



COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. The first meeting of every month is at 9:30AM while the second meeting of every month takes place at 5:30PM. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 4/14/2023 Meeting Date: 4/20/2023

Name: Katrina Evans Department: Library

Approved By:

A handwritten signature in blue ink, appearing to read "Katrina Evans", is written over a light blue horizontal line.

1. Nature and purpose of agenda item:

The Library is seeking approval of the attached agreement for the purchase of Pronunciator, an online language acquisition tool that library users would be able to access 24/7 from anywhere with an internet connection.

2. Recommended Motion/Action:

Recommend motion to approve Pronunciator agreement.

3. Fiscal impact on current budget.

This item is currently budgeted. The account number to be charged is 104-7160-571.30-49

Columbia County Public Library
308 NW Columbia Avenue
Lake City, FL 32055
386-758-1018 * 386-758-2135 Fax

Katrina P. Evans, Library Director

MEMORANDUM

DATE: March 31, 2023

TO: David Kraus, Assistant County Manager

FR: Katrina Evans, Library Director

RE: Language Acquisition Product Purchase

The Library would like to purchase product called Pronunciator. Pronunciator is an online language acquisition tool that helps people learn new languages. It covers 164 languages, including American Sign Language. I think this will be a big help for our ESOL students who are working on learning and improving their English, and it will also be useful for any patron who is interested in learning a new language. Library users will be able to access the content 24/7 from anywhere with an internet connection.

The agreement is attached for review and approval by the Board of County Commissioners. The County Attorney has reviewed the agreement, indicated that he had no comments or notes, and approved it for inclusion on the agenda.

Thank you for your consideration. Please let me know if you need any further information.

Pronunciator LLC Terms of Sale

These Terms of Sale (the "Agreement") is between the Columbia County Public Library ("Library"), and Pronunciator LLC ("Pronunciator"), a Wyoming Limited Liability Company.

1. **PRODUCTS AND TERM.** Pronunciator shall provide Library certain products ("Products") under the terms of this Agreement. The Products provided under this Agreement are identified as Library Subscription. This Agreement shall be effective as of 6/1/23, and shall remain in full force and effect to and including 5/31/24.

2. **PAYMENT.** Payment for the Products shall be made within 30 days of Library's receipt or initial use of the Products.

3. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE PRODUCTS AND SERVICES PURCHASED FROM PRONUNCIATOR ARE PROVIDED "AS IS". PRONUNCIATOR 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, Pronunciator shall not 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 Pronunciator, 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 Pronunciator's aggregate liability under this Agreement exceed the amount actually paid by you for the applicable products.

4. **WEBSITE ACCESS.** Pronunciator hereby grants the Library's Authorized Users a limited license to access and make use of Products available through the Pronunciator Website, whether through the Library's own computers, or via remote access. "Authorized Users" means users who are registered borrowers of the Library, and those that are walk-ins.

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

- a. while Pronunciator attempts to ensure that its Website is normally available 24 hours a day, Pronunciator shall not be liable if for any reason its Website is unavailable at any time or for any period; provided however, that Pronunciator shall use best efforts to provide service on a 24 hour basis except for routine maintenance (for which the Library is notified in advance). In the event of a failure of service for a period of more than twenty-four (24) hours, the Library shall be given a prorated credit for any time of the extended failure.
- b. access to Pronunciator's Website may be suspended temporarily and without notice in the case of system failure, repair, or for reasons beyond Pronunciator's control.
- c. any rights not expressly granted in these terms are reserved.

6. **SETUP.**

- a. **Pronunciator Responsibilities.** Pronunciator shall set up and deliver to the Library the Products for launch on a date mutually agreeable to the parties.
- b. **The Library's Responsibilities.** The Library shall provide Pronunciator with all information needed to develop and launch the Products.

7. **SUPPORT.** Pronunciator shall support the Library by responding to emails and phone calls from the Library on a same-day, 7-day-a-week basis. Pronunciator shall make reasonable efforts to respond to all Authorized User support issues on a same-day, 7-day-a-week basis.

