

Terms and Conditions

These Terms and Conditions (can be also referred to as the “**Agreement**”) shall apply to the use by Cherry Imaging Ltd’s customers (“**Cherry**” and “**Customer**”, respectively; each of Cherry and Customer shall be referred to as a “**Party**”, and together the “**Parties**”) of Cherry’s proprietary 3D imaging Scanner (the “**Scanner**”) and/or a mobile imaging application (a software as-a-service based solution) (the “**App**”). Both Scanner and App (collectively the “**Platform**”) are utilizing innovative and proprietary algorithms and an analysis software which creates a 3D model of the user’s face (the “**Face Model**”) and allows for a 3D review of the Face Model as well as analysis of skin geometry and color (“**Services**”).

By downloading, installing, or using the Platform, Customer agrees to be bound by these Terms and Conditions. If you do not agree with these Terms and Conditions, please refrain from using the Platform or any part thereof.

The term “Customer” as defined herein includes any person that gains access to use the Platform including the Customer’s clients.

1. MOBILE APP

- 1.1. By using the App, Customers are able to create, store and view online their Face Models.
- 1.2. In addition, if the Customer is an esthetic clinic, the Customers’ clients may also purchase a designated App for home use which will enable the clients to view their scanned Face Models on-line, book consultations with the Customers (the esthetic clinic) and enter the Customer’s on-line store (if applicable).
- 1.3. In addition to these Terms and Condition, the use of the App is also subject to the terms of the End User License Agreement (at: [REDACTED]) (“**EULA**”) as well as by Cherry’s Privacy Policy (at: [REDACTED]) (“**Privacy Policy**”), all as may be updated and amended by Cherry from time to time.

2. CHERRY SCANNER

- 2.1 *Ordering*: The Scanner shall be deemed to have been ordered upon execution of a separate sale order to be signed by both Parties (“**Sale Order**”) under the terms set forth therein.
- 2.2 All fees payable under the Sales Order shall be payable in full, without any deduction or set-off right of any kind, including taxes and/or duties of any kind, unless stated otherwise in the Sales Order. Any payments by Customer that are not paid on or before the date such payments are due under the Sales Order shall bear interest of one percent (1%) per month. Interest shall accrue beginning on the first day following the due date for payment and shall be compounded quarterly. Without derogating from the foregoing and in addition thereto, in any event of late payment by Customer, Cherry may, at its sole discretion, suspend or terminate Customer’s account and prohibit it from using the Platform.
- 2.3 *Warranty*. Unless stated otherwise in the Sale Order, Cherry provides a one-year warranty period for the Scanner (“**Warranty Period**”). During the Warranty Period, Cherry warrants that the Scanner will be free from defects in material and workmanship. In the event that a malfunction or a defect is discovered in the Scanner during the Warranty Period, Cherry may either repair or replace the Scanner or the defective components, at Cherry's discretion
- 2.4 Warranty does not cover: (i) damages caused due to accidents, misuse, usage not in accordance with User Manual, improper maintenance, use of third-party components not authorized or supplied by Cherry, unauthorized repair, modification or disassembly, force majeure or any other cause outside Cherry's control; (ii) the computer that is provided along with the Scanner is purchased by Cherry off-the-shelf from a third-party manufacturer and is subject to a standard manufacturer warranty. Warranty is non-transferable and is limited to the original purchaser. In addition, any change or modification to the Scanner not expressly pre-approved by the Cherry in writing, is forbidden and could jeopardize the safety and accuracy of the Scanner and will void the Warranty.
- 2.5 Cherry does not warrant nor make any representation regarding the results of Customer’s use or omission to use the respective Scanner and/or any information or data provided by the respective Scanner in terms of correctness, accuracy, completeness, timeliness of the content, reliability or otherwise. Use of the respective Scanner is at Customer’s sole risk.
- 2.6 SAFETY WARNINGS. The Scanner utilizes flashing LED lights. Prior to use, each Customer must question its clients (the subject of the scans) regarding known sensitivities to flashing lights. The Scanner SHOULD NOT be used on patients with epilepsy and migraines or on patients with known sensitivities to flashing lights.
- 2.7 The Scanner should not be used in environments where it may be immersed in fluid or exposed to harsh conditions and must immediately be turned off and unplugged if smoke or excessive heat is detected. Please note that the cable connecting the Scanner's base and the Scanner hand piece is approximately 2.5 m long. Care should be taken to avoid tripping on the cable while using the Scanner. The Scanner must be operated only with its original parts or parts authorized by Cherry (or by the manufacturer in case of the use of the computer). When not in use, the Scanner hand piece must be placed in its base in order to protect the Scanner's lenses. The Scanner is to be used only with the computer provided by Cherry.

3. TRAINING, SUPPORT AND MAINTENANCE

- 3.1. Training. To the extent applicable, Cherry shall provide training to the Customer or the Customer's personnel regarding the use of the Platform either by recorded tutorials, or via on-line training, or via in person training, as shall be coordinate in advance between the Parties. Customer shall be responsible for the provision of adequate training to its clients regarding the proper use of the Platform.
- 3.2. Support and Maintenance. Cherry shall make commercially reasonable efforts to ensure that the Platform will be accessible and functional 24 hours per day, 7 days per week, with the exception of scheduled maintenance periods. The foregoing notwithstanding, Customer acknowledges and agrees that the Platform may be inaccessible or inoperable due to equipment malfunctions, unscheduled maintenance or repairs, or causes that are beyond Cherry's reasonable control or not al foreseeable by Cherry, including without limitation interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. If the Platform become inaccessible to users or not fully functional, other than due to scheduled maintenance, Cherry shall have qualified personnel respond and endeavor to remedy such unavailability or failure of functionality as soon as reasonably possible.
- 3.3. Cherry may make, from time to time, modifications, additions and/or upgrades to the Platform as it deems necessary, and the terms of this Agreement will apply to any such modifications, additions and/or upgrades that Cherry may make available to the Customer under the terms set forth herein. Continued use of the Platform after the modifications constitutes the Customer's acceptance of the revised Terms and Conditions.
- 3.4. Cherry will make available to the Customer updates, patches and bug fixes with respect to the Platform as may, from time to time, be developed and made generally available by Cherry to its customers. Cherry reserves the right to modify and/or discontinue, temporarily and/or permanently, the Platform and/or any features or portions thereof without prior notice. Cherry will not be liable for any modification, suspension and/or discontinuance of any features of the Platform and/or any part thereof.

