

Software Support Agreement

DATE

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PARTIES

1. PLANET CODE SOLUTIONS LTD, a company incorporated in August 2023 (**REG. NO: PVT-MKUMK763**) having its registered office at *TRV PARKWEST SUITES, PARKLANDS, NAIROBI KENYA* ("**the Provider**"); and
2. ("**the Customer**").

AGREEMENT

1. Definitions

- 1.1 In this Agreement [except to the extent expressly provided otherwise]:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in [Kenya] OR ;

"**Business Hours**" means the hours of [09:00 to 17:00] [GMT] on a Business Day;

"**Charges**" means:

- (a) [the charges and other payable amounts specified in Paragraph 2 of Schedule 1 (Software Particulars) and elsewhere in this Agreement];
- (b) [charges calculated by multiplying [the standard time-based charging rates of the Provider (as notified by the Provider to the Customer before the date of this Agreement)] by the time spent by the personnel of the Provider performing [the Services] (rounded [down by the Provider to the nearest quarter hour])]; and
- (c) [such other charges and payable amounts as may be agreed in writing by the parties from time to time];

[additional list items]

"**Effective Date**" means [the date of execution of this Agreement];

"**Force Majeure Event**" means [an event, or a series of related events, that is outside the reasonable control of the party affected (which may include failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars)];

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means [any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement];

"Software" means the software identified in Paragraph 1 of Schedule 1 (Software Particulars);

"Support Services" means [support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the customization of additional modules whether in relation to the Software or otherwise]; and

"Term" means [the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2].

2. Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 11 or any other provision of this Agreement.

3. Support Services

- 3.1 The Provider shall provide the Support Services to the Customer [during the Term].
- 3.2 The Provider shall provide the Support Services [with reasonable skill and care] OR [in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry]
- 3.3 The Provider shall provide the Support Services in accordance with Schedule 2 (Support SLA).
- 3.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least [30 days'] written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

4. Customer obligations

- 4.1 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

5. Charges

- 5.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 5.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 6.2.
- 5.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider].
- 5.4 The Provider may elect to vary [any element of the Charges] by giving to the Customer not less than [30 days'] written notice of the variation[expiring on [any anniversary of the date of execution of this Agreement]][, providing that no such variation shall constitute a percentage increase in [the relevant element of the Charges] that exceeds[[2]% over] the percentage increase, since the date of the most recent variation of [the relevant element of the Charges][under this Clause 6.4] (or, if no such variation has occurred, since the date of execution of this Agreement),

6. Payments

- 6.1 The Provider shall issue invoices for the Charges to the Customer [from time to time during the Term] OR [on or after the invoicing dates set out in Paragraph 2 of Schedule 1 (Software Particulars)] OR [*dates for invoicing*].
- 6.2 The Customer must pay the Charges to the Provider within the period of [30 days] following [the issue of an invoice in accordance with this Clause 7] OR [the receipt of an invoice issued in accordance with this Clause 7].
- 6.3 The Customer must pay the Charges by [debit card, credit card, direct debit or bank transfer] (using such payment details as are notified by the Provider to the Customer from time to time).
- 6.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
 - (a) charge the Customer interest on the overdue amount at the rate of [8% per annum above the NCBA Bank base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month);

7. Warranties

7.1 The Provider warrants to the Customer that:

- (a) [the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement];
- (b) [the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement]; and
- (c) [the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement].

7.2 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

8. Limitations and exclusions of liability

8.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

8.2 The limitations and exclusions of liability set out in this Clause 8 and elsewhere in this Agreement:

- (a) are subject to Clause 8.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

8.3 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of profits or anticipated savings.

8.4 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of revenue or income.

- 8.5 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of use or production.
- 8.6 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of business, contracts or opportunities.
- 8.7 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss or corruption of any data, database or software.
- 8.8 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any special, indirect or consequential loss or damage.

9. Force Majeure Event

- 9.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement [(other than any obligation to make a payment)], that obligation will be suspended for the duration of the Force Majeure Event.
- 9.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 9.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

10. Termination

- 10.1 Either party may terminate this Agreement by giving to the other party [at least 30 days'] written notice of termination.
- 10.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 10.3 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;

- (iv) is or becomes insolvent or is declared insolvent; or
- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[(other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement)]; or
- (d) [if that other party is an individual:
 - (i) that other party becomes incapable of managing his or her own affairs as a result of illness or incapacity; or
 - (ii) that other party is the subject of a bankruptcy petition or order,
 and if that other party dies then this Agreement shall automatically terminate].

11. Effects of termination

- 11.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 6.2, 6.4, 8, 11, 14 and 15].
- 11.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 11.3 Within [30 days] following the termination of this Agreement for any reason:
 - (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
 - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,
 without prejudice to the parties' other legal rights.

