollment Spreadsheet” SuperEval approved spreadsheet containing User data provided by the Customer for account creation within the Service.

“Documentation” means all propriety materials relating to the Service including, but not limited to, user manuals, system support materials, and professional development materials including worksheets, and handouts.

“Subscription Term” means the initial term of your subscription to the applicable Service, as specified in your Service Order, and each subsequent renewal term (if any).

“Subscription Fee” means the amount you pay to us for the Service.

“Subscription Service” or “Service” means the SuperEval web application, as outlined in your Service Order.

“Service Order” means the SuperEval approved form by which you agree to subscribe to the Service.

“Authorized User/s” or “User” means your employees, agents, contractors, representatives, successors or assigns, or agents who are authorized by us to use the Service and have unique user identifications and passwords to the Service.

“You”, “Your” and “you” means the person or entity using the Service, including its employees, agents, contractors, representatives, successors or assigns, and Authorized Users, as identified in the Service Order or Enrollment Spreadsheet that has ordered the Service from PLS 3rd Learning or an authorized distributor.

SAAS Services

During the Subscription Term, Customer will receive a revocable, nonexclusive, non-assignable worldwide right to access and use the Subscription Services as described in this Agreement and the applicable Service Order. This is an Agreement for access to and use of the Subscription Service, and you are not granted a license to any software by this Agreement. This access to be used solely for your internal business operations subject to the terms of this Agreement. Customer agrees and acknowledges that this Agreement is a services agreement and SuperEval will not be delivering the software, in whole or in part, to the Customer. The Subscription Service and Consulting Services are protected by intellectual property laws, they belong to and are the property of us or our licensors (if any), and we retain all ownership rights to them. You agree not to copy, license, rent, sublicense, lease, sublease, sell, distribute, transfer, or create derivative works based on the Subscription Service or the Consulting Services in whole or in part, by any means, except as expressly authorized in writing by us.

Service Use Restrictions

Except as otherwise explicitly provided in or permitted by this Agreement or as may be expressly permitted by applicable law, you will not, and will not permit or authorize any User, affiliate or third party to: (a) rent, lease, transfer, license, or otherwise permit anyone to use the Service or Documentation; (b) use the Service to provide services to third parties as a service bureau, or in any way that violates applicable law; (c) circumvent or disable any security or other technological features or measures of the Service, or attempt to probe, scan or test the vulnerability of a network or system, or to breach security or authentication measures; (d) upload or provide for processing any information or material that is illegal, defamatory, offensive, abusive, obscene, or that violates privacy or intellectual property rights of any third party in our sole discretion; (e) use the Service to harm, threaten, or harass another person or organization; or (f) send, store, or distribute any viruses, worms, Trojan horses, or other disabling code or malware component harmful to a network or system. You will not copy, reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of any software or provide, disclose, or make the Service or Content available to any third party, except that you may make one copy of Customer Data, excluding the Confidential User Data, as hereinafter defined, solely for backup and archival purposes. You will neither alter nor remove any trademark notice, copyright notice, or other proprietary rights notice that may appear in any part of the Customer Data and/or Documentation and will include all such notices on any copies. You will notify

your affiliates and permitted third parties of the requirement to comply with this Agreement. We reserve the right to deactivate, change, or require you to change your user ID, Account, and any custom or vanity URLs, custom links, or vanity domains you may obtain through the Service for any reason or for no reason at all. We may exercise such right at any time, with or without prior notice.

Authorized Users

This Agreement restricts the use of the Subscription Service to Authorized Users up to the number of users specified in the Service Order.

Communications

By creating an Account on our Service, you agree to subscribe to newsletters, marketing or promotional materials and other information we may send. However, you may opt out of receiving any, or all, of these communications from us by following the unsubscribe link or instructions provided in any email we send.

Subscriptions

The Service is billed on a subscription basis ("Subscription(s)"). You will be billed in advance on a recurring and periodic basis ("Billing Cycle"). Billing cycles are set on an annual basis.

At the end of each Billing Cycle, your Subscription will automatically renew under the exact same conditions unless you cancel, or PLS 3rd Learning cancels. To cancel your Subscription renewal, you must contact PLS 3rd Learning Customer support team at support@supereval.com and provide written notice of your cancellation of the Subscription renewal at least 30 days prior to the end of the Billing Cycle. Failure to provide written notice of cancellation at least 30 day prior to the end of the Billing Cycle will result in an automatic renewal of the Subscription.

You shall provide PLS 3rd Learning with accurate and complete billing information including full name, address, state, zip code, telephone number, and a valid payment method information.

Fees & Payment

Unless otherwise specified in a Service Order, the Subscription Fees for the initial subscription term are due upon execution of the Service Order. In the years following the initial subscription, Customer will be invoiced on the first day of the subscription year for the same subscriptions on the prior year Service Order. Fees for authorized additional Service quantities will be invoiced at the time of order, unless otherwise agreed by the parties in writing. The fees are due 30 days within the invoice date.

We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid and received by us, we may suspend your access to any or all of the Subscription Services ten (10) days after such notice, without further notice or demand. If a Subscription Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Subscription Service.