4. ACCOUNT INFORMATION

- 4.1. In order to access the Platform, Customer shall be required to create an account ("**Account**") with a designated username and password (the "**Login Information**"). The following rules govern the security of Customer's Account and Login Information. For the purposes of this Agreement, references to Account and Login Information shall include any account and account information, including user names, passwords or security questions, whether or not created for the purpose of using the Platform, that are used to access the Platform:
 - 4.1.1. Customer shall not share its Account or Login Information, nor let anyone else access its Account or do anything else that might jeopardize the security of its Account;
 - 4.1.2. In the event Customer becomes aware of or reasonably suspects any breach of security, including, without limitation any loss, theft, or unauthorized disclosure of its Login Information or unauthorized access to its Account, Customer must immediately notify Cherry and modify its Login Information;
 - 4.1.3. Customer is solely responsible for maintaining the confidentiality of the Login Information, and will be responsible for all uses of its Login Information, including purchases, whether or not authorized by it;
 - 4.1.4. Except in the event of a material breach of this Agreement and/or willful misconduct and/or gross negligence by Cherry, Cherry shall not be responsible for anything that happens through the Customer's Account, including, for the avoidance of doubt, actions taken by third parties. Customer acknowledges that its Account may be terminated if an unauthorized third party uses it to engage in any activity that violates this Agreement or is otherwise improper or illegal;
 - 4.1.5. Customer undertakes to monitor its Account and restrict use by any individual barred from accepting this Agreement and/or using the Platform, under the provisions listed herein or any applicable law.
- 4.2. Cherry reserves the right to remove or reclaim any usernames upon receipt of a claim by a third party that a username violates such third party's rights.
- 4.3. As Cherry operates the Platform, it may have access to certain information, such as personal information related to the Customer and its end-users contact details (name, email address, and position within the Customer) (the "**Customer Data**"). As the exclusive owner of the Customer Data, Customer represents that to the extent the Customer Data includes any personally identifiable information, Customer has provided all appropriate notices, received the required consents or permits

and/or have any and all ongoing legal bases, and has acted in compliance with applicable privacy laws and regulations, as to allow Cherry to use the Customer Data solely in order to provide the Platform related Services. Cherry may however be required to disclose the Customer Data and/or to use the User Content (as defined below) for any of the following purposes: (a) to satisfy any applicable law, regulation, legal process, subpoena or governmental request; or (b) to collect, hold and/or manage the Customer Data through Cherry's authorized third party service providers as reasonable for business purposes; or (c) for internal research, development, evaluating, and improving Cherry's products and technology and for statistical purposes. To the extent Customer requires a Data Processing Agreement ("DPA"), the parties shall comply with the Cherry's DPA which shall be made available to Customer upon request.

- 4.4. Customer shall be entitled to instruct Cherry to delete or remove Customer Data, and Cherry shall advise the Customer whether it is able to provide the Platform following such deletion. If the provision of this Agreement following the said deletion is not commercially possible, Cherry shall be entitled to terminate the Services.
- 4.5. During the course of Customer's use of the Platform, Cherry may collect information regarding Customer's and the Customer's clients' use of the Platform, such as information on which tools and/or services in the Platform are being used and how they are being used, connection time to the Platform, the Face Models uploaded to the Platform, etc. Any such information gathered by Cherry may be used by Cherry in connection with research, development, evaluating, and improving Cherry's products and technology and for statistical purposes.

5. **ACCOUNT TERMINATION**

- 5.1. Cherry may refuse access to the Platform or may terminate Customer's Account upon a suspected violation of this Agreement, illegal or improper use of Customer's Account, or illegal or improper use of the Platform or Cherry's intellectual property as determined by Cherry in its sole discretion, by providing Customer prior written notice.
- 5.2. Customer may lose its user name as a result of Account termination, without responsibility on the part of Cherry for any damage that may result from the foregoing. If Customer has more than one Account, Cherry may terminate all of its Accounts. In the event that Cherry terminates Customer's Account, Customer may not participate nor make use of the Platform again without Cherry's express consent. Cherry reserves the right to refuse to keep Accounts for, and provide access to the Platform or other services to, any individual. Customer may not allow entities whose Accounts have been terminated by Cherry to use its Account. If Customer believe that any action has been taken against its Account in error, please contact Cherry at - info@cherryimaging.com.
- 5.3. In addition to the foregoing, Cherry may selectively remove or revoke benefits associated with Customer's Account. If Customer's Account, or a particular subscription for the Platform associated with Customer's Account, is terminated, suspended and/or if any benefits are selectively removed or revoked from Customer's Account, no refund will be granted, no benefits will be credited to Customer or converted to cash or other forms of reimbursement, and Customer will have no further access to its Account or benefits associated with its Account or such particular service.
- 5.4. Customer is solely responsible to make sure and validate that the Platform is used properly and that the required data was properly uploaded to and available for review on the Platform. Cherry does not guarantee that any content (including the Face Models) will always be available through the Platform. In case of termination of use of the Platform, it is the Customer's sole responsibility to download 2D images of his/hers (or his/her clients, if applicable) Face Models.

