

Terms of Service

Terms of Service (“Terms”)

Last updated: April 6, 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 without 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 this document.

“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 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 ensure that your affiliates and permitted third parties comply with this Agreement. You will be directly and fully responsible to us for their use, conduct and/or any breach of this Agreement by them. 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.

A valid payment method, including credit card, is required to process the payment for your 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. By submitting such payment information, you automatically authorize PLS 3rd Learning to charge all Subscription fees incurred through your account to any such payment instruments.

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 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. Any Subscription Fee change will become effective at the end of the then-current 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 or transferrable to another school year.

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 uploading or otherwise making available Customer Data, you automatically grant and/or warrant that the owner, if not you, has granted us the

perpetual royalty-free, non-exclusive right and license to use, reproduce, modify, publish, distribute, perform, display and transmit the Customer Data. You also permit us to access, view, store and reproduce the Customer Data to the same extent permitted herein.

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 and edit all Customer Data provided by users.

In addition, Content found on or through this Service are 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 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, this Agreement, and our Product Privacy Policy. We will not disclose Personally Identifiable Information to anyone else within the your 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.

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, Content, Owned IP, or in any material provided to you.

We may: (i) use your name and/or logo 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 and/or logo as may be agreed between the parties. Additionally, we may include your name and/or logo 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 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

You agree to defend, indemnify and hold harmless PLS 3rd Learning, its licensees, licensors, employees, contractors, agents, owners, officers, directors, affiliates, successors and assigns from and against any and all claims, demands, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees), resulting from or arising out of a) Your use and access of the Service, by you or any person using an Account and password; b) a breach of these Terms, c) Content posted on the Service, d) and Customer Data.

Limitation of Liability

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, FITNESS FOR A PARTICULAR PURPOSE OR AUDIENCE AND NON-INFRINGEMENT. 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 determined at our sole discretion.

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.

Contact Us

If you have any questions about these Terms, please contact us (<https://supereval.com/request-info/>).

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678 Main Street | Buffalo, NY | 14202

(844) 312-3825 (tel:8443123825)

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