
SUBSCRIPTION AGREEMENT

MC CREENERGY SDN. BHD.

[Registration No. 200801020316 & No. 821628A]

Ref No: SNP/074/2023/MCCESB/PSN/AJ

THIS SUBSCRIPTION AGREEMENT is made the day of 2024

BETWEEN

MC CREENERGY SDN BHD (Registration No. 200801020316 & No. 821628A) a company incorporated in Malaysia and having its registered address at Unit C-02-03, Level 2, Block C, Southbank Commercial Centre, 179, Jln Klang Lama, 58000 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur and its business address at H-5-2, Setiawalk, Persiaran Wawasan, Pusat Bandar Puchong, 47160 Puchong, Selangor (hereinafter referred to as **Software Provider**).

AND

The Customer (hereinafter referred to as “Customer”).

The Software Provider and the Customer are collectively referred to as “Parties” and individually as “Party”.

RECITALS

WHEREAS:

- A. **The Software Provider** is a company providing distribution sales and business software solutions which includes customisation software development solutions.
- B. **The Software Provider** is known for its comprehensive solutions through the Datanory Ecosystem to help its clients find the best solutions for their respective business.
- C. **The Software Provider** and its clients (“**the Customer**”) is desirous to enter into this Subscription Agreement for the purposes of subscribing to **The Software Provider’s** product (defined herein) and this Agreement shall govern the relationship between **The Software Provider** and **you** (“**the Customer**”) through the acceptance of the terms and conditions herein by **you** (“**the Customer**”).

- D. **This Agreement** is either effective (i) upon Customer's electronic acceptance of the Invoice; OR (ii) upon the Invoice being signed in writing including by both Parties or electronically executed by the Parties, where in each case the Invoice incorporates the terms and conditions of this Agreement, including the Service Level Agreement (hereinafter referred to as the "SLA") as published on the Software Provider's website.
- E. **The Software Provider** intends to grant the Customer the right to use the Software through a subscription service and **Customer** intends to subscribe to such software. In addition to the Software and the related services required for the provisioning of the Software, the Parties may agree upon specific "Professional Services" to be rendered by Software Provider according to the terms and conditions of this Agreement.

ARTICLE I DEFINITIONS and INTERPRETATIONS

1. **Definitions.** For the purposes of this Agreement, including exhibits hereto, the following terms will have the following meanings:
- 1.1 "**Product**" means the software known as Datanory for the purposes of this Agreement.
 - 1.2 "**Invoice**" means a document recording the purchase of the software between the software provider and its customers, specifying the terms of sale.
 - 1.3 "**Subscription Period**" means the duration of the subscription plan chosen by the Customers.
 - 1.4 "**Authorized User**" means the Customers and/or its employees authorized to use the software under this Agreement, unless otherwise stated.
 - 1.5 "**Subscription Payment**" means the applicable fee to be paid to the Software Provider and the amount shall be determined by the chosen pricing plan.
 - 1.6 "**Grant of Rights**" means the Customer for the purposes of this Agreement, is granted the rights to access and use the software as agreed upon in the Invoice and as stipulated under this Agreement.
 - 1.7 "**Intellectual Property**" means the Trade Mark, Trade Name, Know-how, Software, copyright, design rights and any other intellectual property rights held by the Software Provider in any material form, plan, design and other works relating to the product and methods of conducting the Business

ARTICLE II – USE OF SERVICE AND OBLIGATIONS OF PARTIES

2. Customer's Use of the Service

2.1 Software Provider Obligations. The Software Provider shall provide the following to the Customer upon subscription of the product:

- (a) Deliver the product to the Customer via Mobile APP, Web Access/ Online Installation;
- (b) To ensure that the product is fit for purpose and is functioning well;
- (c) To provide the Customer with support for the use of the product, the terms of which can be found in the SLA on the software provider's website;
- (d) To provide solution to the Customer if the product is not functioning properly;
- (e) To perform periodically maintenance, updates, or upgrade of the product. Although this may disrupt access, the Software Provider shall make a reasonable effort to minimize disruption and any inconvenienced caused by the maintenance work.

2.2 Authorized User(s). The authorized user(s) shall be the Software Provider's Customer(s) and/or the Customer(s) authorized employees and/or agents or any person authorized by the Company to use the system for the purposes of their business.

2.2.1 Unauthorized User(s). The Customer shall not engage in any activities that may create the impression of an endorsement, partnership, or affiliation with the Software Provider without explicit written permission.