6. **TERMINATION**

- 6.1. Either Party may terminate this Agreement if the other Party breaches any term or condition of this Agreement and such breach is not remedied within thirty (30) days after receiving written notice thereof. Notwithstanding the foregoing, Cherry may immediately, by written notice to Customer, suspend or terminate this Agreement and the services and rights provided hereunder if Customer fails to make any timely payment of fees owed to Cherry and such failure is not cured within fourteen (14) days of receipt of notice thereof.
- 6.2. Either Party shall have the right to immediately terminate this Agreement, upon written notice, in the event the other Party files a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or discontinues its business or has a receiver appointed for its business and such receiver is not discharged within sixty (60) days.
- 6.3. Upon termination or expiration of this Agreement:
 - 6.3.1. Customer shall immediately cease, and shall procure that Customer's personnel cease, using and accessing the

Platform. It is clarified that upon termination or expiration of this Agreement, Cherry may terminate the access and use of the Platform, any and all support and maintenance services in connection with the Platform, and/or block access to the App such that it shall no longer be accessible by Customer and/or Customer's personnel. For the removal of doubt, Cherry will not be liable to Customer and/or to Customer's personnel, in connection with any of the foregoing, including for any compensation and/or reimbursement of any sort;

6.3.2. Customer shall, within fourteen (14) days following such termination or expiration, pay Cherry any outstanding fees owed to Cherry hereunder;

6.4. Termination of this Agreement under this section shall be in addition to, and not a waiver of, any remedy at law or in equity available to Cherry arising from Customer's breach of this Agreement or any agreement relating to the Platform.

6.5. Termination of this Agreement shall not affect any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after the termination, including Sections 6 ("*Termination*"), 7 ("*Intellectual Property Rights*"), 8 ("*User Content*"), 9 ("*Confidentiality*"), 10 ("*Exclusion of Warranty; Limitation Of Liability; Indemnification*"), 11 ("*Limitations on Use*") and 12 ("*Miscellaneous*") herein.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. Except for User Content (as defined below), all right, title and interest in the Platform, including all Intellectual Property Rights (as defined below) therein and thereto, and all derivative works, modifications, improvements, updates, upgrades, enhancement, added features, inventions, ideas, insights, concepts, methods, know-how and processes relating to the same, whether created, developed, discovered or conceived in connection with this Agreement or otherwise, and regardless of whether Customer or anyone on its behalf may have contributed to the conception of any of the foregoing, or paid Cherry for such, are and shall at all times vest exclusively with Cherry, and may not be used by or for Customer or anyone on its behalf including its subsidiaries or parent Cherry or any other related party, except as expressly provided herein.

"**Intellectual Property Rights**" means all intangible legal rights, titles and/or interests, including without limitation, all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, design, Confidential Information (as defined below), and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

7.2. Customer's use of the Platform is limited to that specifically and explicitly permitted in this Agreement. Customer will not, and will not allow, permit or assist any third party: (i) to attempt to discover any source code or underlying ideas or algorithms of the Platform and/or the App; (ii) reverse engineer, disassemble, de-compile or translate the Platform and/or the App, or grant any other third party the right to do any of the above; (iii) except to make the App available to Customer's clients to as set forth herein, provide, lease, rent, lend, license, assign, delegate, or otherwise transfer or use or allow others to transfer or use the Platform, or any output generated by the Platform, to or for the benefit of any third party; (iv) adapt, translate, localize, port, or otherwise modify Platform or any other compiled software provided or made available by Cherry hereunder, (v) remove, obliterate, and/or cancel from view any copyright, trademark, and/or other proprietary and/or confidentiality notice and/or legend appearing on and/or in any materials provided or made available by Cherry hereunder, and/or fail to reproduce any such notice and/or legend on any copy made of any such materials, (vi) take any action that materially interrupts and/or interferes with, or that might reasonably have been expected to materially interrupt and/or interfere with, the Platform, Cherry's business operations and/or other clients, (vii) copy or imitate part or all of the design, layout and/or look and feel of the Platform in any form or media and/or (viii) permit any other user, person and/or entity to engage in any of the foregoing conduct.

8. USER CONTENT

8.1 While using the Platform, the Customer (and its clients, to the extent applicable) may submit, post, display, provide, or otherwise make available certain content (such as: profile information or Face Models) (collectively "**User Content**") which, to the best of the Customer (or its client, as applicable) knowledge, is truthful and accurate.

8.2 CHERRY DOES NOT CLAIM OWNERSHIP RIGHTS OVER USER CONTENT CREATED BY THE CUSTOMER AND SUCH CONTENT SHALL REMAIN OWNED BY THE RESPECTIVE CUSTOMER (AND IF CREATED BY THE CUSTOMER'S CLIENTS, SHALL REMAIN OWNED BY THE RESPECTIVE CLIENT). Customer's clients may allow

Customer to view, edit, share, and/or otherwise interact with the client's User Content by providing or sharing such User Content through the Platform. Cherry has no control over and is not responsible for any use or misuse (including any distribution) of User Content by any third party, including by its Customers with whom such User Content was shared.

