



MZALI

End user agreement

MZALI DEVELOPMENT (PTY) LTD



1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise indicates:

- 1.1.1 “**Agreement**” means this agreement and all annexures and/or schedules hereto;
- 1.1.2 “**Business Day**” means any day other than a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa;
- 1.1.3 “**Confidential Information**” means the Documentation, the source code, object code, methodologies and all other information, data and operating instructions appertaining to the Mzali app;
- 1.1.4 “**Fee**” means the monthly fee per User, payable by the Licensee to the Licensor on behalf of each User annually, as confirmed by the Licensor from time to time on Annexure “B”;
- 1.1.5 “**Documentation**” means the operating manuals, training manuals, user instructions and other related materials supplied by the Licensor to the Licensee (whether in writing or by electronic means) for aiding the use of the Mzali app, including any part or copy thereof;
- 1.1.6 “**Effective date**” means 1 (one) Business day after the Signature Date;
- 1.1.7 “**Installation Date**” means the date on which the User and/or the Licensee downloads the Mzali app;
- 1.1.8 “**Intellectual Property Rights**” means all the copyright, trademarks and any other intellectual property rights of whatsoever nature appertaining to the Mzali app and its use;
- 1.1.9 “**Licensee**” means [insert School name] with [insert address];
- 1.1.10 “**Licensor**” means Mzali Development (Pty) Ltd (registration number [insert]) of [insert address];
- 1.1.11 “**Mzali application**” or “**Mzali app.**” means mobile and/or online learner progress and activity monitoring and notification application developed and/or owned by the Licensor;



- 1.1.12 “**New Module**” means any upgrades available for download on the online platform and / or the Mzali app;
- 1.1.13 “**Online platform**” means the version of the Mzali app. accessible on a personal computer;
- 1.1.14 “**Prime Rate**” means a rate of interest per annum which is equal to the Standard Bank of South Africa Limited’s published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time (In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the Standard Bank of South Africa Limited, whose decision shall be *prima facie* proof of the applicable rate);
- 1.1.15 “**Signature Date**” means the date on which the last party signing this agreement signs it;
- 1.1.16 “**Site**” means the school specified in the applicable Schedule; and
- 1.1.17 “**Users**” mean authorised persons using the Mzali app, which persons shall only be parents, guardians and/or caregivers of learners or the learners themselves, and each shall be referred to as a “**User**” as described in more detail on Annexure “A”.
- 1.2 Words importing the singular shall include the plural and *vice versa*, and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate.
- 1.3 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4 This Agreement shall be binding on and enforceable by the trustees, permitted assigns, liquidators, business rescue practitioners or other legal successors of the parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any party shall be deemed to include such party’s trustees, permitted assigns, liquidators, business rescue practitioners or other legal successors, as the case may be.
- 1.5 Full effect shall be given to any substantive conferring rights and obligations upon the parties and contained in this clause 1 or clause 2 provided that if any provision in clause 2 conflicts with any other provision of this Agreement, such other provision shall prevail and be carried into effect.



- 1.6 Whenever a number of days is prescribed in this Agreement, such number shall be calculated excluding the first and including the last day, unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next day which is a Business Day.
- 1.7 Whenever performance is required to be made in this Agreement on any date and such date is not a Business Day, such performance shall be required to be made on the next succeeding Business Day.
- 1.8 Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause 1.
- 1.9 The terms defined in this Agreement shall bear the same meanings in annexed schedules which do not contain definitions.
- 1.10 This Agreement includes all attached annexures and/or schedules which are an integral and indivisible part of this Agreement.

2. INTRODUCTION

- 2.1 The Licensor has developed a mobile and/or online operated application known as the Mzali application.
- 2.2 The Licensee wishes to use the Mzali application to record the academic progress and activities of its learners for the benefit of the Users.
- 2.3 The Licensor has therefore agreed to grant to the Licensee and the Users use of the Mzali app upon payment by the Licensee to the Licensor of the Fee annually, and the Licensee accepts such grant on its own behalf and, to the extent that this agreement creates a benefit for a third party, being each User, the Licensee accepts such grant on behalf of each User, in accordance with the provisions of this agreement.
- 2.4 The parties wish to record the terms of their relationship herein.

3. GRANT OF LICENCE

- 3.1 The Licensor hereby grants the Licensee and each User whose Fee has been paid the non-exclusive and non-transferable licence to use the Mzali app, for a period for which a Fee has been paid.
- 3.2 Each User, whose Fee has been paid by the Licensee to the Licensor for such period of use by such User of the Mzali app, upon downloading and/or online



registration of the Mzali app hereby undertakes that s/he shall abide by the terms of this agreement inasmuch as this agreement applies to a User and further undertakes that the Licensee has entered into this agreement with the Licensor for his/her benefit as a User.