In the event, the Software Provider became aware of an unauthorized use of the product and/or the Software Provider's branding, the Software Provider reserves the right to terminate the Customer's access to the product and shall entitled them to seek legal remedies against the Customer under the applicable laws.

2.3 Customer's Obligations. The Customer hereby unequivocally agrees to use the product in compliance with the Software Provider's terms of use (attached herewith as Service Level Agreement), this Agreement, and the applicable laws and regulations.

The Customer SHALL NOT use the product for any unlawful, harmful, or unauthorized purposes.

ARTICLE III – PAYMENT TERMS AND RENEWAL

3. Subscription Fees, Payment and Taxes

- 3.1 **Subscription Fee.** Customer shall pay to Software Provider in consideration for Software Provider providing the Services, the subscription fee as agreed upon within the specified pricing plan.
- 3.1.1 The payment terms shall be decided mutually between the Customer and the Software Provider.
- 3.1.2 The software provider shall be entitled to adjust the subscription fee with effect from the renewal term.

3.2 **Payment Method.** The Customer shall provide a valid payment information authorizing its provider to allow for the transaction of the application subscription fees according to the chosen pricing plan and the billing cycle.

- 3.2.1 **Late Payment.** In the event of a late payment by the Customer, the Provider may issue a notice of the late payment and to request for the settlement. Further, the Customer's account shall be suspended until the payment has been made and/or settled.

Without prejudice to any other rights that the Software Provider may have, a late payment interest may be imposed at the rate of five (5) % per month.

3.3 **Payment Terms.** The Customer hereby agrees and acknowledges to ensure payment is made on time for service provided by the Software Provider as per payment terms to be decided mutually between the Parties.

3.4 **Taxes.** The Software Provider's Subscription plan is not inclusive of the Government Service Tax ("GST"). However, the amount in the invoice shall reflect the final amount the Customer shall be responsible to pay which shall be inclusive of the GST and any other taxes that may be imposed by the government.

4. **Renewal.** For every subscription, the renewal shall vary depending on the invoice UNLESS otherwise stated in writing. The Software Provider shall sent out reminders thirty (30) days in advance to its Customers.

4.1 If there is no renewal in place, the Customer shall be aware that the Customer's data shall not be stored more than sixty (60) days.

4.2 **Fees upon Renewal.** Upon renewal, the Customer hereby acknowledges that the Software Provide is entitled to and may adjust the fees for the subscription of the product.

4.3 **Termination on or during Renewal Term.** Upon the commencement of the renewal term, any termination by the Customer shall be subjected to the provisions outlined in Article VI of the Termination Clause of this Agreement.

ARTICLE IV – INTELLECTUAL PROPERTY RIGHTS , RESTRICTIONS AND CUSTOMERS DATA

5. **Intellectual Property Rights.** The Software provider exclusively retains ownership and reserves all intellectual property rights in their product (as defined in Article I herein).

The Customer shall not cause or permit anything which may damage or endanger the Intellectual Property or other intellectual property of the Software Provider or the Software Provider's title to it or assist or allow others to do so.

6. **Restrictions**

The Customer **shall not** in any way or form do the following:

- (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Service available to any third party, other than to the Authorized Users;
- (b) modify, copy or create any derivative works based on the Service;
- (c) frame or mirror any content forming part of the Service, other than on Customer's own intranets for its own internal business purposes;
- (d) access the Service in order to build any commercially available product or service;
- (e) copy any features, functions, interfaces or graphics of the Service or any part thereof; or
- (f) use the Service in any manner that exceeds the scope of use permitted herein.

ARTICLE V CONFIDENTIALITY, WARRANTIES, AND INDEMNITY

7. **Confidentiality.** Each party must treat as strictly confidential all information received or obtained as a result of entering into or performing this agreement which relates to: -
- (a) the Software's source code; UI & UX
 - (b) Customer Data; and
 - (c) each Party's business or technical information,

including but not limited to any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development, or know-how.

Any party may disclose information which would otherwise be confidential if and to the extent –

- (a) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
- (b) it considers it is necessary to disclose the information to its professional advisers, auditors, and bankers provided that it does so on a confidential basis;
- (c) the information has come into the public domain through no fault of that party;
- (d) it is consented to in writing by the other party to this agreement prior to such disclosure; or
- (e) it is required to be disclosed in the implementation and/or enforcement of the terms of this agreement.

Each Party agrees to protect the Confidential Information of the other Party in the same manner that it protects its own Confidential Information of like kind (but in no event using less than a reasonable degree of care and reasonable technology industry standards).