- 8.3 Customer shall obtain the prior consent of each scanned client to use such person's User Content in the manner contemplated by the Platform and this Agreement, and each such person shall release Cherry from any liability that may arise in relation to such use.
- 8.4 The use of the User Content by both Parties as contemplated by this Agreement will not violate any law including but not limited to any privacy law or regulation.
- 8.5 Cherry shall have no liability for Customers interactions with their clients or for any of the Customers' or Customers' clients acts or omissions. Cherry takes no responsibility and assumes no liability for any User Content that Customer or Client or any third party uploads, posts, sends, or otherwise makes available through the Platform. Customer understands and agrees that it may be exposed to User Content that is inaccurate, objectionable, inappropriate for children, or otherwise unsuited to your purpose, and Customer agrees that Cherry shall not be liable for any damages you allege to incur as a result of or relating to any User Content. Cherry may (with no obligation to do so) monitor, evaluate, alter, or remove User Content or analyze User Content and any use thereof for the purposes set forth in Section 4.3 of this Agreement.

9. CONFIDENTIALITY

- 9.1. Confidential Information (as defined below) of either Party shall be retained in strict confidence by the other Party until such information becomes public through no action or inaction of such Party and shall be used, disclosed, and copied solely for the purposes of, and in accordance with, this Agreement. Each Party shall only disclose Confidential Information of the other Party to those employees, officers, agents or subcontractors ("**Representatives**") with a need to know such Confidential Information for the purposes of this Agreement, and who have executed an obligation of confidentiality and restriction of use similar to the terms hereof; provided that, the receiving Party shall assume full responsibilities for any failure of its Representatives to comply with the terms of this Agreement. Each Party shall use the same degree of care as it uses to protect its own Confidential Information of a similar nature, but no less than reasonable care, to prevent the unauthorized use, disclosure or publication of the Confidential Information. "**Confidential Information**" means any proprietary business, marketing, technical, scientific or other information disclosed by either Party, including, without limitation, any know-how, trade secrets and other proprietary information relating to either Party.
- 9.2. Information shall not be considered Confidential Information if such information: (a) was or hereafter becomes known to the recipient prior to the disclosure by the discloser; (b) was at the time of disclosure to the recipient, or subsequently became generally available to the public through no act of the recipient; (c) was received by the recipient from a third party without restrictions as to disclosure; (d) was independently developed by the recipient without use of the Confidential Information of the discloser; or (e) required to be disclosed by a court or governmental authority or by applicable law or regulation, provided however, that (i) the recipient notifies the discloser of such disclosure, to the extent not limited by law; and (ii) to the extent possible, provides the discloser with the opportunity to oppose the disclosure or obtain a protective order.
- 9.3. It is hereby agreed that, without limiting the foregoing, all Intellectual Property Rights in and to the Platform, and any and all documentation, user guides and manuals, and other data and materials related to the foregoing or made available by Cherry to Customer pursuant to this Agreement, are considered as Confidential Information of Cherry.

10. EXCLUSION OF WARRANTY; LIMITATION OF LIABILITY; INDEMNIFICATION

- 10.1. No Medical Advice. ALL OF THE MATERIAL PROVIDED THROUGH THE PLATFORM, SUCH AS FACE MODELS, TEXT, GRAPHICS, PHOTOGRAPHS, IMAGES, MESSAGES, AND ANY OTHER MATERIALS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE OR TREATMENT. CHERRY IS NOT RESPONSIBLE TO ANY ADVICE OR INFORMATION PROVIDED BY ITS CUSTOMERS TO THEIR CLIENTS. ANY ASSESSMENTS PROVIDED BY CHERRY VIA THE PLATFORM DO NOT CONSTITUTE MEDICAL CARE, ADVICE OR DIAGNOSIS. CHERRY DOES NOT PROMISE ANY PARTICULAR RESULTS WITH REGARDS TO HEALTH OR ESTHETIC CONDITION IN CONNECTION WITH THE USE OF THE SERVICE. Cherry does not recommend or endorse any specific tests, physicians, products, procedures, opinions, or other information that may be mentioned through the Platform. Reliance on any information provided through the Platform, is solely

at Customer's (and Customer's clients, if applicable) own risk. Cherry does not undertake any responsibility in relation to the quality of the Face Models and/or any medical and/or other advice provided in connection to the Services and/or the manner in which it is provided, whether provided by Cherry's Customers or by third parties. All Customers should use reasonable discretion in using the Platform.

10.2. For additional disclaimers, please go to the EULA at: [\[REDACTED\]](#).

10.3. OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT THE PLATFORM (INCLUDING THE FACE MODELS) ARE BEING PROVIDED 'AS IS'. CHERRY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (EVEN IF ON NOTICE OF SUCH PURPOSE), NON-INFRINGEMENT, SATISFACTORY QUALITY, OR THAT THE PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE.

10.4. IN NO EVENT SHALL CHERRY OR ANYONE ON ITS BEHALF BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY LOSS OF ACTUAL OR ANTICIPATED REVENUE, BUSINESS, SAVINGS OR PROFITS, OR LOST DATA, IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES TO BE PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE AND WHETHER ARISING IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF CHERRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.5. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL THE TOTAL LIABILITY OF CHERRY FOR ANY CLAIM UNDER ANY CAUSE OF ACTION IN CONNECTION WITH THIS AGREEMENT AND THE PLATFORM TO BE PROVIDED HEREUNDER EXCEED THE FEES PAID TO CHERRY BY CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING SUCH CLAIM.

10.6. Customer shall indemnify, defend and hold Cherry, and its officers, directors and employees harmless from and against any and all costs, liabilities, losses and expenses, including, but not limited to, reasonable attorneys' fees resulting from or arising out of any claim, suit, action, arbitration or proceeding brought by a third party relating to: (a) Customer's use of the Platform; or (b) breach by Customer of any of its covenants, obligations and/or undertakings hereunder.

11. LIMITATIONS ON USE

11.1. In using the Platform, each Party shall comply with and adhere to all applicable laws, rules and/or regulations, including without limitation, those which relate to privacy and data protection, and shall be responsible, at its sole cost, to obtain any mandatory or regulatory permits, licenses and/or approvals (if any), required for the use of the Platform in the manner described herein and enable Cherry to access any information required to in order for Cherry to provide the Services. To the extent required by the applicable data protection laws, Customer is responsible for ensuring that all necessary privacy notices are provided to individuals whose Face Models (and any other personal data) are collected prior to utilizing the Platform.

