mango languages

Mango Languages School Terms of Sale

These Terms of Sale (this "Agreement") are made and entered into as of June 10, 2015, between Palo Verde College ("School"), and Creative Empire, LLC, d/b/a Mango Languages, a Michigan limited liability company ("Mango").

1. SERVICES; TERM. Subject to the satisfaction of the terms and conditions of this Agreement, Mango shall provide School certain services identified as School Premium Edition. School Premium Edition shall include the current version of Mango Conversations for all language offerings as of the Effective Date and shall also include any new languages, courses or updates to Mango School Edition made from time to time (collectively, "Services"). The term of this Agreement shall commence on July 1, 2015, and end on June 30, 2016 (the "Initial Term"). The Initial Term shall automatically be extended for successive one (1) year terms (each, a "Successor Term") unless either party provides written notice to the other party not less than thirty (30) days prior to the end of the Initial Term or Successor Term, as applicable, of its intent not to extend the term. During any such Successor Terms, all terms and conditions of this Agreement shall remain in full force and effect unless modified in writing by the parties.

2. PAYMENT. School shall pay Mango $1,021 for the Services during the Initial Term(the "Initial Payment Amount"). School shall pay Mango the Initial Payment Amount within 30 days of School's receipt or initial use of the Services. The Initial Payment Amount shall be payable by check, wire transfer, or other immediately available funds. Prior to the commencement of each Successor Term(s), School and Mango shall agree upon the amount School shall pay Mango for the upcoming Successor Term (the "Successor Payment Amount", and School shall pay Mango the Successor Payment Amount within 30 days of the date of Mango's invoice for the Services for the Successor Term. The Successor Payment Amount shall be payable by check, wire transfer, or other immediately available funds.

3. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE SERVICES AND SERVICES PURCHASED BY SCHOOL 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 School 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 Services that School purchases 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 three times the amount actually paid by School for the applicable Services.

4. WEB-SITE/SOFTWARE ACCESS. To the extent that any Services are accessed through Mango's website ("Website") or software programs (collectively "Website"), Mango hereby grants the School's Authorized Users a limited license to access and make use of such Services. "Authorized Users" means users who are registered affiliates of the School, including the School's students and teachers, parents of the School's students, and those who are remote users accessing the Services through the School's website. School shall only be permitted to have a total of unlimited Authorized Users. School will make reasonable efforts to protect Mango's proprietary information (including but not limited to Mango's intellectual property and other similar Content (as defined below)), and will promptly notify Mango if School discovers there is unauthorized use of Mango's Services and will cooperate with Mango to mediate the situation.

5. WEB-SITE LICENSE AND CONDITIONS. As a condition of the Website license granted in paragraph 4 above, School 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 the Website or its Content;
d. not to reproduce, duplicate, copy, sell, resell or otherwise exploit the Website for any commercial purpose without the express written consent of Mango;
e. not to make any derivative use of the Website or its Content;
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 Services;

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 its best efforts to provide adequate capacity and bandwidth to support the School's needs and provide service on a 24 hour basis except for routine maintenance (for which the School 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. Mango shall provide a pro rata refund for the 30 day period in question if the interruption lasts longer than 5 days;

j. Certain Content, including without limitation Mango Premiere School Edition, may be owned by Mango and/or its licensors. School therefor acknowledges and agrees that such Content may be added, removed or unavailable from time to time during the Initial Term or any Successor Term (the "Unavailability"), and such Unavailability shall not be deemed breach of this agreement by Mango.

k. Neither the School nor any of its Authorized Users shall show any Content, including without limitation any video clips or movies which are included in the Contents, to any public group or other third parties who are not Authorized Users; and

l. Any rights not expressly granted in these terms are reserved.

6. INDEMNIFICATION. Mango and the School agree to indemnify, defend and hold one another, and all of their respective members, directors, officers, employees, attorneys and agents (collectively, "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 School's possession and/or use of the Services 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 School or their respective Agents with respect to any obligation, term or condition of this Agreement.

