ESGi ✓

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Elkhart, IN 46515
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Quote #	929094
Quote Prepared:	07/22/2021
Quote Expires:	10/22/2021

Prepared For:	Steffanie Sela
State:	Kentucky
District:	BOONE CO
School:	THORNWILDE ELEMENTARY

QUOTE

Qty	Description	Notes	List Price	Disc Price	Amount
10	ESGI 12-Month License (max. 35 students)	Promo Code: KICKINIT	$225.00	$175.00	$1,750.00
				Total	$1,750.00

ORDER FORM

Complete all required information below and send this form with your PO or check.

Purchase Order
support@esgisoftware.com
Fax: 866-925-3450

Personal or School Check
ESGI, LLC
PO Box 938, Elkhart, IN 46515

After processing, an Activation Code will be sent to the contact for distribution to teachers.

ACTIVATION CODE CONTACT (*Required)

Name: _____

Email: _____

ACCOUNTS PAYABLE CONTACT (*Required)

Phone: _____

Email: _____

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

Teacher Name	# of Students	Teacher Name	# of Students

Other Information:

Marking Period for the current school year (circle one):   Semester   Trimester   Quarters   Other

Marking Period	End Date [MM/DD/YY]	Marking Period	End Date [MM/DD/YY]
First	__ __ / __ __ / __ __	Sixth (if applicable)	__ __ / __ __ / __ __
Second	__ __ / __ __ / __ __	Seventh (if applicable)	__ __ / __ __ / __ __
Third (if applicable)	__ __ / __ __ / __ __	Eighth (if applicable)	__ __ / __ __ / __ __
Fourth (if applicable)	__ __ / __ __ / __ __	Ninth (if applicable)	__ __ / __ __ / __ __
Fifth (if applicable)	__ __ / __ __ / __ __		

ESGI, LLC Terms of Use

Last updated: November 6th, 2020.

By entering into these Terms of Use (the "Terms") with ESGI, LLC ("ESGI"), and/or by accessing or using the ESGI website, mobile application, and related services (collectively, the "Service"), you expressly acknowledge that you have read, understood, and agree to be bound by these Terms. These Terms apply to all visitors, users, and others who access or use the Service (each, a "Customer"). If you are agreeing to these Terms on behalf of an organization or entity (such as a school, district, or educational organization, each, a "Licensee"), you represent and warrant that you are authorized to agree to these Terms on behalf of the Licensee and to bind them to these Terms (in which case, references to "Customer" in these Terms refer to such Licensee). For good and valuable consideration, the receipt of which is acknowledged by each party, the parties agree as follows:

1. Definitions.

"Customer Content" means any information, data, images, and other content, in any form or medium, that is submitted by or collected from or on behalf of Customer through the Service, but excluding the Usage Data.

"Documentation" means the documentation that ESGI makes generally available to its customers in any form related to the Service.

"Effective Date" means the effective date of these Terms, which shall be the earlier of Customer's acceptance of these Terms or its access to or use of the Service.

"Fees" means the subscription fees for the Service.

"Intellectual Property Rights" means all patent, copyright, trademark, trade secret, rights in know-how, business domain names, designs, and other proprietary and intellectual property rights recognized in any jurisdiction worldwide, including moral rights.

"Marks" means a party's name, logo, and trademarks.

"Reports" means the tangible reports generated by Customer's use of the Service.

"Service Term" is defined in Section 10.1 below.

"Third-Party Service" means any products or services provided by third parties that may be integrated with or accessed through the Service.

"Usage Data" means any anonymized and aggregated data that is derived from the processing of Customer Content or the access or use of the Service by or on behalf of Customer, that in no way identifies or refers to Customer, User, or students, and any statistical or other analysis, information, or data based on or derived from the foregoing.