PLS 3rd Learning, in its sole discretion and at any time, may modify the Subscription Fees for the Subscriptions upon sixty (60) days' notice to Customer. Any Subscription Fee change will become effective for the next Billing Cycle.

PLS 3rd Learning will provide you with at least 60 days' notice of any change in Subscription Fees for the next Billing Cycle.

Your continued use of the Service after the Subscription Fee change comes into effect shall constitute your agreement to pay the modified Subscription Fee amount for the applicable Billing Cycle.

Refunds

Paid Subscription Fees are non-refundable.

Content

Our Service allows you to post, link, store, share and otherwise make available certain information, text, graphics, videos, or other material ("Customer Data"). You are responsible for the Customer Data that you post on or through the Service, including its legality, reliability, and appropriateness.

By posting Customer Data on or through the Service, You represent and warrant that: (i) the Customer Data is owned by you and/or you have the right to use it and the right to grant us the rights and license as provided in these Terms, and (ii) that the posting of your Customer Data on or through the Service does not violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any person or entity. We reserve the right to terminate the Service if any Customer Data infringes a third-party copyright or intellectual property right.

You retain any and all of your rights to any Customer Data that you submit, post or display on or through the Service and you are responsible for protecting those rights, with the exception of the Confidential User Data. We take no responsibility and assume no liability for Customer Data you or any third-party posts on or through the Service.

PLS 3rd Learning has the right but not the obligation to monitor all Customer Data provided by users.

In addition, Content found on or through this Service (that is not Customer or user data) is the property of PLS 3rd Learning or used with permission. You may not distribute, modify, transmit, reuse, download, repost, copy, or use said Content, whether in whole or in part, for commercial purposes or for personal gain, without express advance written permission from us.

Accounts

When you create an Account on the Service, you hereby represent and warrant that each Customer User is above the age of 18, and that the information provided is true, accurate, complete, and current at all times. Inaccurate, incomplete, or obsolete information may result in the immediate termination of your account on the Service.

You are responsible for maintaining the confidentiality of your Account and password, including but not limited to the restriction of access to your computer and/or account. You agree to accept responsibility for any and all activities or actions that occur under your Account and/or password, whether your password is with our Service or a third-party service. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account.

You may only access the Account and use the Account for lawful purposes. You are solely responsible for the knowledge of and adherence to any and all laws, rules and regulations pertaining to your use of the

Account. You agree that you will not: (i) use the Account to commit a criminal offense or to encourage conduct that would constitute a criminal offense or give rise to a civil liability, or otherwise violate any local, state, Federal or international law or regulation, including, but not limited to, export control laws and regulations; (ii) upload, post, email, or otherwise transmit any unlawful, threatening, libelous, harassing, defamatory, vulgar, obscene, pornographic, profane or otherwise objectionable Customer Data or content; (iii) upload, post, email or otherwise transmit any Customer Data that you do not have a right to transmit; (iv) upload, post, email, or otherwise transmit any Customer Data that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (v) alter, damage or delete any Content or other Owned IP that are not your own or to otherwise interfere with the ability of others to access or use the Account; (vi) claim a relationship with or to speak for any individual, business, association, institution or other organization for which you are not authorized to claim such a relationship; (vii) upload, post, email or otherwise transmit any unsolicited advertising, promotional materials, or other forms of solicitation to other users including, without limitation, "junk mail," "spam," "chain letters," or "pyramid schemes"; (viii) interfere with or disrupt the Account or servers or networks connected to the Account, or the Service or disobey any requirements, procedures, policies or regulations of networks connected to the Account; (ix) collect or store personal data about other users; or (x) reproduce, duplicate, copy, use, distribute, sell, resell or otherwise exploit for any commercial purposes, any portion of the Account, use of the Account or access to the Account.

Customer Data

We will not use, or allow anyone else to use, Customer Data to contact any individual or company except as you direct or otherwise permit. We will use Customer Data only in order to provide the Subscription Service and Consulting Services to you and only as permitted by applicable law (including, but not limited to, Education Law Section 2-d), this Agreement, and our Product Privacy Policy. We will not disclose Personally Identifiable Information to anyone else within the organization unless the individual user directs and permits for such disclosure.

Notwithstanding the above, we may monitor use of the Subscription Service by all of our Customers and use the information gathered, including the Customer Data, in an aggregate and anonymous manner. We may use Customer Data as part of internal data processes to develop and improve the Service. With these internal data processes, in no event will identifying Customer Data be disclosed, included within or provided to other Customers or third parties. The aggregated and anonymized data may also be used for research purposes. Aggregated and anonymous data ensures the privacy of the individual's Personally Identifiable Information will be maintained.

We will maintain commercially appropriate administrative, physical, and technical safeguards to protect Customer Data. You consent to the Service processing of Customer Data in the United States and for the purposes set forth above, provided such processing is compliant with New York Education Law Section 2-d.

Confidential User Data

You hereby agree that you shall not have the right to, and shall not use or access Personally Identifiable Information and/or other data and information entered by users in furtherance of the Services, including, but not limited to, an individual's personal data and/or information that may or may not be part of Customer Data ("Confidential User Data"). Further, you hereby agree that you shall not have the

right to use or access data mining details concerning the Confidential User Data. No user, individual, or otherwise, including you, shall be entitled to access or use of Confidential User Data at any time.

