



**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: September 27, 2022

The purpose of this memo is to request that at our October 6, 2022, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- N2y, LLC - Regional Information Center – per attached

Should you have any questions please contact me prior to our October 6 meeting. Thank you.



## ONLINE HOSTED SOFTWARE SERVICES AGREEMENT

This Online Hosted Software Services Agreement ("Agreement") dated September 9, 2022 is entered into by and between n2y, LLC, an Ohio Limited Liability Company at 909 University Drive South, Huron Ohio, 44839 ("n2y" or "Software Provider") and Monroe 1 BOCES at 41 O'Connor Road, Fairport, New York 14450 (the "District"; for itself and participating school districts), collectively referred to as the "parties."

### RECITALS

WHEREAS, Software Provider develops and markets online hosted software services (the "Software Services") which are made digitally accessible via the internet, and

WHEREAS, the District wishes to make the Software Services available to a portion of its student population;

WHEREAS, Software Provider represents itself able and, for valid consideration, willing to provide such services to the District;

Now, THEREFORE, in consideration of the premises and the mutual covenants contained herein, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby enter into this Agreement for Software Provider to provide to the District the Software Services as detailed herein. This Agreement attaches and incorporates by reference as though fully set forth herein n2y's standard Terms of Use, Privacy and Confidentiality found [www.n2y.com/privacy-policy](http://www.n2y.com/privacy-policy) and the Scope of Services attached hereto as Appendix A. In the event of a conflict between this Agreement, Appendix A and the Terms of Use, Privacy and Confidentiality, this Agreement shall control, then Appendix A and then the Terms of Use, Privacy and Confidentiality.

#### A. TERM; EFFECTIVE DATE

Subject to n2y Terms of Use and the Scope of Services, the term of this Agreement shall be as set forth in Appendix A. This Agreement and the Scope of Services may be terminated at any time and for any reason upon thirty (30) days' notice. In the event of early termination for cause, the District will be reimbursed on a *pro rata* basis for any fees paid in advance.

#### B. SERVICES SOFTWARE PROVIDER AGREES TO PROVIDE

Software Provider agrees to provide the District with the Software Services as set forth in Appendix A ("Scope of Services").

#### C. COMPENSATION

As compensation for the Software Services, District agrees to pay Software Provider \$640.46 per participating BOCES or school District within 30 days of Execution of this Agreement.

#### D. SUBSCRIPTION EXPIRATION, RENEWAL AND APPLICABLE GRACE PERIOD

Unless otherwise agreed upon in writing between you and n2y, your subscription will not automatically renew unless you notify n2y in writing at least 30 days prior to the expiration of same. Payment of your subscription fee must be made in full at the time of your renewal. If you are unable to pay the renewal fee in full at the time of your renewal, you may contact n2y to request a 30-day grace period (which may be granted (or denied) in n2y's sole discretion). In the event you fail to pay your renewal fee in full within any agreed-upon grace period, your account shall terminate effective immediately. You will be charged a prorated renewal fee for your subscription access during the grace period in accordance with the terms and conditions of your underlying agreement with n2y if your account is terminated for nonpayment of

the renewal fee. You will be invoiced for this prorated renewal fee and payment is due upon receipt. **PLEASE NOTE: ANY GRACE PERIOD, IF GRANTED, IS A PART OF YOUR YEAR-LONG SUBSCRIPTION AND NOT AN EXTENSION OF SUCH SUBSCRIPTION.**

**E. PRIVACY PLEDGE**

As a public commitment for the responsible collection and use of student data, n2y is a signatory to the Student Privacy Pledge (the "Pledge") of the Future of Privacy Forum and the Software & Information Industry Association (SIIA). n2y believes this Agreement is consistent with the Pledge and will ensure that any current and future subcontractors and business partners operate in a consistent manner by agreeing to comply with this Agreement. The Pledge is available for review at [www.studentprivacypledge.org](http://www.studentprivacypledge.org). n2y will comply with the terms and conditions set forth in the Compliance with New York Education Law Section 2-d Contract Addendum, which is attached hereto as Appendix B and is incorporated by reference as if fully set forth herein.

**F. NOTICE TO PARTIES**

All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid.

**NOTICE TO THE DISTRICT:**

SITE/DEPARTMENT	
HEAD OF SITE/DEPARTMENT	
CONTACT PERSON	
STREET ADDRESS	
CITY, STATE, ZIP	
TELEPHONE	
EMAIL ADDRESS	

**NOTICE TO THE SOFTWARE PROVIDER:**

SOFTWARE PROVIDER	n2y LLC
CONTACT NAME	David Swank, Chief Financial Officer
STREET ADDRESS	909 University Drive South
CITY, STATE, ZIP	Huron, Ohio 44839
TELEPHONE	419 433-9800
EMAIL ADDRESS	bids@n2y.com

**G. NO WAIVER**

The failure of either party to enforce any terms and conditions of this Agreement or to respond to any breach by the District shall not in any way be deemed a waiver of either party's right to enforce any terms or conditions of this Agreement.

**H. GOVERNING LAWS AND VENUE**

The parties agree that the laws of the State of New York without regards to principles of conflict of laws, will govern this Agreement and any dispute that may arise between District and Software Provided. Further, the parties expressly agree that exclusive jurisdiction for any dispute resides in the courts of Monroe County, New York.

**I. SEVERABILITY**

All provisions of this Agreement are severable and neither this Agreement nor any provision hereof shall be affected by the invalidity, inapplicability or unenforceability of any other provision of this agreement.

