APPLICATION SOFTWARE USER AGREEMENT

BETWEEN

MINEX 360 SERVICES LIMITED

AND

TEMA PARENTS' ASSOCIATION SCHOOL

No. 14 Addis Ababa Road,
Block C, East Legon, Greater Accra.
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THIS AGREEMENT is made this 5th day of October, 2020 between

1. **MINEX 360 SERVICES LIMITED,** a limited liability company registered in Ghana and having its office at No.14 Addis Ababa Road, Block C, East Legon, Accra in the Republic of Ghana (hereinafter called the **"Service Provider"),** which expression shall, where the context admits or requires include its legal representative, successors or assigns acting per its authorised representative, **MR FRANK NATIE**, Chief Executive Officer of the one part, and

2. **TEMA PARENTS' ASSOCIATION SCHOOL** having its campuses at Tema in the Republic of Ghana (hereinafter called the **"School"**) which expression shall, where the context admits or requires include its legal representative, successors or assigns) acting per its authorised representative, MRS. ESTHER MENSAH, Head of School, of the other part.

(MINEX 360 SERVICES LIMITED and TEMA PARENTS' ASSOCIATION SCHOOL are collectively referred to in this Agreement as the Parties)

WHEREAS:

a. The two parties have agreed to establish a relationship and refine the engagement for the mutual benefit of the two parties in respect of the innovative application for schools namely, SmartSapp.

b. The School requires SmartSapp for the purpose of teaching and learning and is desirous of obtaining license from the Service Provider for the use of its application and services.

c. The Service Provider is prepared to undertake the services subject to the terms specified in this Agreement.

NOW THEREFORE THE PARTIES AGREE HEREBY AS FOLLOWS:

1.   DEFINITIONS AND INTERPRETATION
  The following definitions and rules of interpretation shall apply in this Agreement:

1.1. **"Agreement" –** this signed agreement titled 'Application Software Agreement between MineX 360 Services Limited and Tema Parents' Association School including any schedules and attachments.

1.1.1. "**Services**" – the performance of professional services that include but are not limited to system analysis, software development, provision of platform for on-line teaching and learning, personnel training, documentation writing and general business consulting.

1.2. **"Active Customer" –** A customer who has directly or indirectly received a service through SmartSapp application. This includes schools, parents, guardians or authorised representative of parents of the School's students.

1.2.1. **"Product" –** The SmartSapp application.

1.2.2. **Critical Issue –** Any issue that affects the basic functioning of SmartSapp.

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2. COMMENCEMENT/TERM

2.1. This Agreement shall commence on …th day of October, 2020 and shall remain in force for an initial period of one (1) year on the terms and conditions provided in this Agreement.

2.2. This agreement shall auto-renew year on year, at the beginning of every academic year, if on the day of expiry of the agreement's term the School does not provide any request not to continue with the agreement.

3. GRANT OF LICENCE

3.1. The Service Provider shall offer the School access for the use of the SmartSapp application with accompanying operating guidance document.

3.2. The SmartSapp application is not purchased and remains the intellectual property of the Service Provider.

3.3. Upgrades will be installation of fresh deployment of SmartSapp with all features and/or modules of the application as agreed between the parties.

3.3.1. The School shall pay for implementation of the SmartSapp and termly subscription fees of the license.

4. RESPONSIBILITIES OF SERVICE PROVIDER

4.1.1. The Service Provider shall provide and deliver the services set out in this contract or any other services agreed upon between the parties.

4.1.2. Use its best judgment to ensure the timely delivery of requested products and services in accordance with the manner agreed with little or no interference to the business operations of the School. In the event of a critical issue that needs the Service Provider's action, the Service Provider shall within 24 hours, attend to the critical issue.

4.1.3. Provide maintenance, technical support and ensure security of the School's data on its server.

4.1.4. Provide software updates as and when required.

5. RESPONSIBILITIES OF THE SCHOOL

5.1. Provide the necessary data and information, assistance, IT infrastructure, resources and co-operation required for the performance of the services by the Service Provider s to ensure the timely and efficient delivery of services by the Service Provider.

5.2. The School shall nominate a SmartSapp Champion among their staff on site to interface between the School and the Service Provider and to be the main Point of Contact for all communications.

5.2.1. Ensure that parents are set up in the system properly – this includes uploading of parents' data and all parents download and setup SmartSapp mobile app on their phones.

5.2.2. Pay all invoices issued by the Service Provider for subscription and services provided within thirty (30) days of their receipt.

5.2.3. Provide an update of information on students on the interface to ensure that the system is up to date.

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5.2.4. Provide the right information to the Service Provider on the active customers, students, pupils and their authorised delegates or persons.

6. ANNUAL RENEWAL AND PRICE REVIEW

6.1. This Agreement shall renew after one-year period. The School shall indicate its intention to renew three months prior to the expiry of this agreement.

6.2. It is agreed that Subscription fees shall escalate by between 5-10% upon annual renewal at the beginning of every academic year. Escalation rate shall be agreed upon by both parties at the time of renewal.

6.3. The subscription fees shall be stated in United States Dollars. Invoices shall, however, be issued in Ghana Cedi using the Bank of Ghana interbank selling exchange rate of the Ghana Cedi to the US Dollar at the beginning of each academic year.

7. COPYRIGHT

7.1. Those parts of the Software specifically developed or written under the Agreement including the source code, design patterns and algorithms (hereinafter called collectively `the Developed Software') and the copyright and all other intellectual property rights therein shall belong to and vest in the Service Provider.