Intellectual Property

The Service and the Content (excluding proprietary Customer Data provided by users), features and functionality (collectively, "Owned IP") are and will remain the sole and exclusive property of PLS 3rd Learning and its licensors. Owned IP is protected by copyright, trademark, and other laws of both the United States and foreign countries. Our trademarks, trade dress, or Owned IP may not be used in connection with any product or service without the prior written consent of PLS 3rd Learning.

PLS 3rd Learning retains all rights, title, and interest in the Service and the Owned IP and all related intellectual property rights, including, without limitation, any modifications, improvements, updates, Customer suggestions, and customizations. Customer rights are limited to those expressly set forth in this Agreement.

By agreeing to these Terms, Customer irrevocably acknowledges that it has no ownership interest in any Software, the Service, PLS 3rdL Content, Owned IP, or in any material provided to you by PLS 3rdL.

We may: (i) use your name within product literature, press release(s), social media, and other marketing materials; (ii) quote your statements in one or more press releases; and/or (iii) make such other use of the your name as may be agreed between the parties. Additionally, we may include your name within its list of customers for general promotional purposes. We will comply with your trademark use guidelines as such are communicated to us in writing and we shall use your trademarks only with prior written consent in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any trademark except as provided in this section or as agreed, in writing.

Links to Other Web Sites

Our Service may contain links to third party web sites or services that are not owned or controlled by PLS 3rd Learning.

PLS 3rd Learning has no control over, and assumes no responsibility for the content, privacy policies, or practices of any third-party web sites or services. We do not warrant the offerings of any of these entities/individuals or their websites.

You acknowledge and agree that PLS 3rd Learning shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such third party web sites or services. Further, the inclusion of these links does not imply that the other sites have given permission for inclusion of these links, or that there is any relationship between the Service or us and the linked sites. We are an independent operating company and reference to other companies does not imply any partnership, joint venture, or other legal connection where we would be responsible for the actions of their respective owners.

We strongly advise you to read the terms and conditions and privacy policies of any third-party web sites or services that you visit.

Indemnification

See Agreement.

Limitation of Liability

Except with regard to defense and indemnification, as set forth in the Agreement, in no event shall PLS 3rd Learning, nor its directors, owners, employees, Customers, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the Service; (ii) any conduct or content of any third party on the Service; (iii) any content obtained from the Service; and (iv) unauthorized access, use or alteration of your transmissions or content, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not we have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.

Disclaimer

WE ARE NOT RESPONSIBLE FOR ANY INFORMATION OR CONTENT CONTAINED WITHIN THE SERVICE AND MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY OF THE INFORMATION, CONTENT, OR OTHERWISE, CONTAINED IN OR ACCESSED THROUGH THE SERVICE FOR ANY PURPOSE OR AUDIENCE OR ABOUT ITS LEGITIMACY, LEGALITY, VALIDITY, ACCURACY, CORRECTNESS, RELIABILITY, QUALITY, STABILITY, COMPLETENESS, CURRENTNESS, OR SATISFACTION THAT THE SERVICE WILL MEET YOUR REQUIREMENTS. ALL SUCH CUSTOMER DATA IS SOLELY PROVIDED BY OR ON BEHALF OF YOU, THIRD PARTIES OR OTHER USERS OF THE SERVICE. YOU AGREE THAT YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR OWN RISK, NEITHER WE NOR OUR OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY, RELIABILITY, SUITABILITY OR CONTENT OF THE SERVICE. THE SERVICE IS PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR AUDIENCE. EXCEPT WITH REGARD TO DEFENSE AND INDEMNIFICATION, AS SET FORTH IN THE AGREEMENT, IN NO EVENT WILL WE OR OUR OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF YOUR USE OF OR INABILITY TO ACCESS THE SERVICE, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOSS OF GOODWILL, LOST BUSINESS, LOST DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETIONS OF FILES, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO THE SERVICE OR ITS PROGRAMS. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OUR LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

Governing Law

These Terms shall be governed and construed in accordance with the laws of the State of New York, United States, without regard to its conflict of law provisions.

Severability

Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect. These Terms constitute the entire agreement between us regarding our Service and supersede and replace any prior agreements we might have had between us regarding the Service.

Force Majeure

Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either party may cancel the unperformed services upon written notice.

Compliance with Laws

PLS 3rd Learning will comply with all U.S. state and federal laws in our provision of the Service and the processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process of governmental request. You will comply with all laws in your use of the Service.

Changes

We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material we will provide at least 60 days' notice prior to any new terms taking effect. What constitutes a material change will be reasonably determined at our sole discretion. We will promptly provide you notice of any non-material change.

By continuing to access or use our Service after any revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, you are no longer authorized to use the Service.

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

The parties to this Agreement are the Monroe 1 Board of Cooperative Educational Services ("BOCES") and PLS 3rdL Learning ("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 PLS 3rdL Learning 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 evaluation and training 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 until June 30, 2022, unless sooner 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.