"User" means Customer's employees, independent contractors, or other third parties who are authorized by Customer to access and use the Service under the rights granted to Customer in these Terms

2. The Service.

2.1 <u>Provision of the Service</u>. During the Service Term and subject to the terms and conditions of these Terms: (i) Customer may access and use the Service pursuant to these Terms; and (ii) ESGI hereby grants to Customer a limited, non-exclusive, non-transferable (except as set forth in Section 11), non-sublicensable license to use and copy the Documentation as reasonably required to access and use the Service. ESGI will use commercially reasonable efforts to maintain the security of the Service. 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.]

2.2 <u>Modifications</u>. ESGI may revise or remove features, functionalities, or service levels of the Service at any time. If any such revision or removal materially impacts Customer's use of the Service, Customer may within thirty (30) days' notice of the revision or removal terminate these Terms, without cause.

2.3 <u>Privacy Policy</u>. ESGI's privacy policy (located at https://www.esgisoftware.com/privacy-policy) is incorporated herein by reference. ESGI reserves the right to modify its privacy policy in accordance with such policy.

2.4 <u>Subcontractors</u>. Customer acknowledges and agrees that ESGI may use subcontractors and other third-party service providers in its provision of the Service, provided that ESGI remains liable for such third party's breach of these Terms.

3. Customer's Responsibilities.

3.1 <u>Use of the Service</u>. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all the Customer Content; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and to notify ESGI immediately of any such unauthorized access or use; and (iii) provide all necessary personnel and other resources, as reasonably requested by ESGI, to enable ESGI to fulfill its obligations hereunder. Customer is fully responsible and liable for all Users' use of the Service.

3.2 <u>Restrictions</u>. Customer may use the Service solely as set forth in these Terms and will not: (i) copy, modify, or create derivative works or improvements of the Service; (ii) reverse engineer, disassemble, decompile, modify, or alter the Service; (iii) remove, circumvent, disable, damage, or otherwise interfere with or disrupt the integrity or performance of the Service or any security-related features therein; (iv) input, upload, transmit, or otherwise provide to or through the Service, any information or materials that are unlawful or injurious, or contain, transmit, send, or store material containing harmful computer code, files, scripts, agents, or programs; (v) rent, lease, loan, resell, sublicense, distribute, or otherwise commercially exploit or make available the Service to any third party or use the Service for service bureau or time-sharing purposes; or (vi) develop or have developed any products, services, or other materials that compete with the Service or otherwise compete with ESGI's business. Each User's right to access and use the Service through its individual account is personal to such User and such account may not be shared with other individuals. A User account may only be reassigned to a new User who is replacing the applicable User, as determined by an authorized account administrator.

3.3 <u>Customer Content</u>. Customer hereby grants to ESGI a limited, non-exclusive, non-transferable (except as set forth in Section 11) right and license during the Service Term to: (i) download, receive, collect, access, modify, copy, store, retain, and otherwise use the Customer Content in order to provide and support the Service in accordance with these Terms and to internally develop and improve its products and services; and (ii) provide access to the Customer Content by a Third-Party Service selected by Customer or otherwise upon Customer's consent or direction. Customer acknowledges and agrees that ESGI has no responsibility for the services or content of any Third-Party Service and will have no liability for the acts or omissions of such Third-Party Service. Any activities related to Third-Party Service, and any terms associated with such activities, are solely between Customer and the applicable Third-Party Service.

3.4 <u>Aggregate Data</u>. Customer hereby grants to ESGI a non-exclusive, worldwide, perpetual, irrevocable, fully paid, royalty-free right and license to collect, retain, store, use, modify, distribute, and disclose the Customer Content in aggregated and anonymized form and any inferred insight relating to the Customer Content for any purpose whatsoever, provided that any such disclosure does not identify or enable the identification of Customer, Users, or students by name or description sufficient to enable the identification of such party as the source or subject of such information, in whole or in part.

4. Fees & Payment.

4.1 <u>Fees</u>. Customer will pay the Fees mutually agreed to by the parties. All Fees are quoted in United States Dollars and are non-refundable except as otherwise specifically set forth in these Terms. Customer's credit card will automatically be charged when payment is due. Any payment not received or able to be processed by the due date may accrue, at ESGI's discretion, late charges at the rate of one and a half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date fully paid. ESGI uses a third-party payment processor and Customer must agree to such third party's terms when entering payment information, if applicable.