11.2. Customer agrees to not abuse the Platform. "Abuse" includes, without limitation, using the Platform to:

11.2.1. Defame, harass, stalk, threaten, abuse or otherwise violate others' rights as defined by applicable law.

11.2.2. Harm or interfere with the operation of others' computers and software in any respect, including, without limitation, by uploading, downloading or transmitting corrupt files or computer viruses.

11.2.3. Violate applicable intellectual property, publicity or privacy rights, including, without limitation, by uploading, downloading or transmitting materials, Face Models, or software.

11.2.4. Omit or misrepresent the origin of, or rights in, any file Customer download or upload, including, without limitation, by omitting proprietary language, author identifications, or notices of patent, copyright or trade-mark.

11.2.5. Transmit, post, or otherwise disclose trade secrets, or other confidential or protected proprietary material or information, moreover, provide Cherry's proprietary information to any 3rd party (including: business entities, vendors, integrators etc.).

11.2.6. Download or upload files that are unlawful to distribute through the Platform.

11.2.7. Interfere with or disrupt the Platform or servers or networks connected to the Platform, including attempting to interfere with the access of any other user, host or network, including without limitation, overloading, initiating, propagating, participating, directing or attempting any "denial of service" attacks, "spamming", "crashing", "flooding" or "mail-bombing" the Platform.

11.2.8. Direct bots, spiders, crawlers, avatars, intelligent agents or any other automated process at Cherry's computer systems or otherwise, create unreasonable load upon any of Cherry's computer hardware, network, storage, input/output or electronic control devices or infrastructure.

- 11.2.9. Transmit any Face Models, information or software obtained through the Platform and App, or copy, create, display, distribute, license, perform, publish, recreate, reproduce, sell, or transfer works derived from the Platform.
- 11.2.10. Falsely use a password or personal identification number during logging into the Account or misrepresent one's identity or authority to act on behalf of another.
- 11.2.11. Violate this Agreement in any other manner.

12. MISCELLANEOUS

- 12.1. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Israel, and any dispute arising out of or in connection with this Agreement shall be submitted to the sole and exclusive jurisdiction of the competent courts in Tel-Aviv, Israel.
- 12.2. The Customer hereby agrees that Cherry shall be permitted, for the duration of this Agreement and thereafter, without time limitation, to include in its publications, including, without limitation, on Cherry's website and Cherry's other web publications and in Cherry's written marketing materials, references identifying the Customer as a customer of Cherry, including depiction of the Customer's name, logo and marks.
- 12.3. All notices permitted or required hereunder shall be in writing and shall be sent by email. Notices sent to Cherry shall be addressed to Cherry Ltd. at: info@cherryimaging.com and to Customer's address set out in its website (<https://www.cherryimaging.com/contactus>) or at any other email address as either Party may specify in writing. Any such notice will be deemed as being received on the date of transmission of email or unless given outside normal business hours in which case such notice shall be deemed as being given on the next business day (provided that the sender did not receive a failure or non-delivery message).
- 12.4. Cherry shall not be in default, or held responsible, for damages caused by delay or failure to perform in full or in part its obligations under this Agreement, where such delay or failure is due to circumstances beyond Cherry's reasonable control, including but not limited to acts of God, fire, flood, war, terrorism, embargo, accident, labor disputes, or shortage of material, equipment or transport, epidemic, pandemic, any law, regulation, or any ruling of court, tribunal or governmental agency.
- 12.5. This Agreement may not be assigned without the prior written consent of the other Party, except that Cherry may assign this Agreement in connection with a merger, acquisition, sale of all or substantially all of Cherry's assets or other such corporate reorganization. This Agreement may only be amended by a written document executed by both Parties.
- 12.6. The terms and provisions contained in this Agreement, the Privacy Policy, the EULA and in the Sales Order (if applicable) constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous communications, oral or written, between the Parties hereto with respect to the subject matter hereof.
- 12.7. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
- 12.8. No provision of this Agreement shall insure to the benefit of any third party and no third party whatsoever shall be a third party beneficiary to this Agreement or have any rights hereunder.

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End User License Agreement

1. Acceptance of this Agreement

This End User License Agreement (this “**Agreement**”) you are reading is a legally binding agreement between Cherry Imaging Ltd. (“**Cherry Imaging**”, “**we**” or “**us**”) and yourself as a customer (“**you**” or “**Customer**”). By downloading, installing, accessing, or otherwise using the Cherry Imaging mobile app (the “**App**”) you agree that you have read, understood, accept and agree to be bound by this Agreement.

By checking “I accept”, you acknowledge that you have read this Agreement, understand it, and agree to be bound by it. **If you are unwilling to accept all of the terms of this Agreement, you should not check the “I accept” checkbox and you should not download the App.**

If you violate this Agreement, Cherry Imaging reserves the right to issue you a warning regarding the violation or to immediately terminate or suspend all or part of your use of the App. You agree that Cherry Imaging does not need to provide you notice before terminating or suspending your use of the App, but it may provide such notice in its sole discretion.

You declare that by acceptance of this Agreement and/or by using the App you are: (a) of legal age to form a binding contract with Cherry Imaging or under the strict and continuous supervision of a parent or any other qualified legal guardian, and in any case, at least 18 years of age (b) not prevented or barred, in any way, from entering this Agreement and using the App; (c) not in breach or conflict with any other agreement, undertaking or law to which you are subject or bound; and (d) not barred from receiving the Services (as defined below) under the laws of the country in which you are resident or from which you use the App.

