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| 1. **THE SUBJECT OF THE AGREEMENT**    1. ***General.*** The following conditions provide for terms that are common to this Agreement. In the event of a conflict between this Agreement and any Order, this Agreement will control, unless expressly stated to the contrary in the Order.    2. ***Services.*** All services provided by SaaS Provider under this Agreement (each as described in more detail in each Order, the “Service(s)”) will be provided to Client according to this Agreement, all Orders, and all schedules, exhibits, or other attachments made a part of this Agreement.    3. The Parties have agreed that the following Services may be provided under this Agreement:       1. ***Software Services.*** SaaS Provider will provide Client, and individual human end users that Client permits to use (“End Users”), with access to the functionality of the software products provided by SaaS Provider and identified in an Order (“Software Service(s)”). SaaS Provider will provide the functionality of the Software Services via the Internet through the use of web browser software.       2. ***Professional Services.*** SaaS Provider may provide integration, implementation, or other professional services (each to the extent identified on an Order, “Professional Services”) to Client as set forth in an Order or otherwise agreed upon between the Parties. Namely, Professional services: (i) for setting up, implementing and maintaining the System in order to ensure the achievement of target indicators for the accuracy of recognition of the Client's Assortment of Goods/Products; and/or (ii) for setting up, implementing and maintaining the System in order to ensure the achievement of target indicators for the accuracy of recognition of the Assortment of goods / products of the Client's competitors; and/or (iii) for additional configuration of the System in accordance with the requirements of the Client.       3. ***Technical support.*** SaaS Provider will provide technical support services to Client in accordance with the Order.       4. other services agreed by the Parties in the Order.    4. In the Order, the Parties agree on the following conditions: (i) list and content of the Services; (ii) start and end dates for the provision of the Services. The terms are indicative and are not grounds for accepting or not accepting the Services; (iii) the cost of the Services provided by the SaaS Provider; (iv) a list of access, documents and information to be provided by the Client in favor of the SaaS Provider for the purpose of high-quality and timely provision of the Services, as well as the procedure for such provision.    5. In the Order, the Parties may also agree on the following conditions, depending on the type of Services: (i) phasing of the provision of the Services (if the provision of the Service involves division into separate stages and if they are agreed by the Parties); (ii) other conditions requiring approval (service level agreement (SLA), requirements for devices, information systems, equipment and technical environment of the Client, rules for shooting, displaying products, etc.)    6. During the period of access to the Software, Client will receive a nonexclusive, non-assignable, worldwide right to access and use the Software solely for internal business operations subject to the terms of this Agreement.    7. ***Restrictions.*** Client shall not, and shall not permit anyone to: (i) copy or republish the Software, (ii) make the Software available to any person other than authorized Platform users, (iii) use or access the Software to provide service bureau, time-sharing or other computer hosting services to third parties, (iv) modify or create derivative works based upon the Software or documentation provided or made available by SaaS Provider to Client regarding the use or operation of the Services (Documentation), (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the software used to provide the Software or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software, except and only to the extent such activity is expressly permitted by applicable law, or (vii) access the Software or use the Documentation in order to build a similar product or competitive product. Subject to the limited licenses granted herein, SaaS Provider shall own (or will have legal rights to it) all right, title and interest in and to the Software, services, Documentation, and other deliverables provided under this Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights therein. Client agrees to assign all right, title and interest it may have in the foregoing to SaaS Provider. 2. **OBLIGATIONS OF THE PARTIES**    1. ***The SaaS Provider undertakes:***       1. To provide the Client with access to the software by registering in the system with a unique name (Login) and a password for entering the system and then creating a separate account for interaction with the software through the Client’s Personal Account.       2. To provide the Client with free information support on issues related to software via e-mail.       3. Independently, timely and free of charge to update the current version of the software during the validity of this Agreement.       4. Inform the Client regarding the version of the software that won’t be supported since the specified date.       5. The SaaS Provider shall secure the storage, backup and archive storage of the Client’s data.       6. In case of a technical capability to eliminate possible software failures in the software at the request of the Client.       7. Strictly adhere to and not violate the terms of this Agreement and annexes, as well as to ensure the confidentiality of commercial, personal and technical information received from the Client as defined in Article 7 of this Agreement.    2. ***The Client shall oblige:***       1. The Client shall pay for Services.       