ESGI
CLICK. CLICK. DONE.

DATE: 12/03/2019
EXPIRES: 03/03/2020
QUOTE NUMBER: 912284

PREPARED FOR:
NAME: Kristen Singer
STATE: Kentucky
DISTRICT: BOONE CO
SCHOOL: FLORENCE ELEMENTARY SCHOOL

Each license is per teacher and up to 35 students.

Quantity	Description	Notes	List Price	Discounted Price	Amount
1	ESGI 12 Month License	Promo Code: WIIS	$199.00	$159.00	$159.00
				Total	**$159.00**

ORDER FORM

TO ORDER:
1. Complete the information below.
2. Email (support@esgisoftware.com) or Fax (866-925-3450) this form with your PO.
3. You will be sent an activation code after we receive your order. <u>Please include an email address</u> to which we should send the instructions.

Primary Contact (*Required)

(The person who will be sent the Activation Code to distribute to teachers.)

*Name:_____

*Email:_____

*Phone number if we have a question about the purchasing / payment:

_____   _____
        Purchasing Number   Accounts Payable Phone Number and Email Address

If your order includes extra students, please provide the teacher name(s) and number of students in the box below so we can update the accounts accordingly.

Order Information (Optional):

COMPLETE EACH DATE BELOW FOR THE CURRENT SCHOOL YEAR TO ALLOW TEST SHARING.

Marking Period Type: ○ Semesters ○ Trimesters ○ Quarters ○ Other

End of First Marking Period: . . / . . / . . . .

End of Second Marking Period: . . / . . / . . . .

End of Third Marking Period: . . / . . / . . . . (if applicable)

End of Fourth Marking Period: . . / . . / . . . . (if applicable)

Additional Marking Periods: _____ (if applicable)

Website and Software Terms of Use

APPLICATION SERVICE PROVIDER SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT ("AGREEMENT") CONSTITUTES A BINDING AGREEMENT BETWEEN YOU ("YOU" OR "SUBSCRIBER") AND ESGI, LLC ("ESGI"). PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE ESGI AND ITS SOFTWARE (COLLECTIVELY, THE "APPLICATION") AND SERVICES ("SERVICES"). BY ACCESSING THE ESGI WEBSITE (THE "WEBSITE"), COMMUNICATING WITH ESGI THROUGH THE WEBSITE, REGISTERING ONLINE OR OTHERWISE USING THE INFORMATION AVAILABLE THROUGH THE WEBSITE, AND/OR USING THE SERVICES AND/OR APPLICATION, YOU ARE AGREEING TO BE BOUND BY THESE TERMS IN ADDITION TO ANY OTHER REQUIREMENTS OR PROVISIONS SET FORTH IN ANY OTHER CONTRACT OR AGREEMENT BETWEEN YOU AND ESGI. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT ACCESS THE WEBSITE OR USE THE SERVICES OR APPLICATION. ESGI MAY REVISE THESE TERMS AT ANY TIME WITHOUT NOTICE, SO PLEASE REFER TO THIS PAGE FROM TIME TO TIME. ANY CHANGES TO THESE TERMS WILL BE POSTED BY ESGI ON THE WEBSITE AND WILL TAKE EFFECT IMMEDIATELY UPON POSTING. YOUR CONTINUED USE OF THE SERVICES OR ACCESS TO THE APPLICATION OR WEBSITE AFTER ANY SUCH POSTING WILL CONSTITUTE YOUR AGREEMENT TO BE BOUND BY ANY POSTED CHANGES. ANY RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY ESGI. THIS AGREEMENT IN NO WAY CONSTITUTES A TRANSFER OF TITLE, RIGHTS, OR OWNERSHIP IN THE APPLICATION OR WEBSITE OR PERMISSION TO USE THE APPLICATION OR WEBSITE EXCEPT AS EXPRESSLY SET FORTH HEREIN.

1. PRIVACY. ESGI is sensitive to privacy issues on the Internet and ESGI believes it is important that you understand how ESGI treats the information you may provide to it. The ESGI Privacy Policy (/privacy-policy) is designed to provide clarity about the information ESGI collects and how ESGI uses it to provide a better online experience.