2. Description of the App

Cherry Imaging provides a mobile device downloadable App from an online App store, currently for iPhone®12 and above. The App uses your mobile phone camera to assist you in creating a 3D facial model (the “**Face Model**”) for analysis of skin geometry and color purposes (collectively the “**Services**”) which can be shared with others.

3. No Medical Advice

YOU SHOULD BE AWARE THAT CHERRY IMAGING IS NOT A PROVIDER OF MEDICAL ADVICE OR MEDICAL SERVICES AND THE APP SHOULD NOT BE USED AS A DIAGNOSTIC TOOL OF ANY KIND, INCLUDING OF MEDICAL CONDITIONS. BEFORE YOU TAKE ANY ACTION THAT MAY AFFECT YOUR HEALTH OR SAFETY, OR THE HEALTH OR SAFETY OF OTHERS, PLEASE CONSULT WITH A PROFESSIONAL.

IF YOU THINK YOU MAY HAVE A MEDICAL EMERGENCY, CALL YOUR LOCAL EMERGENCY PHONE NUMBER OR YOUR HEALTH CARE PROVIDER IMMEDIATELY AND NOTIFY ANY RELEVANT AUTHORITIES. ALL OF THE MATERIAL PROVIDED THROUGH THE SERVICE BY CHERRY IMAGING, SUCH AS TEXT, GRAPHICS, PHOTOGRAPHS, IMAGES, MESSAGES, FACE MODELS, AND ANY OTHER MATERIALS, ARE FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE OR TREATMENT. EVEN WHEN ASSESSMENTS ARE BASED ON CLINICAL PROTOCOLS, SUCH ASSESSMENTS DO NOT CONSTITUTE MEDICAL CARE, ADVICE OR DIAGNOSIS. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING YOUR HEALTH. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF ANY INFORMATION PROVIDED THROUGH THE SERVICE. ADDITIONALLY, CHERRY IMAGING DOES NOT PROMISE ANY PARTICULAR RESULTS WITH REGARDS TO YOUR HEALTH IN CONNECTION WITH YOUR USE OF THE SERVICE.. Cherry Imaging does not recommend or endorse any specific tests, physicians, products, procedures, opinions, or other information that may be mentioned through the Service or as a result thereof.

Reliance on any information provided through the Service, or provided by other Customers that use the App or the Service, is solely at your own risk. CHERRY IMAGING HAS NO CONTROL OVER ANY MEDICAL ADVICE PROVIDED TO YOU BY ANY THIRD PARTY, INCLUDING BY CHERRY IMAGING’S CUSTOMERS. Cherry Imaging does not undertake any responsibility in relation to the quality of the medical advice or the manner in which it is provided by doctors or medical organizations. We recommend that you use reasonable discretion, and if you do not feel good or if you do not receive feedback within a reasonable time, we recommended that you contact your doctor directly.

4. License Grant to Use the App

Cherry Imaging hereby grants you a personal, non-exclusive, non-transferable and non-sublicensable revocable license, which is time-limited to the term of this Agreement, to install the App, solely for your own personal use. For the removal of doubt, no commercial use may be made by you or any others on your behalf with the use of the App without Cherry Imaging’s prior written consent. The App is licensed, not sold, to you for use only under the terms of this Agreement. Cherry Imaging reserves all rights not expressly granted to you.

You shall not make any copies of the App and are expressly prohibited from providing the App or any portion thereof, or access thereto, to any third party, except as otherwise agreed to by Cherry Imaging in writing.

You shall not remove or destroy any copyright or restricted rights notices: (a) affixed to any media containing the App; or (b) incorporated within the App. You shall not reproduce any such copyright or restricted rights notices in any copy of the App created by you.

Cherry Imaging may make modifications, additions and upgrades to the App, as it deems necessary. The terms of this Agreement will apply to any updates that Cherry Imaging may make available to you unless the update is accompanied by a separate license, in which case the terms of that license will govern. You agree that updates may require you to change or update your App, and may affect your ability to use, access or interact with the App. Cherry Imaging is not obligated to provide any maintenance, technical or other support for the App.

You hereby acknowledge that your right to use the App is limited by this Agreement, and, if you violate or if, at any point, you do not agree to any of the terms contained in this Agreement, your right to use the App shall immediately terminate, and you shall immediately refrain from using the App. If the App or any part thereof is determined to be illegal under the laws of the country in which you are situated, you shall not be granted any right to use the App, and must refrain from using the App.

5. **Access to the App**

It is your responsibility to ensure your mobile device meets all the necessary technical specifications to enable you to access and use the App. Cherry Imaging does not provide you with the equipment to access and/or use our App. You are responsible for all fees charged by third parties related to your access and use of the App (e.g., charges by internet service providers or air time charges). Cherry Imaging cannot guarantee that the App will always function without disruptions, delay or errors. Cherry Imaging takes no responsibility for any disruption, interruption or delay caused by any failure of, or inadequacy in any of these items or any other items over which we have no control, including, but not limited to, failures or delays resulting from labor disputes, strikes, lockouts, war, terrorism, riot, or acts of God.

6. **Log-in Information**

In order to use the App, you will register on-line with a personal user name and password (“**Login Information**”). The following rules govern the security of your Login Information:

- a. You shall not share your Login Information with anyone;
- b. In the event you become aware of, or reasonably suspect any breach of security, including, without limitation any loss, theft, or unauthorized disclosure of your Login Information, you must immediately notify Cherry Imaging in order to modify your Login Information;
- c. You are solely responsible for maintaining the confidentiality of the Login Information, and you will be responsible for all uses of your Login Information;

You hereby acknowledge and agree that upon activation of the App, Cherry Imaging will have access to your mobile device’s camera. Any personal information you provide to us when using the App, which may include, *inter alia*, your Face Model, name, identification number, address, geographic location, e-mail address, cellphone number, and any such other information, will be held and used in accordance with the App’s Privacy Policy as may be amended from time to time (available at: _____).