4.2 Taxes. Fees are exclusive of all local, state, federal, and foreign taxes, levies, or duties of any nature ("Taxes"), and Customer is responsible for payment of all Taxes, excluding only United States taxes based on ESGI's income. If ESGI has the legal obligation to pay or collect Taxes for which Customer is responsible pursuant to this Section 4.2, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides ESGI with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer will indemnify, defend, and hold ESGI, its officers, directors, consultants, employees, successors, and assigns harmless from all claims and liability arising from Customer's failure to report or pay any such Taxes.

4.3 Additional Charges. If Customer requests an additional number of Users of the Service or students rostered for the Service, Customer shall pay to ESGI any additional Fees for such Users as mutually agreed to.

4.4 Internal Review of Use. Upon ESGI's request, Customer shall certify in a signed writing that its and all Users' use of the Service is in full compliance with these Terms. ESGI may run internal reports to analyze Customer's use of the Service in order to determine whether such usage complies with these Terms and the applicable licenses granted hereunder.

5. Proprietary Rights.

5.1 Customer IP. As between Customer and ESGI, Customer owns all right, title, and interest in and to: (i) the Customer Content and Customer's Marks; (ii) Customer's Confidential Information; (iii) the Reports (excluding the ESGI IP as defined below); and (iv) all Intellectual Property Rights in the foregoing (collectively, the "Customer IP"). Except as expressly set forth in these Terms, no license or other rights to any of the Customer IP are granted to ESGI, and all such rights are hereby expressly reserved.

5.2 ESGI IP. ESGI owns all right, title, and interest in and to: (i) the Service, the Documentation, ESGI's Marks, and any and all enhancements, improvements, developments, derivative works, or other modifications (including any changes which incorporate any of Customer's ideas, feedback, or suggestions) made or related to the Service or the Documentation; (ii) the Usage Data; (iii) ESGI's Confidential Information; and (iv) all Intellectual Property Rights in the foregoing (collectively, the "ESGI IP"). Except as expressly set forth in these Terms, no license or other rights to any of the ESGI IP are granted to Customer, and all such rights are hereby expressly reserved.

6. Confidentiality.

6.1 Confidential Information. As used herein, "Confidential Information" means all non-public information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party"), whether orally or in writing, that is designated as "Confidential," "Proprietary," or the like and/or information that the Receiving Party should reasonably understand as being confidential or proprietary to the Disclosing Party given the nature of the information and the circumstances of the disclosure, including business and marketing plans, financial information, technology and technical information, designs, and business processes. Confidential Information

Party's breach of any obligation owed to the Disclosing Party; (ii) was in the rightful possession or known by the Receiving Party prior to receipt from the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party.

6.2 <u>Protection</u>. Subject to Section 6.3, each party will not disclose the other party's Confidential Information, or use the other party's Confidential Information, for any purpose other than to perform its obligations or exercise its rights under these Terms, and will protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event will either party exercise less than reasonable care in protecting such Confidential Information. The Receiving Party may disclose Confidential Information to its employees, agents, contractors, Affiliates, and other representatives having a legitimate need to know, provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 6 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 6.

6.3 <u>Compelled Disclosure</u>. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it will provide the Disclosing Party with prior written notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure.

6.4 <u>Remedies</u>. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. Representations & Warranties.

7.1 <u>Mutual Warranties</u>. Each party represents and warrants that: (i) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation, if applicable; (ii) it has full right, power, and authority to enter into and perform its obligations under these Terms; (iii) these Terms, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms; and (iv) the performance of its obligations under these Terms will not violate any applicable law, rule, or regulation, including those related to data privacy.

7.2 <u>By Customer</u>. Customer represents and warrants that its use of the Service, including the Customer Content provided in connection with the Service, will not violate any applicable law, rule, or regulation, infringe any third party's intellectual property, privacy, or publicity right, or cause a breach of any agreement with any third party.