2. ELIGIBILITY. The Website is intended for use by [adults, and is not directed to minors under the age of 18. By accessing or using the Website and thereby agreeing to the terms and conditions of this Agreement, Subscriber represents and warrants to ESGI: (i) that Scriber is at least 18 years of age; (ii) that Subscriber has not previously been suspended or removed from the Website; and (iii) that Subscriber's registration and use of the Website is in compliance with any and all applicable laws and regulations. Any registration by anyone under the age of 18 is void.]

3. SUBSCRIBER'S REPRESENTATIONS & WARRANTIES TO ESGI. By using the Website, Subscriber expressly represents and warrants that Subscriber is legally entitled to enter into this Agreement. If Subscriber resides in a jurisdiction that restricts the use of the Website because of age or restricts the ability to enter into agreements such as this Agreement due to age, Subscriber must abide by such age limits and Subscriber must not use the Website. By using the Website, Subscriber represents and warrants that Subscriber has the right, authority and capacity to enter into this Agreement and to abide

by the terms and conditions of this Agreement. If Subscriber is using the Website on behalf of an entity, organization, or company, Subscriber represents and warrants that Subscriber has the authority to bind such organization to this Agreement and Subscriber agrees to be bound by this Agreement on behalf of such organization. When using the Website, Subscriber agrees to comply with all applicable laws from Subscriber's home nation and the country, state, and city in which Subscriber is present while using the Website. By using the Website, Subscriber further represents, warrants and agrees that: (i) Subscriber will only use the Website for lawful purposes, and Subscriber will not use the Website for sending or storing any unlawful material or for fraudulent purposes; (ii) Subscriber will not use the Website to cause nuisance, annoyance or inconvenience; (iii) Subscriber will not impair the proper operation of the Website or any network which is used to support or access the Website; (iv) Subscriber will not try to harm the Website in any way whatsoever; (v) Subscriber will not copy, or distribute the Website or other content without written permission from ESGI; (vi) Subscriber will only use the Website for your own use and will not resell any aspect of the Website to a third party; (vii) Subscriber will keep secure and confidential any account password or other identification provided by ESGI which allows access to the Website; and (viii) Subscriber will provide ESGI with whatever proof or identity ESGI may reasonably request.

4. GRANT OF RIGHTS. ESGI hereby grants to Subscriber a non-exclusive, non-transferable, limited right to access the Application from ESGI's servers through the Website, under and subject to the limitations of the terms of this Agreement. These access rights are granted solely for Subscriber to enter and process its own education-related data, and Subscriber is prohibited from entering the educational, business or other data of other persons not parties to this Agreement. Subscriber shall not add more than 35 students per year, unless otherwise agreed upon by both parties in writing.

4.1 Non-Exclusivity. Subscriber acknowledges that ESGI may, without limitation, accept subscriptions from or grant licenses to other educators, school districts, persons, or other entities for the Application and other products identical or similar thereto, on any terms ESGI deems appropriate, including terms more favorable than the ones outlined in this Agreement.

4.2 Sub-License and Assignment. Neither the access and other rights granted hereunder nor the Application or any part thereof may be sub-licensed, leased, subleased, assigned, or otherwise transferred (a "Transfer") by Subscriber without the prior written consent of ESGI. Any attempt to Transfer any of the rights, interests, duties or obligations under this Agreement constitutes a material breach of this Agreement justifying immediate termination.

5. SUBSCRIPTION FEES. Subscriber agrees to pay the subscription fee mutually agreed upon by ESGI and the Subscriber for the term of this Agreement as identified in Section 17. ESGI reserves the right to change the subscription fee annually upon notice to the Subscriber. All payments not made when due shall be subject to late charges of the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount, calculated from the date payment was due, or (ii) the maximum amount permitted under applicable law.

6. COPYING. Subscriber shall not, under any circumstances, directly or indirectly, download, copy, decompile, analyze or reverse engineer all or any part of the Application or the Website, or attempt to access any product of ESGI or any region within ESGI's servers beyond that authorized to Subscriber by ESGI.