4. DURATION OF LICENCE

4.1 The licence granted herein is granted for the period for which a Fee has been received by the Licensor for such User, subject to the provisions of this agreement.

5. USE OF THE MZALI APP

5.1 It is fundamental to this Agreement that the Licensee and each User shall only use the Mzali app as indicated by the Licensor in the Documentation.

5.2 The Licensee may not use, sell, rent, lease, sub-license, distribute or otherwise make available the Mzali app to any third party except as specifically provided herein.

5.3 The Licensee shall not modify, adapt, alter, translate, or create derivative works from, or merge the Mzali app into other software and/or products, or decompile, disassemble, reverse-assemble, or otherwise reverse engineer the Mzali app.

6. INSTALLATION

6.1 The Licensor shall make the Mzali app available to the Licensee and each User whose Fees have been paid by the Licensee, through online registration and/or download on Android, Apple or other approved mobile devices.

6.2 Risk in the use of the Mzali app shall pass to the Licensee and each User, upon online registration or download thereof.

7. MAINTENANCE AND UPDATES

7.1 The Licensee shall install such upgrades and/or updates to the Mzali app. as and when they become available for download.

7.2 Unless the context otherwise indicates, all references to the Mzali app. in this Agreement shall mean a reference to the most recently updated version available to download.



8. OBLIGATIONS OF THE LICENSEE

- 8.1 The Licensee shall provide the Licensor with all reasonable assistance, notifications and learner information via email or physical delivery however not limited to the aforementioned.
- 8.2 The Licensor shall not be held liable for the veracity of the information provided by the Licensee.

9. PAYMENT

- 9.1 The Licensee shall pay the Fee per User once-off on an annual basis for each academic year, which shall be a Fee for each of the 12 (twelve) months per year per User, in consideration for the licence conferred under this Agreement.
- 9.2 All fees are quoted and provided for exclusive of Value-Added Tax and all or any Value-Added Tax payable thereon shall be paid by the Licensee in addition to the fees quoted and provided for.
- 9.3 All amounts payable by the Licensee to the Licensor hereunder shall be paid free of bank costs or charges and without any deduction or set-off of any nature whatsoever.
- 9.4 Interest shall accrue on all or any overdue amounts hereunder at the rate of 2% (two percent) above the Prime Rate, without prejudice to any other rights or remedies of the Licensor under this Agreement or in law.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Intellectual Property Rights appertaining to the Mzali app., including all or any modifications effected thereto, whether by the Licensor, the Licensee or third parties, shall be and remain vested in the Licensor and the Licensee shall acquire no right or interest therein or thereto, save for the right to use the Mzali app. in accordance with the provisions of this Agreement.
- 10.2 The Licensee shall render all reasonable assistance to the Licensor in protecting the Intellectual Property Rights, including, but not limited to:
- 10.2.1 advising the Licensor immediately it becomes aware of any infringement or attack of all or any Intellectual Property Rights;
 - 10.2.2 taking steps as may be practicable to prevent such infringement or attack or to assist the Licensor in defending same;
 - 10.2.3 agreeing and undertaking not to challenge the Licensor's right, title and interest in and to the Intellectual Property Rights nor do



anything which might give cause to invalidate or expunge all or any of the Intellectual Property Rights.

11. CONFIDENTIALITY

11.1 The Licensee agrees and undertakes that it shall:

11.1.1 maintain as confidential and shall not disclose all or any of the Confidential Information to any third party without the prior written consent of the Licensor;

11.1.2 not, either directly or indirectly or in any capacity whatsoever, use all or any of the Confidential Information, save as may be expressly required in the use of the Mzali app. authorised in terms of this Agreement.

11.2 Without limiting the generality of this agreement the Licensee shall:

11.2.1 not copy the Mzali app. in whole or in part;

11.2.2 insofar as any disclosure of the Confidential Information to third parties is authorised by the Licensor in terms of clause 5.2, ensure that the third party to whom such information is disclosed shall have bound itself in writing to:

11.2.2.1 maintain as confidential and not to disclose all or any of the Confidential Information to any third party without the prior written consent of the Licensor;

11.2.2.2 not, either directly or indirectly or in any capacity whatsoever, use all or any of the Confidential Information, save as may be required to enable the Licensee to use the Mzali app. for the purposes authorised in terms of this Agreement;

11.2.2.3 not copy the Mzali app. in whole or in part, other than as may be strictly necessary to enable the Licensee to use the Mzali app. for the purposes authorised in terms of this Agreement.