7. SUPPORT. Mango shall support the School by responding to emails and phone calls from the School. Mango shall make reasonable efforts to respond to all customer support issues during normal business days between the hours of 9 a.m. and 6 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 School shall only receive updates to the Mango School Edition, and any changes or enhancements to Mango's "consumer edition" and/or other editions will not necessarily be made to the School Edition. Mango will provide School with at least 5 days written notice for any scheduled significant updates which may make the Website or Mango School Edition unavailable to school.

9. ACCESS. Mango intends to provide Authorized Users unlimited access to the Mango School Edition. In the event that the School's Authorized Users exceed what Mango deems reasonable usage during the term of this Agreement (i.e., Mango determines that usage of the Website and Services is being excessively abused by a particular user id and password—by way of illustration and not limitation, a user id and password has multiple logins from different locations at the same time, or is logged in for more than 80 hours per week), Mango shall assume that either the number of cardholders in the School 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 the Services and/or the Website. In the event of such circumstances, Mango shall make every effort to provide notice to and cooperate with School prior to Mango's restriction or limitation of access to its Website and Services.

10. INTELLECTUAL PROPERTY. All materials on the Mango Website or Services, 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 it licensors, who retain all right, title, and interest in and to the Content. The Website and Content are protected by the copyright and trademark laws of the United States and other countries, international conventions, and other applicable laws. School shall use all reasonable efforts to ensure that all Authorized Users are appropriately notified of the importance of respecting Mango's intellectual property rights.

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11. LICENSE OF SCHOOL'S TRADEMARKS. If requested in writing by Mango and approved in writing by an authorized representative of School, School agrees to grant Mango a non-exclusive, non-transferable, royalty-free, right and license, solely during the Initial or any Successor Terms of the Agreement, to reproduce, display, and otherwise use the trademarks, service marks, logos, and trade names of School solely in connection with the advertising and promotion of Mango's language learning business.

12. APPLICABLE LAW; JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding any conflicts of law provisions. The parties hereto agree to submit any suit arising under or relating to this Agreement to any state court of competent jurisdiction located in Riverside County, California, or in the United States District Court for the appropriate District of California, and the parties hereto waive any objection to submitting to the personal jurisdiction and venue therein.

13. FORCE MAJEURE. Neither party hereto shall be deemed in default of this Agreement to the extent that performance of its obligations under this Agreement (other than any payment obligations) are delayed or prevented solely by supervening conditions beyond a party's reasonable control, including without limitation natural disasters, war, terrorism, strikes, power outages, internet connectivity outages, labor disputes, and government demands or requirements (each, a "Force Majeure"), provided that such party gives the other party written notice thereof within fifteen (15) days of its discovery of a Force Majeure that prevents the performance of its obligations under this Agreement (other than any payment obligations). The time for performance shall be extended for a period equal to the duration of the Force Majeure, not to exceed six (6) months.

14. TAXES. All prices for the Services and other amounts in this Agreement are exclusive of any applicable customs, duties, assessments, fees and taxes, including any applicable value added or any other sales taxes (collectively, "Taxes"). School shall be responsible for payment of any and all applicable Taxes to the extent required under applicable law.

15. GENERAL. This Agreement constitutes the entire agreement between Mango and the School regarding the subject matter hereof, supersedes all prior or contemporaneous agreements, understandings or negotiations between Mango and the School, whether written or oral, regarding the subject matter hereof, and may be amended, modified or waived only by a writing signed by Mango and School. The parties hereto represent and warrant to the other party that they each have the right power, and authority to enter into and fully perform its obligations under this Agreement and have obtained all necessary licenses, permissions, and consents to fulfill their respective obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but only Mango may assign any of its rights or obligations under this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. In the event that any provision of this Agreement shall be held to be void or unenforceable by any competent court or tribunal, the remaining provisions of this Agreement shall continue in full force and effect. No failure or delay by Mango in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right or power hereunder. This Agreement may be executed in counterparts (including counterparts delivered via facsimile or other electronic transmission), each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

School:

Palo Verde College

Signature: _____

Name: _____

Title: _____

Mango:

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

Signature: _____

Name: Steve Banks

Title: CFO