You agree that you will supply accurate and complete information to us, and that you will update that information promptly after it changes. you represent and warrant that you have full right and authority to provide Cherry Imaging with the foregoing information, including, without limitation, any third party’s consent (to the extent required under any applicable law).

7. **Rules of Conduct and Usage**

You represent and warrant that you have full right and authority to use the App and to be bound by this Agreement. You agree that you will comply fully with this Agreement and all applicable domestic and international laws, regulations, statutes, ordinances that govern your use of such App.

In furtherance of the foregoing, you agree that you shall not:

- a. Access and use the App, if you are barred from receiving the App under the provisions of this Agreement or any applicable law;
- b. Copy, rent, lease, sell, transfer, assign, sublicense, disassemble, reverse engineer or decompile (except if expressly authorized by Cherry Imaging or by applicable statutory law), modify or alter any part of the App;
- c. Violate the contractual, personal, intellectual property or other rights of any party;
- d. Rent, lease, sell, trade, gift, bequeath or otherwise transfer the App to anyone without Cherry Imaging’s prior written consent;
- e. Violate any applicable laws or regulations, or encourage or promote any illegal activity including, but not limited to, copyright infringement, defamation, or invasion of privacy; and/or
- f. Attempt to interfere with, hack into or decipher any transmissions to or from the servers for the App.

8. **Intellectual Property Ownership**

Cherry Imaging, its affiliates and/or licensors retain all rights in the App (including, but not limited to, software, designs, graphics, texts, information, pictures, video, sound, music, and other files, and their selection and arrangement) (collectively, the “**App Materials**”). The entire contents of the App are protected by applicable copyright, trade dress, patent, and trademark laws, international conventions, and other laws protecting intellectual property and related proprietary rights. You shall not, nor shall you cause or permit any other party to modify, decompile, disassemble, reverse engineer, copy, transfer, create derivative works from, rent, sub-license, distribute, reproduce framed, republish, scrape, download, display, transmit, post, lease or sell in any form or by any means, in whole or in part, use for any purpose other than for using the App pursuant to this Agreement or otherwise exploit any of the App Materials without Cherry Imaging’s explicit, prior written consent. All other uses of copyrighted or trade mark material, including any derivative use, require explicit, prior written consent from Cherry Imaging.

Cherry Imaging, its affiliates and/or its licensors own all right, title, and interest, including copyrights and other intellectual property rights, in and to all the App Materials. You hereby acknowledge that you do not acquire any ownership rights by using the App or by accessing any of the App Materials, or rights to any derivative works thereof.

Any comments or suggestions for the modification, correction, improvement or enhancement of the App and/or any of the App Materials which you may provide Cherry Imaging, you hereby grant Cherry Imaging a non-exclusive, irrevocable, worldwide, royalty-free license, including the right to sublicense, to use and disclose such comments and suggestions in any manner Cherry Imaging chooses and to display, perform, copy, have copied, make, have made, use, sell, offer to sell, and otherwise dispose of Cherry Imaging’s products and content embodying such comments or suggestions in any manner and via any media Cherry Imaging chooses, but without reference to the source of such comments or suggestions.

9. User Content

Some areas of the Service allow to submit, post, display, provide, or otherwise make available content (including but not limited to sharing with our Customers) such as profile information, comments, questions, and other content or information, including but not limited to creating a Face Model (any such materials you upload, submit, post, display, provide, or otherwise makes available on the Service is referred to as “**User Content**”).

WE CLAIM NO OWNERSHIP RIGHTS OVER USER CONTENT CREATED BY YOU. THE USER CONTENT YOU CREATE REMAINS YOURS. You may share User Content through the Service with other Customers, and you agree to allow others to view, edit, share, and/or interact with your User Content in accordance with your App settings and this Agreement. We have no control over and is not responsible for any use or misuse (including any distribution) by other Customer or third parties with whom you choose to share your User Content.

By submitting, posting, displaying, providing, or otherwise making available any User Content on or through the Service, you expressly grant, and you represent and warrant that you have all rights necessary to grant, to Cherry Imaging a royalty-free, fully paid-up, sublicensable (through multiple tiers), transferable, perpetual, irrevocable, non-exclusive, worldwide license, without additional consideration to you or any third party, to use, reproduce, modify, list information regarding, edit, translate, distribute, syndicate, perform and display (publicly or otherwise), adapt, analyze, exploit, and make derivative works of all such User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, in connection with research, development, evaluating, and improving Cherry Imaging’s products and technology and for statistical purposes.

If You use the App for remote consultation with other third parties who are also using the App, You hereby grant us a permission to grant such third parties a non-exclusive license to access your User Content through the App, and to analyze, use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Service and under this Agreement. If you choose to make any of your personally identifiable or other information (including your Face Model) available through the Service, you do so at your own risk.

For the purposes of this Agreement, “**Intellectual Property Rights**” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals, and extensions thereof, under the laws of any state, country, territory, or other jurisdiction.

In connection with your User Content, you affirm, represent, and warrant the following:

- Your User Content and Cherry Imaging’s use thereof as contemplated by this Agreement and the Service will not violate any law or infringe any rights of any third party, including but not limited to any Intellectual Property Rights and privacy rights.
- We may exercise the rights to your User Content granted under this Agreement without liability for payment of any guild fees, residuals, payments, fees, or royalties payable under any collective bargaining agreement or otherwise.