11.3 The Licensee acknowledges that the Confidential Information is a valuable, special and unique asset proprietary to the Licensor and that the unauthorised disclosure of the Confidential Information, or any part thereof, to a third party may cause irreparable loss, harm and damage to the Licensor. Accordingly, the Licensee indemnifies and holds the Licensor harmless against any loss, claim,



harm or damage of whatsoever nature, suffered or sustained by the Licensor pursuant to a breach by the Licensee of the provisions of this agreement.

- 11.4 The Licensor agrees and undertakes that it shall maintain as confidential and shall not disclose to any third party any confidential information of the Licensee, provided that the Licensee has notified the Licensor in writing at the time of disclosure of such information to the Licensor that such information constitutes confidential information of the Licensee and the Licensor agrees.

12. WARRANTY

- 12.1 The Licensee acknowledges that, given the nature of software, the Mzali app. is unlikely to be entirely free of defects and the Licensor accordingly does not warrant that the operation of the Mzali app will be uninterrupted and/ or error free on the Installation Date.
- 12.2 The Licensee acknowledges that the Mzali app has not been developed to meet the Licensee's individual requirements and that it is the Licensee's responsibility to ensure that the Mzali app and functions thereof meet the Licensee's requirements by furnishing the Licensor with timely feedback giving the Licensor reasonable time to consider such feedback.
- 12.3 The Licensee hereby acknowledges that it has complied with and obtained all approvals applicable in the applicable legislation, regulations and/ or rules in order for it to enter into this agreement and meet its obligations in terms of this agreement.
- 12.4 The Licensor shall not, in any circumstances, be liable for any failure of the Mzali app to provide any facility or function not described in the functional specification included in the Documentation.
- 12.5 The Licensor shall not, in any circumstances, be liable for any failure of the Mzali app attributable to any modification (whether by alteration, deletion, addition or otherwise) to the Mzali app, or to a combination of the software or other materials appertaining to the Mzali app, or for any content developed using the Mzali app, by persons other than the Licensor, whether with or without the Licensor's express prior written consent.

13. LIMITATION OF LIABILITY

- 13.1 Save as expressly provided for in this Agreement, the Licensor gives no warranty and makes no representation of any kind, express nor implied of whatsoever nature relating to the Mzali app, any updates, upgrades or New Modules including, without limitation, as to the condition, quality, performance, merchantability or fitness thereof.



- 13.2 The aggregate liability of the Licensor whether under this Agreement or in law shall:
- 13.2.1 be limited to the annual Fee per User received by the Licensor during such year during which a claim may arise, irrespective of the number of claims arising during such year; and
 - 13.2.2 exclude indirect, special and consequential loss (including, but not limited to, loss of data and loss of profits) howsoever and whenever arising.
- 13.3 The Licensee agrees and undertakes to notify each User of the limitation of the Licensor's liability hereunder and does hereby indemnify and hold the Licensor harmless against all or any claims of third parties arising out of the use of the Mzali app., howsoever and whenever arising.

14. **FORCE MAJEURE**

- 14.1 A party shall not be liable for a failure to perform any of its obligations in terms of this Agreement insofar as it is able to prove that such failure was due to an impediment beyond its reasonable control and, for purposes of this clause, the following events (which enumeration shall not be exhaustive) shall be deemed to be impediments beyond the control of each of the parties, namely:
- 14.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;
 - 14.1.2 natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
 - 14.1.3 boycotts, strikes and lock-outs of all kinds, go-slows, occupation of a party's premises or work stoppages;
 - 14.1.4 break-down of equipment, computer viruses or hacking;
 - 14.1.5 explosions, fires and destruction of plant, equipment, machinery and machines and of any kind of installations; and
 - 14.1.6 acts of authority, whether lawful or unlawful, apart from acts for which the party seeking relief has assumed the risk.
- 14.2 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the party seeking relief gives



notice of the impediment relied upon and shall terminate on the date upon which such impediment ceases to exist.

15. BREACH BY THE LICENSEE

Should the Licensee:

- 15.1 commits a material breach of this Agreement (and in the case of a breach capable of remedy) fails to remedy such breach within 5 (five) business days of the date of such notice from the Licensor; or
- 15.2 ceases or threatens to cease carrying on business; or
- 15.3 goes into provisional or final liquidation or has a petition presented for its winding up or liquidation;

then (and in any such case) the Licensor may, without prejudice to any other rights or remedies in law, including the right to claim damages and the right to require specific performance, and without being liable to the Licensee for any loss or damage which may be occasioned, give written notice to the Licensee to terminate this Agreement with immediate effect.