8. **UPDATES.** Pronunciator shall, from time to time, update its online software and content. The Library shall receive updates to Pronunciator and any changes or enhancements to Pronunciator at no additional charge.

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9. ACCESS. Pronunciator intends to provide Authorized Users unlimited concurrent access to Pronunciator, either in-library or via remote access. Certain resources have limitations placed to prevent mass downloading: the Audio Assistant audio files, which a user can download a maximum of 90 MP3s per month (approximately 60 hours of content); and the ePhrasebooks, which are limited to 10 e-book downloads per month per user (approximately 320 pages of content).

10. INTELLECTUAL PROPERTY. All materials on the Pronunciator Website or Products, including without limitation, databases, audio content, video content, images, text, software (collectively, the "Content"), are owned or controlled by Pronunciator, who retains 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. The Library shall use commercially reasonable efforts to protect the Content and all of Pronunciator's rights therein and to cooperate in Pronunciator's efforts to protect its proprietary rights. The Library shall promptly notify Pronunciator of any known or suspected breach of Pronunciator proprietary rights to the Content that may come to the attention of the Library. Library acknowledges and agrees that this Agreement in no way shall be construed to provide to Library, or any other person or entity, any express or implied license to use, copy, reverse engineer, or otherwise exploit the Pronunciator Content or Products or any portion thereof (including any intellectual property embodied therein) other than as specifically set forth in this Agreement.

11. USER INFORMATION. Pronunciator shall not disclose to any third party any personal information that would permit identification of a User without obtaining the prior written consent of the Library, except in cases where, in Pronunciator's reasonable judgment, such disclosure is required by law. The Library hereby grants Pronunciator the right to use quotes from staff regarding the Products for the limited purpose of marketing and public relations. However, other than Pronunciator's right to refer to Library as a customer of Pronunciator, which is hereby permitted, Pronunciator shall not publish any press releases regarding the Library's use of the Products or quotes from the Library faculty or staff without obtaining the prior written consent of the Library.

12. CONFIDENTIALITY. Each party shall retain in strict confidence the confidential information of the other party. Library hereby acknowledges that the Content is Confidential Information of Pronunciator. Confidential Information also includes, without limitation, trade secrets, Content documentation, specifications, designs, development plans, business plans, sales projections, business records, prices and customer lists. The terms of this Agreement shall not be considered Confidential Information. The obligations of confidentiality set forth in this Section 12 shall survive termination of the Term. In the event of any breach of the provisions of this Section 12, Library agrees that Pronunciator would suffer irreparable harm and shall therefore be entitled to obtain injunctive relief against Library in addition to any other rights and remedies available to Pronunciator at law or in equity, or otherwise.

13. APPLICABLE LAW. This Agreement will be governed by and construed and enforced in accordance with the substantive law of the State of the Library, and any and all claims arising hereunder shall be subject to the exclusive jurisdiction of courts residing in that jurisdiction.

14. 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.

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PO Box 95, Jackson, WY 83001 US www.pronunciator.com
Phone: 800-328-1776 E-mail: sales@pronunciator.com

15. GENERAL. This Agreement constitutes the entire agreement between Pronunciator and the Library with respect to the subject matter hereof and supersedes all prior agreements with respect to the same. Failure by Pronunciator 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 each other that: (i) they have the full power and authority to enter into and perform under this Agreement, (ii) the execution and performance of their obligations under this Agreement do not constitute a breach of or conflict with any other agreement or arrangement by which you or it is bound, and (iii) this Agreement is a legal, valid and binding obligation of the party entering into this Agreement, enforceable in accordance with its terms and conditions. Signatures below indicate full acceptance of these terms.

Library Name: **Columbia County Public Library**

Amount: USD \$1,995.00

Authorized Library Representative:

Signature: _____

Printed Name: _____

Date: _____

Pronunciator LLC

A handwritten signature in black ink that reads "Robert Savage". The signature is written in a cursive, flowing style.

Robert Savage
Managing Member

3/30/2023