2. The Client shall not use the software for purposes prohibited by the existing laws or violate the rights of the third parties in accordance with the applicable law. Client shall comply with all applicable local, state, national and foreign laws in connection with its use of the Software, including those laws related to data privacy, international communications, and the transmission of technical or personal data. Client acknowledges that SaaS Provider exercises no control over the content of the information transmitted by Client through the Software. Client shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.       3. The Client shall strictly adhere to and not violate the terms of this Agreement and annexes as well as ensure the confidentiality of commercial, technical information received from the SaaS Provider as defined in Article 7 of this Agreement.    3. ***The Client shall be entitled to:***       1. Use the granted access to the software in accordance with its purpose.       2. Submit applications to the SaaS Provider to resolve software failures, errors and functional change requests.       3. Use the granted access to the software to provide services to third parties and provide access to the software to third parties only in agreement with the SaaS provider.    4. ***Assistance.*** Client shall provide commercially reasonable information and assistance to SaaS Provider to enable SaaS Provider to deliver the Software. Upon request from SaaS Provider, Client shall promptly deliver Client Content (means all data and materials provided by Client to SaaS Provider for use in connection with the Services) to SaaS Provider in an electronic file format specified and accessible by SaaS Provider. Client acknowledges that SaaS Provider’s ability to deliver the Software in the manner provided in this Agreement (Appendix) may depend upon the accuracy and timeliness of such information and assistance.    5. ***Unauthorized Use; False Information.*** Client shall: (a) notify SaaS Provider immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (b) report to SaaS Provider immediately and use reasonable efforts to stop any unauthorized use of the Software that is known or suspected by Client and (c) not provide false identity information to gain access to or use the Software.    6. The Client is obliged to notify SaaS Provider at least 1 business day in advance about cases that hinder the provision of services.    7. ***Access.*** Client shall be solely responsible for the acts and omissions of its users. SaaS Provider shall not be liable for any loss of data or functionality caused directly or indirectly by the users.    8. ***Client Input.*** Client is solely responsible for collecting, inputting and updating all Client Content, and for ensuring that the Client Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. Client shall: (i) notify SaaS Provider immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to SaaS Provider immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by Client, and (iii) not provide false identity information to gain access to or use the Service.    9. ***License from Client.*** Subject to the terms and conditions of this Agreement, Client shall grant to SaaS Provider a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Client Content solely as necessary to provide the Software to Client.    10. ***Ownership and Restrictions.*** Client retains ownership and intellectual property rights in and to its Client Content. SaaS Provider or its licensors retain all ownership and intellectual property rights to the services, Software programs, and anything developed and delivered under the Agreement.    11. ***Suggestions.*** SaaS Provider shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Software any suggestions, enhancement requests, recommendation or other feedback provided by Client, including Users, relating to the operation of the Software. 3. **PAYMENT TERMS**    1. Services Fees. For the Services provided under this Agreement, Client will pay SaaS Provider the fees in the amounts set forth in the applicable Order.    2. Fees are non-cancelable and non- refundable.    3. Except as otherwise may be set forth in the applicable Order, all amounts owed shall be due 30 days from receipt by Client of an invoice for same. All fees paid and expenses reimbursed under this Agreement will be in United States currency, unless otherwise agreed in the Order. In case of violation of the deadline for payment of the SaaS Provider 's invoice, the Client shall pay the SaaS Provider a penalty in the amount of 0.5% of the value of this invoice for each day of delay. This penalty is payable by the Client within 5 days from the date of sending the relevant request by the SaaS Provider by e-mail specified in this Agreement.    4. The Parties confirm that the agreed cost of the Services in another currency depends on the dollar exchange rate against this currency. If the amount of the selected currency changes in relation to the dollar by more than 10%, then the Parties must recalculate the cost of the Services, taking into account these changes.    5. Having paid the invoice the Client confirms that all services are delivered in time and accepted by the Client. No additional acceptance acts are required.    6. Expenses. Client agrees to reimburse SaaS Provider for all reasonable travel and expenses incurred by SaaS Provider in connection with the performance of the Services including banking and transaction expenses. 4. **TERM AND TERMINATION**    1. This Agreement shall be valid within 2 years upon Effective Date.    2. The Parties shall be entitled to early terminate this Agreement by a mutual written agreement.    3. ***Termination.*** Either party may terminate this SaaS Agreement immediately upon a material breach by the other party that has not been cured within thirty (30) days after receipt of notice of such breach.    4. ***Suspension for Non-Payment.*** SaaS Provider reserves the right to suspend delivery of the Software if Client fails to timely pay any undisputed amounts due to SaaS Provider under this SaaS Agreement, but only after SaaS Provider notifies Client of such failure (by e-mail specified in this Agreement) and such failure continues for fifteen (15) days. Suspension of the Software shall not release Client of its payment obligations under this SaaS Agreement. Client agrees that SaaS Provider shall not be liable to Client or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the Software resulting from Client’s nonpayment.    