7. OWNERSHIP.

7.1 The Application and Documentation. All right, title and interest in and to the copyrights, trademarks, patents, trade secrets and other intellectual property rights embodied in or related to the Application and/or the Website and any documentation related to the Application and/or the Website are and shall remain with ESGI. All ideas, suggestions, reports or the like that Subscriber provides to ESGI or otherwise makes available with respect to the Application and/or Website ("Supportive Information") will be owned by ESGI and will be subject to the confidentiality provisions of this Agreement. Subscriber hereby assigns to ESGI all rights, title and interests in the Supportive Information. Any and all derivative works, upgrades, updates, developments, modifications, changes, alterations, edits, conversions, improvements or the like made to the Application and/or the Website by ESGI are and will be owned by ESGI and will be subject to the confidentiality provisions of this Agreement. Subscriber acknowledges and agrees that no source code for the Application has been or will be provided to Subscriber and as a result Subscriber is unable to make and has no right to make modifications to the Application code. Subscriber may use API integration template code provided by ESGI for the purpose of effecting interactivity between Subscriber's existing software (including database software) and the Application. Subscriber acknowledges and agrees that the Application contains confidential and proprietary information and substantial and valuable trade secrets of ESGI. Subscriber shall use the same care to protect the Application against any use, copying, disclosure, or dissemination not expressly authorized by this Agreement that it uses to protect its own most valuable proprietary information and materials, but in no event less than the care a reasonable business person would use under similar circumstances. Without limiting the foregoing, the Subscriber may not give any third party access to the Application, nor permit access to the Application, other than as expressly set forth herein. The Subscriber shall not, and shall not authorize or permit third parties to use, copy, modify, or prepare derivative works of the Application and/or Website or any part thereof. In the event Subscriber knows or has substantial reason to believe that either Subscriber or others have gained access to the Application and/or Website without a valid subscription or have gained access to the Application and/or Website in excess of the rights granted by this or any other agreement, then Subscriber must furnish notice thereof to ESGI immediately. Any failure by Subscriber to perform any of its obligations under this Agreement constitutes a material breach of this Agreement justifying immediate termination.

7.2 Data. ESGI acknowledges that the data administered by the Application, when furnished by, through, or on behalf of Subscriber, is the property of Subscriber or its employees or students. Nevertheless, Subscriber understands and agrees that there may be times when, for maintenance or other reasons, Subscriber may not be able to access such data. In addition, Subscriber grants ESGI the right to analyze, to

make reports from, and to use (commercially or otherwise) any and all such data, provided that the data so reported and published is aggregate in form and does not disclose the identity of Subscriber, Subscriber's employees or students.

8. REQUIRED NOTICES. Subscriber shall not remove any copyright, trademark or patent notice or trade secret legend from any portion of the Application or Website, including any printed computer screens or supporting documentation, and the Subscriber shall not assert and shall not represent to any third party that it has any ownership rights in, or the right to sell, transfer, or sub-license its right to access the Application and/or Website.

9. TECHNICAL SUPPORT. ESGI will use reasonable business efforts to furnish Subscriber support as follows:

9.1 Telephone Support. ESGI will provide telephone support (by toll call) for questions or problems with the use of the Application and/or Website.

9.2 Law Changes. ESGI will provide modifications to the Application required by changes in federal or state laws or regulations relating to education. These modifications will be made as soon as practicable after the passage and/or issuance of the applicable laws and/or regulations to the extent feasible -- as determined by ESGI in its sole discretion.

9.3 Outside Factors.ESGI will not be responsible for problems that occur in the operation of the Application or Website, errors, failures, or malfunctions that are caused by outside factors, including (but not limited to) malfunctions in Subscriber's equipment or connection with or to the Internet and operator error. Nevertheless, ESGI will exert reasonable and good faith efforts to resolve such problems.

10. MAINTENANCE. Subscriber acknowledges and agrees that ESGI may, from time to time, need to perform routine maintenance or repair of the Application and/or Website, and that during such times of maintenance or repair, the Application and/or Website may not be available for the Subscriber's use. ESGI will endeavor to minimize the length of time of any such unavailability, and will endeavor to perform routine maintenance during non-business hours, but ESGI cannot guarantee that the Application will be available at all times. Telecommunications and other interconnection with the Internet is the responsibility of Subscriber, and ESGI disclaims any responsibility or liability whatsoever relating to access or use disruptions resulting from failure or degradation of any such interconnection.

11. WARRANTIES. The Application and Website, subject to events beyond ESGI's control that may make the Application unavailable and subject to the vicissitudes of interconnection, will substantially perform in accordance with the written user documentation furnished by ESGI to Subscriber.