12. Notices

- 12.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 12.2):
 - (a) [[delivered personally or sent by courier], in which case the notice shall be deemed to be received [upon delivery]]; or
 - (b) [sent by [recorded signed-for post], in which case the notice shall be deemed to be received [2 Business Days following posting]],

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

12.2 The parties' contact details for notices under this Clause 12 are as follows:

- (a) in the case of notices sent by the Customer to the Provider, *[contact details]*; and
- (b) in the case of notices sent by the Provider to the Customer, *[contact details]*.

13.3 The addressee and contact details set out in Clause 12.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 13.

13. Subcontracting

13.1 The Provider must not subcontract any of its obligations under this Agreement without the prior written consent of the Customer [, providing that the Customer must not unreasonably withhold or delay the giving of such consent].

OR

13.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement [, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question].

13.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

14. General

14.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

14.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

14.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

14.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

- 14.5 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 14.6 Subject to Clause 8.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 14.7 This Agreement shall be governed by and construed in accordance with Kenyan Law
- 14.8 The courts of Kenya shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

15. Interpretation

- 15.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 15.2 The Clause headings do not affect the interpretation of this Agreement.
- 15.3 References in this Agreement to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].
- 15.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY [.....] on [.....], duly authorized for and on behalf of the Provider]:

.....

SIGNED BY [.....] on [.....], the Customer] OR
[[*individual name*] on [.....], duly authorised for and on behalf of the Customer]:

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SCHEDULE 1 (SOFTWARE PARTICULARS)

1. Identification of Software

.....Software Name.....

2. Financial provisions

ITEM	COST
1. Requirements Engineering	Free
2. Software Development	Based on User Requirement Specifications
3. Pre-Launch Assessment & deployment	Free
4. Software Maintenance	Free within 3 Months of Software Acquisition
5. Software Customizations – This includes creation of a customized modules not present on existing product.	Charges vary based on scope/coding to be done. Minimum charges are KES 10,000 (Inclusive of V.A.T)

SCHEDULE 2 (SUPPORT SLA)

1. Introduction

- 1.1 This Schedule 2 sets out the service levels applicable to the Support Services.

2. Helpdesk

- 2.1 The Provider shall make available to the Customer a helpdesk/support email.
- 2.2 The Customer may use the helpdesk/support email [for the purposes of requesting and, where applicable, receiving the Support Services]; and the Customer must not use the helpdesk for any other purpose.
- 2.3 The Provider shall ensure that the helpdesk is [accessible by telephone, email and using the Provider's web-based ticketing system].
- 2.4 The Provider shall ensure that the helpdesk is [operational and adequately staffed] during [Business Hours] during the Term. [In addition, the Provider shall [provide a special telephone number for the Customer to report critical issues outside of Business Hours].]
- 2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

- 3.1 Issues raised through the Support Services shall be categorised as follows:
- (a) critical: [the Software is inoperable or a core function of the Software is unavailable];
 - (b) serious: [a core function of the Software is significantly impaired];
 - (c) moderate: [a core function of the Software is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Software is significantly impaired]; and
 - (d) minor: [any impairment of the Software not falling into the above categories; and any cosmetic issue affecting the Software].
- 3.2 The [Provider] OR [Customer] shall determine, acting reasonably, into which severity category an issue falls.
- 3.3 The Provider shall [use [all] reasonable endeavours to] respond to requests for Support Services promptly, and in any case in accordance with the following time periods:
- (a) critical: [1 Business Hour];
 - (b) serious: [4 Business Hours];
 - (c) moderate: [1 Business Day]; and
 - (d) minor: [5 Business Days].

- 3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): [an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request].
- 3.5 The Provider shall [use [all] reasonable endeavours to] resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:
- (a) critical: [2 Business Hours];
 - (b) serious: [8 Business Hours];
 - (c) moderate: [4 Business Days]; and
 - (d) minor: [10 Business Days].

4. Provision of Support Services

- 4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

- 5.1 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:
- (a) [any factor outside the scope of the Support Services];
 - (b) [the improper use of the Software by the Customer]; or
 - (c) [any alteration to the Software made without the prior consent of the Provider].
- 5.2 If the Provider provides Support Services at the request of the Customer and the Provider, after beginning the provision of those Support Services, reasonably concludes that the Provider has no obligation to provide those Support Services by virtue of the exceptions set out in Paragraph 5.2, the Provider may levy additional Charges in respect of:
- (a) those Support Services; and
 - (b) any subsequent Support Services provided in relation to the issue with the consent of the Customer,
- at its standard time-based rates.