



Mango Languages Terms of Sale

These Terms of Sale (the "Agreement") is between Gila County Library District and Creative Empire, LLC. d/b/a Mango Languages ("Mango"), a Michigan Limited Liability Company.

1. PRODUCTS AND TERM. Mango shall provide Library certain products ("Products") under the terms of this Agreement. The Products provided under this Agreement are identified as Library Premium Subscription including all languages. This Agreement shall be effective as of 9/1/2011, and shall remain in full force and effect to and including 8/31/2014.

2. PAYMENT. Payment for the Products shall be made within 30 days of Library's receipt or initial use of the Products. Such payment shall be made by checks, wire transfers, or other immediately available funds.

3. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE PRODUCTS AND SERVICES PURCHASED FROM MANGO ARE PROVIDED "AS IS". MANGO DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. To the maximum extent permitted by applicable law, neither Mango nor its licensors or distributors shall be liable to the Library for any lost profits, cost of substitute goods or services, or any form of indirect, special, incidental, consequential or punitive damages from any causes of action arising with respect to the products or services that you purchase from Mango, whether arising in tort (including negligence), contract, strict liability or otherwise, whether or not such party has been advised of the possibility of such damage. In no event shall Mango's aggregate liability under this Agreement exceed the amount actually paid by you for the applicable products.

4. WEB-SITE/SOFTWARE ACCESS. To the extent that any Products are accessed through Mango's web-site or software programs, Mango hereby grants the Library's Authorized Users a limited license to access and make use of such Products. "Authorized Users" means users who are registered borrowers of the Library, those that are walk-ins, and those who are remote users accessing the service through the library's web site. Library will make reasonable efforts to protect Mango's proprietary information (including but not limited to Mango's Intellectual Property) and will notify Mango promptly if it discovers there is unauthorized use of Mango's Products and will cooperate with Mango to mediate the situation.

5. WEB-SITE LICENSE AND CONDITIONS. As a condition of the web-site licensed granted in paragraph 4, above, such license, Library agrees:

- a. not to download or modify any part of the Website, except with the express and prior written consent of Mango;
- b. not to download or copy any account information for the benefit of another merchant;
- c. not to resell or make any commercial use of this Website or its contents;
- d. not to reproduce, duplicate, copy, sell, resell or otherwise exploit the Website for any commercial purpose without express written consent of Mango;
- e. not to make any derivative use of this Website or its contents;
- f. not to frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Mango except for the purposes of this agreement and for promoting the product.
- g. not to use any meta tags or any other "hidden text" utilizing the Mango name or trademarks without the express written consent of Mango;
- h. While Mango attempts to insure that its Website is normally available 24 hours a day, Mango shall not be liable if for any reason its Website is unavailable at any time or for any period; provided however, that Mango shall use best efforts to provide adequate capacity and bandwidth to support the Library's needs and provide service on a 24 hour basis except for routine maintenance (for which the Library is pre-notified). In the event that Mango fails to provide such service for five days within a 30 day period, Mango shall provide a pro rata refund for the 30 day period in question.
- i. Access to Mango's Website may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons beyond Mango's control.
- j. Any rights not expressly granted in these terms are reserved.

6. INDEMNIFICATION. Mango and the Library agree to indemnify, defend and hold one another, and all of their respective directors, officers, employees, attorneys and agents harmless from and against any loss, claim, judgment, liability, damage, action or cause of action (including reasonable attorneys' fees and court costs) arising out of or in connection with (a) a third party claim that the Library's possession and/or use of the Products infringe or misappropriate the patent, copyright, trademark or other intellectual property rights of a third party, or (b) the negligence or willful misconduct of either Mango or the Library or their respective officers employees and/or agents.

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7. SUPPORT. Mango shall support the Library by responding to emails and phone calls from the Library. Mango shall make reasonable efforts to respond to all customer support issues between the hours of 9 a.m. and 5 p.m. Eastern Standard Time, Monday through Friday.