8. **Warranties.** The Customer hereby warrant that they are authorized to act as the authorized person to execute and sign this Agreement and other related documents on behalf of the contracting party.

The Software provider represents that it is the sole owner of the entire right, title and interest in and to the Software and that it has the right to sell and grant its customer the use of its product (as defined herein in Article I).

The Software provider represents and warrants to Customer that the product (as defined herein in Article I), when properly installed and used with the Designated Equipment, will perform substantially as per the product description in Invoice, provided always that the Customer:

- (a) Continuously make timely payment for the subscription pursuant to this Agreement
- (b) Has installed all updates provided by the Software Provider; and
- (c) Is using the product in accordance with the Software Provider's manual and/or guidelines.

The Software provider further represents and warrants that any defect or error detected in the product is reproducible by the Software Provider for as long as the Customer notifies the Software Provider of such defect and error.

Notwithstanding the warranty provisions set forth herein, all of the Software Provider's obligations with respect to such warranties shall be contingent on Customer's use of the Software in accordance with this Agreement and in accordance with the Documentation, as may be amended, supplemented, or modified by the Software Provider from time to time and made available to Customer. The Software Provider shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

Sole Remedy. the Software Provider's entire liability and Customer's exclusive remedy shall be for the Software Provider to repair or replace the product upon its return to the Software Provider; provided the Software Provider receives written notice from Customer of the breach.

The product is non-refundable, therefore, any defect or issues with the product shall only entitle the Customers for a replacement or repairs depending on the issue the Customer experience with the product.

The warranties stated herein are the sole and the exclusive warranties offered by the software provider. There are no other warranties respecting the software and documentation or services provided hereunder, either express or implied, including but

not limited to any warranty of design, merchantability, or fitness for a particular purpose, even if the software provider has been informed of such purpose.

9. **Indemnity.** The Customer shall indemnify, defend, and hold harmless the Software Provider for:
- (a) Infringement of any intellectual property rights of any third party by the Customer, subject to the terms and conditions;
 - (b) Breach of warranties and representations agreed in the Agreement;
 - (c) Failure by the Customer to pay the subscription fees.

The above shall survive the termination of the Agreement.

Article VI – LIABILITY, TERMINATION AND CANCELLATION

10. **Liability.** Neither Party shall be liable to the other Party for any special, incidental, indirect or consequential damage or loss of any nature including any loss of profit, loss of opportunities, loss of revenues, loss of contract, loss of production or loss of use of any property of the other Party.

The Customer shall indemnify the Service Provider, its affiliates and/or their subcontractors and employees against any and all claims, losses, suits, actions, demands, damages, costs, charges, expenses or liabilities, however arising, EXCEPT where the loss and or/damage are due to the Service Provider's gross negligence or wilful misconduct.

Notwithstanding the above, the Service Provider's liability in respect of all claims from the Customer shall not exceed the value of the subscription fee paid six months prior to the breach by service provider.

In the event that the Customer is in breach of any of its obligations under the Agreement then any right to compensation or damages which the Software Provider may have (whether under the Agreement or otherwise and subject always to the limitations and exclusions provided under this Article V shall become void if the Software Provider, if and to the extent measures are reasonably possible, fails to take measures to:

- (a) Limit and mitigate its damages immediately after it occurs;
- (b) Prevent (any other or additional) damages from occurring; or
- (c) Notify the Customer of the damages as soon as reasonably possible and provide the customer with all the relevant information.

- 10.1 **Limitation of Liability.** Except for actions or claims arising from the negligence either as a result of a breach of this Agreement and/or that the product is not fit for purpose, the Software provider's shall be limited to only compensate its Customers for loss related to the use of the product under this Agreement.

10.2 Notwithstanding the above, the Customer acknowledges the following:

- (a) That the system's performance may be subject to limitations, including but not limited to the system's downtime, internet connectivity issues, and device malfunctions. As such, the Customer hereby unequivocally agrees that the Software Provider shall not be held accountable and liable for any losses incurred by Customer due to such limitation;
- (b) The Software Provider shall use its reasonable endeavour to ensure the accuracy, integrity and timely delivery of data processed or stored by the System. However, the Software Provider shall not be liable for any loss or damages suffered by the Customer; and
- (c) The Customer understand and unequivocally agree to implement appropriate measures such as regular data backups and install a plan in place to mitigate risks associated with potential data loss or system, internet and/or devices issues.

11. Term. This Agreement enters effect upon the Effective Date and shall continue unless terminated in accordance with this Agreement ("**Term**"), unless otherwise set forth in the Invoice.