11.1 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY STATED ABOVE IN SECTION 11, ESGI AND ITS SUPPLIERS AND LICENSORS PROVIDE THE WEBSITE AND APPLICATION AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY,

INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY OR COMPLETENESS OR RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES AND OF LACK OF NEGLIGENCE, ALL WITH REGARD TO THE APPLICATION, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, OR NON-INFRINGEMENT WITH REGARD TO THE WEBSITE OR APPLICATION.

11.2 LIMITATION OF LIABILITY; EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ESGI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING THE DUTIES OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE APPLICATION OR THE WEBSITE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF ASP, AND EVEN IF ESGI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESGI'S SOLE LIABILITY AND SUBSCRIBER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT AND ITS PERFORMANCE SHALL BE EXPRESSLY LIMITED TO REFUND OF THE SUBSCRIPTION PRICE PAID IN THE MONTH PRECEDING SUBSCRIBER'S NOTICE TO ESGI OF SUCH A CLAIM, OR CORRECTION OF THE ALLEGED DEFECT, AT ESGI'S OPTION. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.

12. INDEMNIFICATION. The Subscriber agrees to indemnify ESGI, its officers, directors, employees, agents, affiliates, suppliers, licensors, and assigns, against all claims, losses, damages, actions, expenses, including cost and reasonable attorneys' fees, and other liabilities arising out of or resulting from i) Subscriber's use of the Application and/or Website other than as authorized herein; or ii) Subscriber's breach of any of these Terms.

13. INDEMNIFICATION BY ESGI. ESGI agrees to defend, indemnify and hold Subscriber harmless from and against all damages, costs, liabilities, expenses and settlement amounts incurred in connection with any suit, claim or action by any third party alleging that the Application (excluding any third party software) used within the scope of this Agreement infringes a U.S. copyright or any U.S. patent issued as of the Effective Date provided that: (a) Subscriber notifies ESGI in writing within 30 days of its receipt of notice of any claim; (b) ESGI has sole control of the defense and all related settlement negotiations; and (c) Subscriber provides ESGI with reasonable assistance, information and authority necessary to perform its obligations under this Section 13, at Subscriber's expense. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to: (i) modification of the Application or any

portion of the Application by anyone other than ESGI without ESGI's prior written consent; (ii) a combination of the Application with any third party software or equipment where such combination is the cause of such infringement; or (iii) Subscriber's data, compilations or reports of data, or Subscriber's use of data. If the Application is held or believed by ESGI to infringe or to become infringing, ESGI may, at its sole option, elect to: (1) modify the Application so that it is non-infringing; (2) replace the Application with non-infringing products or services which are functionally equivalent in performance; (3) obtain a license for Subscriber to continue to use the Application as provided hereunder; or (4) terminate the license for the infringing portion of the Application. The rights granted to Subscriber under this Section 13 shall be Subscriber's sole and exclusive remedy for any infringement by the Application.

14. TERMINATION. A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of the notice, the other party will have the Applicable Cure Period (as defined below) to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within The Applicable Cure Period, this Agreement will automatically be deemed terminated at the end of the Applicable Cure Period. For purposes hereof, the Applicable Cure Period means a period of ten (10) days, in the case of the breach of an obligation to pay money, and means a period of thirty (30) days in the case of all other breaches. For the breach of an obligation or covenant of confidentiality and for breaches of Sections 6, 8, and 22, there shall be no Applicable Cure Period. Upon termination of this Agreement by either party, Subscriber's access to the Application will cease and Subscriber will promptly return to ESGI or, at ESGI's request, will destroy all supporting documentation with respect to the Application and Website, including discs, user manuals, and printed screens, and will certify to ESGI in writing, over the signature of a duly authorized representative of Subscriber, that it has done so. Those terms of this Agreement which, by their nature, are meant to survive termination shall so survive, including without limitation terms related to ownership of intellectual property, confidentiality, indemnification, governing law and venue, and recovery of attorneys' fees. Subscriber acknowledges and agrees that if this Agreement terminates prior to the end of the then-current term, unless such termination is because of ESGI's breach, Subscriber will not be entitled to a refund of any fees paid for that term.