8. UPDATES. Mango shall from time to time, update its online software and language lesson content. The Library shall only receive updates to the Mango Languages Library Edition and any changes or enhancements to Mango's "consumer edition" and/or other editions will not necessarily be made to the Library Edition.

9. ACCESS. Mango intends to provide Authorized Users unlimited access to the Mango Library edition. In the event that the Library's Authorized Users exceed what Mango deems reasonable usage during the term of the agreement, Mango shall assume that either the number of cardholders in the Library was grossly underestimated or there is piracy of Mango's service from outside sources. Under such circumstances Mango reserves the right to restrict or limit access to Mango's web-site. In the event of such circumstances, Mango shall make every effort to provide notice to and cooperate with Library prior to Mango's restriction or limitation of access to its Web-site and Products.

10. INTELLECTUAL PROPERTY. All materials on the Mango Web Site or Products, including without limitation, text, images, logo, software, Audio Content and video clips, databases, e-mails, and posted comments and reviews (collectively, the "Content") are owned or controlled by Mango and/or its licensors, who retain all right, title, and interest in and to the Content. The Web Site and Content are protected by the copyright and trademark laws of the United States and other countries, international conventions, and other applicable laws. Library shall use all "reasonable" efforts to ensure that all Authorized Users are appropriately notified of the importance of respecting Mango's intellectual property rights.

11. APPLICABLE LAW. This Agreement shall be construed and interpreted under the laws of the state of Arizona, excluding conflicts of any law provisions.

12. FORCE MAJEURE. Neither party shall be in default if failure to perform any obligation under this Agreement is caused solely by supervening conditions beyond a party's control, including acts of nature, God, civil commotion, terrorism, strikes, power outages, internet connectivity outages, labor disputes, and government demands or requirements. The party anticipating or claiming a force majeure occurrence shall notify the other party, in writing as soon as possible, detailing the occurrence and providing a recovery and time table plan.

13. GENERAL. This Agreement constitutes the entire agreement between Mango and the Library with respect to the subject matter hereof and supersedes all prior agreements with respect to the same. Failure by Mango to enforce any provision of this Agreement shall not be construed as a waiver of any provision or right. In the event that any portion of this Agreement is held unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. The parties represent and warrant to the other that they each have the right and power to enter into and fully perform its obligations under this Agreement or Invoice and has obtained all necessary licenses, permissions, consents to fulfill their respective obligations.

Signatures below indicate acceptance of these terms:

Library Name: Gila County Library District

Amount: \$3,142

Authorized Library Representative: _____

Title: _____

Signature: _____ Date: _____

Creative Empire, LLC. d/b/a Mango Languages

Authorized Mango Representative: Steve Perakis

Signature: [Signature] Date: 7/14/11

Cancellation pursuant to A.R.S. §38-511. This contract is subject to the cancellation provisions of A.R.S. §38-511.

Anti-Terrorism Warranty. Pursuant to A.R.S. §35-397, Mango certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

Legal Arizona Workers Act Compliance. Mango hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Mango's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (collectively, the "State and Federal Immigration Laws"). Mango shall further ensure that each subcontractor who performs any work for Mango under this Agreement, if any, likewise complies with the State and Federal Immigration Laws.

Any breach of Mango's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed a material breach of this Agreement, such that Gila County Library District ("Client") shall have the right to suspend or termination this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Mango shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor (subject to Client approval), as soon as possible so as not to delay project completion.

Mango Languages shall advise each subcontractor of Client's rights, and the subcontractor's obligations, under this section.

Any additional costs attributable directly or indirectly to remedial action under this section shall be the responsibility of Mango.


Steve Perry Date 7/14/11 _____ Date _____
On behalf of Mango Languages : Chairman, Board of Directors

Approved as to form:

Chief Deputy County Attorney



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Exhibit A -Library Premium Subscription

The Library Edition of the following courses will be made available to your library:

Full Language Package