- To the best of your knowledge, all your User Content and other information that you provide to us is truthful and accurate.

You are solely responsible for any interactions with our Customers. We reserve the right, but have no obligation, to monitor disputes between you and Customers. Cherry Imaging shall have no liability for your interactions with our Customers, or for any other action or inaction.

Cherry Imaging takes no responsibility and assumes no liability for any User Content that you or Customer or third party posts, sends, or otherwise makes available through the Service. You shall be solely responsible for your User Content and the consequences of posting, publishing it, sharing it, or otherwise making it available on the Service, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content. You understand and agree that you may be exposed to User Content that is inaccurate, objectionable, inappropriate for children, or otherwise unsuited to your purpose, and you agree that Cherry Imaging shall not be liable for any damages you allege to incur as a result of or relating to any User Content. We may (but have no obligation to) monitor, evaluate, alter, or remove User Content before or after it appears on the Service, or analyze your access to or use of the Service, for any or no reason.

10. **Confidential Information**

You acknowledge and agree that the App was developed at considerable time and expense by Cherry Imaging and contains valuable trade secrets and confidential information of Cherry Imaging. Accordingly, you agree to maintain the confidentiality of any proprietary information received by it during, or prior to entering into, this Agreement, including, without limitation, the App and any trade secrets and other proprietary information, that you should know is confidential or proprietary based on the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information and all other information obtained during the use of the App as permitted hereunder (“**Confidential Information**”). The restriction herein shall not apply to the extent that such information is in the public domain or hereafter falls into the public domain through no fault of yours. You agree not to use said Confidential Information for any purpose except as necessary to exercise your rights under this Agreement. You shall protect the secrecy of and avoid disclosure and unauthorized use of Cherry Imaging’s Confidential Information to the same degree that it takes to protect its own confidential information and in no event less than reasonable care.

11. **Disclaimer of Warranty; Limitation of Liability; Indemnification**

The App is provided on an “AS IS” and “AS AVAILABLE” basis. You are solely responsible for any and all acts or omissions taken or made in reliance on the App. To the fullest extent permitted by law, Cherry Imaging, its officers, directors, employees, licensors and agents disclaim all warranties, explicit or implied, in connection with the App and your use thereof including without limitation implied warranties of merchantability, title, fitness for a particular purpose or non-infringement, usefulness, authority, accuracy, completeness, and timeliness.

Cherry Imaging assumes no liability or responsibility for any:

- a. Errors, mistakes, inaccuracies, non-suitability or non-conformity of the App or any of the Services;
- b. Direct, indirect, special, incidental, punitive or consequential damages including without derogating personal injury, property damages and/or monetary damages, of any nature whatsoever, arising out of the use of or the inability to use the App;
- c. Any unauthorized access to or use of Cherry Imaging’s servers and/or any and all personal information and/or financial information stored therein;
- d. Any interruption or cessation of transmission to or from the App;
- e. Any bugs, viruses, Trojan horses, or the like which may be transmitted to or through the App by any third party;
- f. Any results that may be obtained from the use of the App; and/or
- g. The quality of any information, or other material obtained by you through the App;

WITHOUT DEROGATING FROM THE ABOVEMENTIONED, IN NO EVENT WILL CHERRY IMAGING, ITS DIRECTORS, OFFICERS, AGENTS, CONTRACTORS, PARTNERS, LICENSORS, CONSULTANTS AND/OR EMPLOYEES, BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE APP OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE APP, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT CHERRY IMAGING HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. WITHOUT DEROGATING FROM THE AFOREMENTIONED, IN ANY EVENT CHERRY IMAGING’S MAXIMUM LIABILITY IN ALL CASES AND FROM ALL CAUSES OF ACTION SHALL BE LIMITED TO THE SUM OF US \$50.

You agree to indemnify and hold Cherry Imaging, and each of its directors, officers, agents, contractors, partners, licensors and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney’s

fees, arising out of or in connection with any of the following:

- a. Your use of, and access to the App;
- b. Your violation of any term of this Agreement;
- c. Your violation of any third party right, including without limitation any copyright, property, or privacy right;
- d. Any claim that any user submission made by you has caused damage to a third party.

Certain laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these laws apply to you, then the limitations included in this section shall be interpreted to the maximum extent permitted under applicable law.

12. **Notices**

Notices to you may be made via the App and/or e-mail. Cherry Imaging may also provide notices of material changes to this Agreement or other matters by displaying notices or links to notices to you generally on the App. You agree that all agreements, notices, disclosures and any other communications that Cherry Imaging provides as aforementioned satisfy any legal requirement that such communications be in writing. Any and all e-mail notices sent to you will constitute sufficient and effective delivery and notice to you, whether or not you access or review the notice and shall be deemed to have been delivered to you, whether actually received by you or not.

13. **Miscellaneous**

By using the App, you agree that the laws of the State of Israel, without regard to principles of conflict of laws and regardless of your location, will govern this Agreement and any dispute of any sort that might arise between you and Cherry Imaging. Any claim or dispute between you and Cherry Imaging that arises in whole or in part from your use of the App shall be decided exclusively by a court of competent jurisdiction located in Tel Aviv, Israel, to the exclusion of any other courts, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non-convenient with respect to venue and jurisdiction in the courts of Tel Aviv, Israel.

The failure by Cherry Imaging to enforce any provision of this Agreement, will not constitute a waiver of future enforcement of that or any other provision. If, for any reason, a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

This Agreement constitute the complete and exclusive agreement between Cherry Imaging and you regarding its subject matter and supersedes all prior or contemporaneous quotations, agreements, communications or understandings, whether written or oral, relating to its subject matter.

For any questions about this Agreement or any other issue regarding Cherry Imaging or the App please contact us at: info@cherryimaging.com.

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