The term to the Agreement shall be governed by the Invoice Form and this Agreement shall remain effective for the term that is specified in the Invoice. If no such period is specified, the term shall remain effective until the end of use of the software.

12. Termination. The Customer may terminate this Agreement by serving the Software Provider with a written notice to this effect, however, the Customer shall remain responsible for any outstanding fees.

In the event of a breach, either party may terminate this Agreement with a written notice in writing specifying the breach. The defaulting party shall have thirty (30) days to remedy the breach, failing which, the Agreement may be terminated in its entirety by the other party.

13. Cancellation. The Customer may cancel their subscription of the product (as defined herein in Article I) through a written notice to the Software Provider.

13.1 **Deemed date of Cancellation.** The cancellation date shall be effected on the date as specified in the notice.

13.2 **Refunds.** In the event the Customer has decided to cancel and /or terminate the subscription, NO REFUND shall be provided for any fees paid prior to the cancellation and for the un-used portion of the subscription period, UNLESS otherwise agreed upon in writing by the Software Provider.

The Customer shall remain responsible to ensure the payment of any outstanding fees are made.

14. Access. Upon termination or cancellation, the Customer's access to the product shall be terminated and the Provider shall not have any further obligation to provide access to the product and to maintain Customer's data EXCEPT as required by law.

14.1 Upon termination or cancellation, the Customer shall be entitled to use the product until the end of its contract term with the Software Provider, after which the Customer shall cease to use the product. In the event that the Customer wishes to continue using the product, the Customer shall subscribe to with the Software Provider for the use of product again for the desired period.

14.2 Upon termination or cancellation, there shall be a grace period of sixty (60) days with regards to storing the Customer's data.

ARTICLE VII – DATA PROTECTION AND USE OF CUSTOMER'S DATA

15. Data Protection and Security. The Software Provider unequivocally agrees to preserve and maintain the confidentiality of Customer's Data and information.

The Software Provider shall not disclose any confidential data and/or information pertaining the Customer without the Customer's written consent to this effect EXCEPT when it is required by the law.

The Software Provider have implemented and shall continue to implement a reasonable technical and organizational measures to protect Customer's data from unauthorized access, loss or destruction.

16. Data Use. For the purposes of performing analysis and research to improve and enhance the services offered by the system, the Customer agrees and acknowledges that the Software Provider may use its data. Such data shall only be use for the purpose of future improvisation of the product and shall not be further use for any other purpose.

The Customer acknowledges that the Software Provider may use its data for marketing purposes.

The Software Provider shall maintain the confidentiality of its Customer as stated and shall ensure that the use of Customer's data shall at all times be in compliance with the Personal Data Protection Act 2010 and shall observe the 2010 Act with regards to the use of data through-out and post subscription period.

ARTICLE VIII – NEW PRODUCT FEATURES. TECHNOLOGIES AND MAINTANENCE

17. Introduction of New Feature. The Software Provider may introduce new features and/or technologies in order to enhance the functionality of the product. The Customer hereby acknowledges that Provider may require the use of these new features or technologies to ensure optimal system performance and maintain compatibility.

17.1 **Notice and Transition Period.** In implementing its new product and/or technologies as stated in clause 17 above, the Software Provider shall provide the Customer with a reasonable advance notice and shall specify any transition period during which the Customer can familiarize themselves with the new features and technologies.

17.2 **Customer Corporation.** The Customer agrees to give its cooperation to the Software provider during the transition period to use it best endeavors and make reasonable efforts to utilize the new features or technologies as required of them. Failure to comply may result in a limited access to certain functionalities of the system.

18. Product / System Maintenance. The Software Provider shall update the Customer on any product and/or system maintenance via email. They shall use their best endeavors to ensure minimum interference with the use of the product.

ARTICLE IX – GENERAL PROVISIONS

19. Binding Effect. Each party shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through agents or distributors provided that any act or omission of any such other agents or distributors shall, for the purpose of this Agreement, be deemed to be the act or omission of that party.

20. Notices. All notices and documents required to be given under this Agreement and all other communications between the parties hereto with respect to this Agreement shall be in writing and must be given through e-mail service, unless otherwise stated.

The Software Provider such notices via email to the address(es) and contact person(s) indicated by the Customer upon subscription and registration of Customer's account with the Software Provider. Additionally, the Software Provider may notice the Customer directly by making available information at their official website. The Parties shall immediately notify each other about any changes of the contact data they have provided each other with. If Customer is not updating its contact details on a regular basis, Customer may not receive Updates, Upgrades or important information about the Services.