15. INJUNCTIVE RELIEF. Subscriber acknowledges that the use, copying, disclosure, or dissemination of the Application, or the trade secrets embodied therein, in a manner not authorized by this Agreement would cause irreparable harm to ESGI that could not be fully remedied by monetary damages. The Subscriber therefore agrees that ESGI shall be entitled, in addition to any other remedies available to it at law or in equity, to such injunctive or other equitable relief as may be necessary or appropriate to prevent such unauthorized use or disclosure without the necessity of proving actual or irreparable damage by reason of such use, disclosure, dissemination or copying, and without filing any type of bond or other security.

16. ASSIGNMENT. This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of ESGI. ESGI may assign this Agreement to any affiliate or to any person who succeeds to substantially all of ESGI's assets and business related to the Application or Website by merger or purchase, provided that the assignee assumes this Agreement by an instrument in writing.

17. TERM. The term of this Agreement is one year from the date you complete the application to obtain Services and submit payment for the first year of access to the Website and Application. The Agreement may be renewed for successive one year periods upon payment of the annual subscription fee by Subscriber. Subscription fees are subject to change in renewal terms. In the event Subscriber terminates the subscription prior to the end of its term, ESGI shall not be liable to refund any of the subscription fees paid.

18. FERPA. ESGI warrants that it will comply with the regulations of FERPA which are applicable to ESGI. Without limiting the warranty disclaimers contained herein, ESGI disclaims any and all other warranties related to FERPA and specifically disclaims any warranty that use of the Website or Application will result in compliance with FERPA. You shall indemnify and defend ESGI against any claims relating to your use of the Application or Website pursuant to this Agreement which use results in a violation of FERPA, pursuant to the indemnification provisions outlined herein.

19. ENTIRE AGREEMENT. Except for previously agreed-upon terms regarding the length of Subscriber's subscription to the Application and the Subscriber's subscription price, this Agreement (and all referenced Exhibits attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior expression of intent or understanding, oral or written, relating to the subject matter of this Agreement.

20. WAIVER. Any waiver of a failure or delay in performance shall be effective only if in writing and only in accordance with its terms. The waiver of one breach or default shall not constitute the waiver of any subsequent breach or default and shall not act to amend or negate the rights of the parties under this Agreement.

21. RIGHT TO USE SUBSCRIBER'S NAME. Subscriber authorizes ESGI to use Subscriber's name in marketing literature and on the Website as a "Subscriber" of ESGI.

22. CONFIDENTIAL INFORMATION. The terms of this Agreement and all other agreements between Subscriber and ESGI; all information and data to which Subscriber gains access by virtue of this Agreement; the Application and its functions and features; and the operations, rules, and policies of ESGI are confidential and may not be disclosed, described, or communicated in any way by Subscriber to any third party without the advance written consent of ESGI.

23. NOTICE. All notices, demands, and requests required or permitted to be given under this Agreement shall be in writing and delivered to the respective addresses of the parties as shown in Subscriber's application to obtain Services (or to such other address as either party may furnish by a notice complying

with this Section) personally, by local courier, by a nationally recognized overnight courier, or by United States certified mail, return receipt requested, postage prepaid. Notices shall be effective upon receipt.

24. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the state of Indiana, and the Subscriber hereby submits to jurisdiction and venue in the courts of Elkhart County, Indiana, including the United States District Court for the Northern District of Indiana.

25. ATTORNEYS' FEES. In the event of any dispute arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

26. FORCE MAJEURE. Except for the payment of money, neither party shall be liable for any failure or delay in performance under this Agreement which might be due to strikes, shortages, riots, insurrection, fires, flood, storm, explosion, acts of God, war, government action, inability to obtain delivery of parts, supplies or labor, labor conditions, earthquakes, acts of terrorism, or any other cause which is beyond the reasonable control of such party.

27. SEVERABILITY. If any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable statute, rule of law or public policy then such provision shall be considered inoperative to the extent of such invalidity, illegality or unenforceability and the remainder of this Agreement shall continue in full force and effect. The parties agree to replace any such invalid, illegal or unenforceable provision with a new provision that has the most nearly similar permissible economic effect.

28. AUTHORIZATION. If you are subscribing to the Services on behalf of another person or entity, you represent and warrant that you have the authority to bind the party or entity for which you are acquiring the Services to this Agreement.