7.2. The School, its representatives, agents and assigns or third parties claiming through it, shall not, without the prior written consent of the Service Provider, use the Product or intellectual property of the Service Provider for any purpose other than that which is provided for under this Agreement.

7.3. Any use of the Product or the intellectual property right of the Service Provider in contravention of the provisions set out in 9.2 above shall constitute a breach of this Agreement.

8. DELAYS

8.1. The Service Provider shall not be liable for delays due to inability of the School to provide appropriate information, data, infrastructure or any other relevant asset or resource that are required to be provided under this agreement in the timely execution of deliverables. Such delays will not affect due payments to the Service Provider and the Service Provider shall be paid per the agreed payment schedule or terms as if work has been delivered.

9. TERMINATION FOR BREACH

9.1 This agreement shall remain in force unless terminated by either the Service Provider or the School by giving the other three months written notice of termination. Either party may terminate this Agreement if:

9.1.1.   There is a breach by the other party of any provision of the Agreement which expressly entitles the party not in breach to terminate the Agreement.

9.1.2.   There is a material or persistent breach by the other party of any other term of the Agreement, which is not remediable, or if it is remediable has not been remedied within 30 days of the service of written notice to the defaulting party specifying the breach and requiring it to be remedied.

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9.2. On termination other than for the default of the Service Provider, the School shall pay to the Service Provider the proportion of the fees payable in respect of the materials supplied and/or services performed by the Service Provider up to the date of termination less the amount of any payments already made to the Service Provider. Where scanners were provided by the Service Provider, the School shall return the scanners to the Service Provider in good condition.

9.3. Following the termination of the Agreement, neither party shall have any further rights or obligations in relation to the other party other than those explicitly stated in this agreement to continue after termination. Subject to sub-Clause 2 above, termination shall not, however, affect the rights of action and remedy of the parties which shall have accrued at the date of termination or shall thereafter accrue.

10. NON-DISCLOSURE AND CONFIDENTIALITY

10.1. The Parties agree to maintain strict confidentiality in respect of the subject matter of this Agreement and any such confidential information that each party may receive or become privy to in the performance of this Agreement.

10.2. The Parties agree that this clause shall survive the termination of the Agreement.

11. ADHERENCE TO STANDARDS AND REGULATIONS

11.1. The Service Provider shall use all reasonable endeavours to ensure that it complies with all applicable laws, regulations and other statutory requirements relating to its obligations under this agreement and shall perform such acts as may be reasonably required, including, but not limited to, obtaining all the necessary consents, approvals and authorizations from the relevant regulatory authorities, for the purpose of giving full effect to this agreement.

12. FORCE MAJEURE

The occurrence of the events of war, riot, explosion, fire, flood, strike, lock-out, withdrawal of license, suspension of the Product by the Services Provider in order to comply with any lawful order, restriction or request of the Government or administrative authority of Ghana, or any other event beyond the control of the Service Provider, shall cause the obligations of the Service Provider to be suspended during such period. Non-performance resulting from the occurrence of aforementioned events shall not constitute an event of breach and neither party shall be held liable provided that such reasonable steps are taken to mitigate the consequences of any event of Force Majeure.

13. LIMITATION OF LIABILITY

13.1. Notwithstanding anything to the contrary contained in this Agreement, the Parties shall not be liable to each other for any indirect or consequential loss or damage including, without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

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14. GOVERNING LAW

14.1 This Agreement shall be governed by and enforced in accordance with the laws of the Republic of Ghana and the courts of Ghana shall have exclusive jurisdiction.

15. DISPUTE RESOLUTION

15.1. In the event that any dispute/misunderstanding arises, the Parties shall first resolve the matter through an amicable settlement via arbitration.

15.2. Where the parties are unable to settle any misunderstanding or dispute arising out of the terms of this Agreement within fourteen (14) days after the first attempt to do so through negotiations, the matter shall be referred to an arbitrator acceptable to the parties.

15.3. The arbitration shall be conducted under the direction of the Ghana Arbitration Centre and in accordance with the provisions of the Alternative Dispute Resolution Act, 2010 (Act 798).

15.4. The Parties' decision to submit to arbitration does not preclude the right to seek any remedy in law or equity in a Court of competent jurisdiction pursuant to the Arbitrator's award.

SUBSCRIPTION

Module and subscription fee details are as follows:

Module	Subscription Fee (GHS)	Applicable To
SmartSapp Class (E-learning)	GHS14.95(USD2.62)/student/term (3 months)	All students from crèche to JHS 3
Child Security & Attendance Management	GHS24.95(USD4.37)/student/term (3 months)	All students from crèche to JHS 3
SmartSapp Pay	Bank applicable transaction fees only	All SmartSapp Pay transactions
Connected Community – School's platform	GHS999.00(USD175.09)/school per term (3 months)	School once a term payment
E-Library Platform	GHS9.95(USD1.74)/student/term	All students from crèche to JHS 3
HR & Payroll System	GHS12.95(USD2.27)/employee/month	Teaching & Non-teaching staff

The applicable fees are payable in Ghana Cedi equivalent at the time of invoicing.

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IN WITNESS WHERE OF the first party hereto have hereunto set its hand and seal and the second party has set his hand and name the day and year first above written:

SIGNED, SEALED AND DELIVERED on behalf of

MINEX 360 SERVICES LIMITED

....

(MR FRANK D. NATIE)
MANAGING DIRECTOR

SIGNED, SEALED AND DELIVERED on behalf of

TEMA PARENTS' ASSOCIATION SCHOOL

....
Name: ....
Position: Director

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