**J. 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 from the negligent or willfully wrongful acts or omissions of its employees, third-party vendors, contractors, subcontractors or agents, in connection with the services provided in connection with this Agreement.

**K. INDEPENDENT CONTRACTOR**

This Agreement does not create an employee/employer relationship between the parties or between n2y and any participating school district. N2y will be an independent contractor and not a Monroe 1 BOCES or school district employee for any purpose whatsoever. No n2y employee shall be entitled to any payment or benefit from Monroe 1 BOCES or a participating school district.

**L. NON-DISCRIMINATION AND LEGAL COMPLIANCE**

n2y agrees that it will not discriminate against anyone 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. In providing the services pursuant to this Agreement, n2y will comply with all applicable laws, rules and regulations.

**M. 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.

**N. ORDER OF INTERPRETATION AND CONTROL**

In the event of a conflict between this Agreement, the Compliance with New York Education Law Section 2-d Contract Addendum (Appendix "B"), the Scope of Services (Appendix "A") or any other document, the Compliance with New York Education Law Section 2-d Contract Addendum (Appendix "B") shall control, then this Agreement, then the Scope of Services (Appendix "A"). n2y shall not include any term in any such form or format that contradicts the terms to which it has agreed in this Agreement, its appendices or with Education Law Section 2-d.

[Signature page follows]

**SIGNATURES OF THE PARTIES**

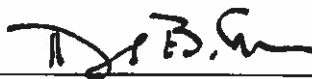
IN WITNESS WHEREOF the parties hereto have executed this Agreement on September 9, 2022.


**For :**  
**n2y LLC**

**For:**  
**Monroe 1 BOCES**

**APPROVED:**

**APPROVED:**

**BY:**   
\_\_\_\_\_  
Authorized Signature  
David Swank  
Chief Financial Officer

**BY:**   
\_\_\_\_\_  
**NAME:** Daniel T. White  
**TITLE:** District Superintendent

**APPENDIX A  
SCOPE OF SERVICES**

Please see attached Quote Q-102955 that will act as the scope of services



Quote No.	Opportunity No.	Date
Q-102955	OPP-174281	9/9/2022

Remit To	Contact Info
n2y, LLC PO Box 550 Huron, OH 44839	Michael Baxendell michael_baxendell@boces.monroe.edu

Bill To	Ship To
Monroe 1 Board of Cooperative Educational Services On Behalf of Brighton CSD 41 O'Connor Road Fairport, New York 14450	Brighton Central School District 2035 Monroe Avenue Rochester, New York 14618

Date	Payment Terms	RFP / Contract #	Purchase Order
9/9/2022	Net 30		

Qty	Item	Description	Type	Sub No.	Sub Start Date	Sub End Date	Unit Cost	Amount
1	ULS	Unique Learning System®	New		8/31/2022	8/30/2023	\$640.46	\$640.46

Thank you for your business! In need of additional assistance? Please call us at (419) 433-9800 or (800) 697-6575.

Sub-Total \$640.46  
Sales Tax \$0.00  
Total \$640.46

**Please Note:**

1. This Quote, exclusive of sales tax, is valid for 90 days. Purchase orders or payments via credit card must be received within 90 days from the date of this Quote to guarantee the listed price.
2. Multi-year Quotes require full payment of the Quote amount up front.
3. Prices are subject to change without notice. All orders are subject to our standard terms and conditions. ([Terms of Use & Privacy Policy](#))
4. n2y accepts credit cards for orders up to \$5,000 and checks or ACH payments for orders over \$5,000. Your Sales Representative would be happy to address any questions you might have regarding these policies.



Quote No.	Opportunity No.	Date
Q-102955	OPP-174281	9/9/2022



NOTE: Your order/Quote will not be processed until we receive a copy of your purchase order. Tax exempt organizations must include a copy of your state tax exempt form with your purchase order. All orders without a state tax exempt form will be charged sales tax at the applicable state rate.

There are four ways to process this Quote:

1. Fax your purchase order and a copy of your Quote to **(419) 433-9810**.
2. Email your purchase order either to **sales@n2y.com** or to your Sales Representative.
3. To request to use a credit card for payment, contact n2y Sales at **(419) 433-9800** or **(800) 697-6575** between the hours of 8:00am-4:30pm EST, Monday-Friday.
4. Mail your purchase order to the address below. Be sure to attach a copy of this Quote or reference **Quote Number Q-102955** on the purchase order.

n2y, LLC  
PO Box 550  
Huron, OH 44839

n2y Math Manipulative Kits are subject to availability.

Cancellation of training day(s) requires a 30 day notification. Failure to cancel within 30 days of initial training date may result in a cancellation fee of up to 50%.

For additional assistance with your order, please call n2y at **(419) 433-9800** or **(800) 697-6575**.

Sincerely,

Loren Schild  
Inside Sales Executive  
lschild@n2y.com  
**(419) 433-9800 ext. 1140**

## **Appendix B**

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

The parties to this Contract Addendum are the Monroe 1 Board of Cooperative Educational Services ("BOCES") and n2y LLC ("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 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.

"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 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 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 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/documentalioin/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 n2y and BOCES**

- (a) The exclusive purposes for which the personally identifiable information will be used by Vendor is to provide the n2y subscription services to BOCES and/or a Participating School District pursuant to a 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 Addendum shall be from the effective date the Agreement and it shall remain in effect until June 30, 2025, unless terminated sooner or renewed for an additional term. This Agreement shall automatically renew for one (1) year periods following the term, unless terminated by either party at any time and for any reason upon thirty (30) days' notice.
- (e) Upon expiration or termination of the 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 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.