16. BREACH BY LICENSOR

16.1 If the Licensor commits a material breach of this Agreement, and/or fails to comply with any of the material provisions hereof, then the Licensee shall be entitled to give the Licensor 14 (fourteen) business days' notice in writing to remedy such breach and/or failure and if the Licensor fails to comply with such notice, then the Licensee shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the Licensee may have in law, including the right to claim damages:

- 16.1.1 to cancel this Agreement; or
- 16.1.2 to claim immediate performance and /or payment of all the Licensor's obligations in terms hereof.

17. POST-TERMINATION

17.1 On termination of this Agreement by the Licensor in the circumstances envisaged in clause 15 the Licensee's and each User's authorisation to use the Mzali app. will automatically cease and the Licensee and each User undertakes immediately to cease to use the Mzali app and / or online platform and delete same immediately.



17.2 Termination of this Agreement, howsoever arising, shall not affect the rights or remedies of any party under this Agreement in respect of any breach which may have occurred prior to the date of termination.

18. ARBITRATION

18.1 The parties shall first use reasonable endeavours to resolve any disputes that may arise under this Agreement through good faith negotiations. This entails one of the parties inviting the other in writing to meet, either in person or by means of telephone or video conferencing facilities, and to attempt to resolve the dispute within 5 (five) Business Days from date of written invitation. In the event that such negotiations do not result in a mutually acceptable resolution within 5 (five) Business Days of the commencement thereof, the dispute shall be handled in accordance with clause 18.2.

18.2 Subject to clause 18.1, any dispute or difference arising out of or relating to this Agreement, its termination or cancellation, shall be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa. Such arbitration shall be held in Johannesburg, and conducted in the English language before one arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either party notifies the other party in writing to that effect. These provisions shall not prevent either party from approaching any court or other judicial forum in any country having appropriate jurisdiction to obtain timely interim or other relief in cases of urgency.

19. PRESS RELEASES AND PUBLICITY

19.1 The Licensee agrees that the Licensor may:

19.1.1 issue a press release stating that this licence agreement has been executed and may, from time to time, issue further press releases relating to the Licensee's use of the Collection System, provided that any such releases are first submitted to the Licensee for approval, which approval may not be unreasonably withheld or delayed; and

19.1.2 include the Licensee's name in its marketing and promotional materials.

20. ASSIGNMENT

20.1 This Agreement is personal to the Licensee and the Licensee may not assign or otherwise transfer its rights or obligations under this Agreement without the prior



written consent of the Licensor which consent shall not be unreasonably withheld.

- 20.2 The Licensor shall be entitled to assign, cede, transfer, subcontract and dispose in any other way any of its rights or obligations under this Agreement to any third party on written notice to the Licensee to such effect, subject to the provisions of clause 14.

21. NOTICES AND DOMICILIA

- 21.1 Each of the parties chooses *domicilium citandi et executandi* (“domicilium”) for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in clause 1 hereof.

- 21.2 Each of the parties shall be entitled from time to time, by written notice to the others to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.

- 21.3 Any notice given and any payment made by a party to any of the others (“the addressee”) which:

21.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

21.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the 7TH (seventh) day after the date of posting.

- 21.4 Where, in terms of this Agreement any communication is required to be in writing, the term “writing” shall include communications by facsimile. Communications by facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee one hour after the time of transmission.

22. GENERAL

- 22.1 No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.



- 22.2 The terms of this Agreement form the sole contractual relationship between the parties in relation to the matters canvassed in the/preamble hereto and no variation of this Agreement shall affect the terms hereof unless such a variation shall be reduced to writing under the hands of the parties hereto.
- 22.3 For the avoidance of doubt, this Agreement cancels and supersedes all or any prior agreements or negotiations between the parties hereto appertaining to the matters canvassed in the preamble hereto.
- 22.4 This Agreement shall be construed and governed in accordance with the laws of the Republic of South Africa and the parties submit to the non-exclusive jurisdiction of the High Court of South Africa, Cape of Good Hope Provincial Division.
- 22.5 The provisions of clauses 1, 2, 3, 5, 8,10 ,12, 13, 17 and this 22 shall survive the termination of this Agreement.

23. COSTS

Each party shall bear its own costs of and incidental to the preparation of this Agreement, the drawing and redrafting thereof and sundry attendances.