21. Severability. Any term, condition, stipulation, provision, covenant or undertaking of this agreement that is illegal, prohibited or unenforceable will be ineffective to the extent of such illegality, void-ness, prohibition or unenforceability without invalidating the remaining provisions hereof.

22. Waiver. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or any other provision.

- (a) A party waives a right under this agreement only if it does so in writing.
- (b) A party does not waive a right simply because it –
 - (1) fails to exercise the right;
 - (2) delays exercising the right; or
 - (3) only exercises part of the right.
- (c) A waiver of one breach of a term of this agreement does not operate as a waiver of another breach of the same term or any other term.

23. Marketing or Advertising. The Customer agrees that they shall not use the Software Provider's name, logo, product, trademarks, advertising marketing and promotional material in connection with the Software Provider.

The Customer hereby acknowledges and consented to the Software Provider using its information and data for marketing and advertising purposes.

24. Assignment. Neither Party to this Agreement shall assign or purport to assign any right under this Agreement without the prior written approval of the other Party.

Notwithstanding the foregoing, Software Provider shall at any time have the right, without any consent of Customer, to assign any receivables arising under this Agreement and all security and ancillary rights relating hereto to any third party, where Customer is not entitled to offset other than undisputed or legally established own claims against claims of Software Provider or of third parties to whom Software Provider has assigned its rights and/or transferred its obligations under this Agreement.

25. Entire Agreement. This Agreement, the invoice and the SLA constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, understandings, or representations, whether oral or written, relating to the subject matter of this Agreement. There are no agreements, representations, warranties, promises, covenants, commitments, or undertakings other than those expressly set forth herein

26. Survival. The termination and/or expiration of this Agreement shall not affect provision that are, by nature intended to survive such as provision related to customers' confidentiality, indemnification, and limitation of liability.

27. Governing Law and Jurisdiction. This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, construed, and governed by the laws of Malaysia. The Courts of Malaysia shall have exclusive jurisdiction in respect of all matters arising under or in connection with this Agreement. The exclusive place of jurisdiction for disputes in connection with this Agreement is the competent court for Software Provider's registered office.

28. Further Provisions. This Agreement supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter. In the event of a conflict between this Agreement and one or more of the documents attached hereto or referenced herein, the documents shall be construed consistently, insofar as reasonably practicable, but to the extent of any inconsistency, they shall be controlling in the following order: (1) the invoice, (2) Services Description, (3) this Agreement, and (4) the SLA.

Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

29. Form Requirement Except for verbal arrangements after the conclusion of the agreement, no modification, amendment, or waiver of any provision of this Agreement shall be effective, unless being agreed upon in text form (e.g. email, notifications, etc.) or in writing by the Party against whom the modification, amendment or waiver is to be asserted. Transmission by fax, e-mail or any other equivalent form of electronic exchange or execution shall be deemed to comply with such form requirement. The Parties furthermore acknowledge and agree that this Agreement may be executed, exchanged, stored and through a simple- or advanced eSignatures) and that such eSignatures shall comply with the written form requirement. The Parties agree that they will not challenge the authenticity or correctness for the sole reason of the invoice and/or the Agreement being executed in electronic form only.

30. Force Majeure. Neither party shall be liable for failure or delay to perform obligations under this Agreement which have become practicably impossible to perform because of circumstances beyond the reasonable control of the applicable parties. The circumstances include but not limited to: -

- a) Natural disasters;
- b) Acts of God;
- c) Acts of terrorism;
- d) Labor Disputes or stoppages;
- e) War risks and impediments;
- f) Act of State;
- g) Epidemics or Pandemics or Outbreak of communicable, infectious and contagious disease, including the current COVID 19 Virus.
- h) Quarantines;
- i) National or Reginal Emergencies; or

Any other cause, whether similar in kind to the foregoing or otherwise, beyond the reasonable control of the Parties.

Written Notice of a party's failure or any delay in performance due to force majeure must be given to the other party no later than five (5) working days following the force majeure commencing (where possible) and in addition to the written notice, the Software Provider reserves the right to publish the notice on their website , such a notice shall describe the event and the actions taken to minimize the impact thereof.

The Parties hereby agree not to cancel, but re-schedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist. However, If a Force Majeure event persists for an uninterrupted period of ninety (90) days, either party shall be entitled to terminate this Agreement.

EXHIBIT 1 –SERVICE LEVEL AGREEMENT

(To be construed as part of the Agreement, the terms are as published on the Software Provider's Website)