



September 25, 2020

Michele Geoghegan
Burlington Elementary
5946 N. Orient St.
Burlington, KY 41005
united states

Term	School Year	Licenses	Pricing for GoNoodle Plus
2020-2021 School Year	2020-2021 School Year	School Wide Subscription	\$1,300

Services Provided:

- Online Monitoring and Support
- Monthly Measurement Reporting
- School Starter Kit (fact sheets, stickers, etc.)

Please let me know if you have any questions or need any additional information. I'm looking forward to discussing next steps with you!

Sincerely,

Tracy Coats
Manager, School & District Sales
(615) 668-5562
tracy.coats@gonoodle.com



SCHOOL ACCESS AGREEMENT

This School Access Agreement (the "Agreement") dated (the "Effective Date") is entered into by and between GoNoodle, Inc., a Delaware corporation ("GoNoodle") and Burlington Elementary ("School" and together with GoNoodle, the "Parties" and each, a "Party").

RECITALS

School desires access to GoNoodle's Platform (as defined below); and

- A. School agrees to comply with the terms and conditions set out in this Agreement; and
- B. GoNoodle desires to provide School with access for use by certain End User Organizations (as defined herein), in exchange for the the Access Fee (as set forth below).

NOW, THEREFORE, in consideration of the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the School and GoNoodle agree as follows:

- 1. **ACCESS.** GoNoodle agrees to provide the following School-affiliated End User Organizations with access to GoNoodle PLUS, a platform containing a web-based suite of interactive games and videos designed to inspire movement and physical activity in children (the "Platform"):

Burlington Elementary

School agrees to refrain and agrees to cause the End Use Organizations to refrain, from distributing, modifying, copying, creating derivative works based upon, decompiling, reverse engineering, disassembling or otherwise attempting to access the source code with respect to the Platform. GoNoodle or its designees will maintain and host the Platform. End User Organizations are responsible for obtaining all necessary hardware and software to access the Platform and content contained therewith, including but not limited to any necessary web browser software.

- 2. **ACCESS FEE.** School shall pay GoNoodle a non-refundable, non-proratable Access Fee in the amount of \$1,300 upon full execution of this Agreement.
- 3. **TERM.** The term of this Agreement shall commence upon the Effective Date and shall expire on June 30, 2021 (the "Term"). GoNoodle may terminate this Agreement at any time as a result of School's material breach.
- 4. **REPORTING.** GoNoodle shall provide the following two (2) authorized representatives of School with monthly aggregated reporting on End User Organization usage of the Platform.

Report Recipient 1 Name: _____

Report Recipient 1 Email: _____

Report Recipient 2 Name: _____

Report Recipient 2 Email: _____

5. **LIMITED WARRANTY.** GONOODLE MAKES NO WARRANTIES. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. GoNoodle does not warrant that the Platform or the content will operate or perform in a manner that is uninterrupted or error-free, or that the Platform, the content or the host server will be maintained free of viruses or other harmful code. GoNoodle shall not be liable to School for any loss of use, revenue or profit, or loss of data or diminution in value, or for any consequential, incidental, exemplary or special damages of any nature whatsoever, even if School has been advised of the possibility of such damages and regardless of character, including, without limitation, any damages relating to computer failure or malfunctioning or otherwise. School agrees GoNoodle's liability for all claims of any kind shall be limited to general money damages and shall not exceed the fees actually paid by School. The foregoing shall be enforceable to the maximum extent permitted by applicable law, and School and GoNoodle agree to this allocation of risk in relation to the provision of the Services and use of the Platform.

6. **INTELLECTUAL PROPERTY.** Subject to the terms and conditions herein, GoNoodle hereby grants the End User Organizations the right and license to use the Platform (and all content therewith, as permitted under this Agreement) on a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free basis during the Term. School acknowledges and agrees that nothing herein shall grant School or any End User Organization the right to download, distribute, publish, modify, copy or create derivative works based upon the content contained on the Platform, whether in whole or in part, or the GoNoodle logo, name or trademarks. School acknowledges and agrees that, as between the parties, personally identifying information collected by GoNoodle pursuant to this Agreement shall be the exclusive property of GoNoodle. GoNoodle shall use such personally identifying information consistent with GoNoodle's Terms of Service and Privacy Policy as updated from time to time and posted on the Platform.

7. **REPRESENTATIONS AND WARRANTIES; INDEMNITY.** School represents and warrants to GoNoodle that it is duly authorized and empowered to execute, deliver and perform this Agreement and that such action does not conflict with or violate any provision of law, regulation, policy, contract, deed or trust or other instrument to which it is a party or by which it is bound and that this Agreement constitutes a valid and binding obligation of it enforceable in accordance with its terms. The School shall provide to GoNoodle concurrently with the execution and delivery of this Agreement all evidence of authority to act, including without limitation, the signatory to this Agreement and the Authorized Representatives designated to receive reporting, upon which GoNoodle may rely. School shall indemnify and hold harmless GoNoodle from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and expenses (including, without limitation, counsel's fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) which may be instituted or asserted against or incurred by any GoNoodle as the result or arising out of breach of School's representations, warranties or covenants contained herein.

8. **CONFIDENTIALITY.** From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when

disclosed and within fifteen (15) days thereafter, is summarized in writing and confirmed as confidential ("Confidential Information"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 7; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 7 only, Receiving Party's Group shall mean the Receiving Party's officers, agents, employees, independent contractors, service providers, attorneys, accountants, and financial advisors.

9. **ENTIRE AGREEMENT.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

10. **SEVERABILITY.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

11. **AMENDMENTS.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by each Party.

12. **WAIVER.** No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

13. **ASSIGNMENT.** School shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of GoNoodle. Any purported assignment or delegation in violation of this Section 12 shall be null and void. No assignment or delegation shall relieve the School of any of its obligations under this Agreement. GoNoodle may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of GoNoodle's assets without School's consent.

14. **SUCCESSORS.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

15. **RELATIONSHIP OF THE PARTIES.** The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall give the School the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16. **NO THIRD-PARTY BENEFICIARIES.** This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

17. **APPLICABLE LAW; EQUITABLE RELIEF.** This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, exclusive of its conflicts of laws rules. Notwithstanding anything herein to the contrary, either party may seek equitable relief in any court of competent jurisdiction to prevent misuse or disclosure of its intellectual property or Confidential Information. Except where otherwise specified, the rights and remedies granted to a party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies which the party may possess at law or in equity.

18. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

19. **FORCE MAJEURE.** GoNoodle shall not be liable or responsible to School, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of GoNoodle including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

SCHOOL

By

Name:

Title:

GONOODLE

By

A handwritten signature in black ink, appearing to read 'K Estenson', with a long horizontal stroke extending to the right.

Name: KC Estenson

Title: Chief Executive Officer