5. ***Suspension for Ongoing Harm.*** SaaS Provider reserves the right to suspend delivery of the Software if SaaS Provider reasonably concludes that Client use of the Software is causing immediate and ongoing harm to SaaS Provider or others. In the extraordinary case that SaaS Provider must suspend delivery of the Software, SaaS Provider shall immediately notify Client of the suspension and the parties shall diligently attempt to resolve the issue. SaaS Provider shall not be liable to Client or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the Software in accordance with this Section 5.5. Nothing in this Section 5.5 will limit SaaS Provider’s rights under Section 5.6. below.    6. ***Effect of Termination.***       1. Upon termination of this SaaS Agreement, SaaS Provider shall immediately cease providing the Software and all usage rights granted under this SaaS Agreement shall terminate.       2. If SaaS Provider terminates this SaaS Agreement due to a breach by Client, then Client shall immediately pay to SaaS Provider all amounts then due under this SaaS Agreement and to become due during the remaining term of this SaaS Agreement, but for such termination. If Client terminates this SaaS Agreement due to a breach by SaaS Provider, then SaaS Provider shall immediately repay to Client all pre-paid amounts for any unperformed Software Appendix to be delivered after the termination date.       3. Upon termination of this SaaS Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction, provided that the receiving party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.      1. **WARRANTIES**    1. ***Warranty.*** SaaS Provider represents and warrants that it will provide the Software in a professional manner consistent with general industry standards and that the Software will perform substantially in accordance with the Documentation. For any beach of a warranty, Client’s exclusive remedy shall be as provided in Section 5, Term and Termination.    2. SAAS PROVIDER WARRANTS THAT THE SOFTWARE WILL PERFORM IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE DOCUMENTATION. SAAS PROVIDER DOES NOT GUARANTEE THAT THE SOFTWARE WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT SAAS PROVIDER WILL CORRECT ALL SOFTWARE ERRORS. CLIENT ACKNOWLEDGES THAT SAAS PROVIDER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SAAS PROVIDER (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. NEITHER SAAS PROVIDER NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, NOR SHALL SAAS PROVIDER OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF CLIENT’S OR ANY USER’S DATA, FILES, OR PROGRAMS. 2. **RESPONSIBILITY OF THE PARTIES**    1. The parties shall be responsible for non-performance or improper performance of their obligations under this Agreement according to the legislation of the United States of America, State of Delaware.    2. The SaaS Provider shall not be responsible for any Client’s activities related to the software use.    3. The SaaS Provider shall not be liable to the Client for any damages suffered by the Client for the loss and / or disclosure of its data to software access.    4. The SaaS Provider shall secure the basic information security of the Client’s data within the limits determined by normal conditions. Basic information security shall include such state of information security where its confidentiality, availability and integrity are insured.    5. The SaaS Provider shall not be liable to the Client for delays and disruptions that occur directly or indirectly, that is beyond the reasonable control of the SaaS Provider.    6. The SaaS Provider shall not responsible for the quality of services (in particular data services, mobile network operators) necessary for operating with software if they are organized by the third parties not involved by the SaaS Provider.    7. The Client agrees that for operating with the software it needs to use software (web-browsers, operating systems, etc.) and equipment (personal computers, mobile phones, tablets, network equipment, etc.) produced and provided by the third parties, and the SaaS Provider shall not be held responsible for its quality.    8. In case of data loss caused by the Client’s activities, data recovery shall be performed by the request to the SaaS Provider. Data recovery shall be carried out only subject to availability of the last backup.    9. ***LIMITATIONS OF LIABILITY.*** NEITHER PARTY (NOR ANY LICENSOR OR OTHER SUPPLIER OF SaaS Provider) SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY’S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), SHALL EXCEED THE FEES PAID OR PAYABLE BY Client UNDER THIS SAAS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. The foregoing limitations shall not apply to the parties’ obligations (or any breach thereof) under Sections entitled “Restriction”, “Indemnification”, or “Confidentiality”.    10. ***Indemnification by SaaS Provider.*** If a third party makes a claim against Client that the Software infringes any patent, copyright or trademark, or misappropriates any trade secret, or that SaaS Provider’s negligence or willful misconduct has caused bodily injury or death, SaaS Provider shall defend Client and its directors, officers and employees against the claim at SaaS Provider’s expense and SaaS Provider shall pay all losses, damages and expenses (including reasonable attorneys’ fees) finally awarded against such parties or agreed to in a written settlement agreement signed by SaaS Provider, to the extent arising from the claim. SaaS Provider shall have no liability for any claim based on (a) the Client Content, (b) modification of the Software not authorized by SaaS Provider, or (c) use of the Software other than in accordance with the Documentation and this SaaS Agreement.    11. ***Indemnification by Client.*** If a third party makes a claim against SaaS Provider that the Client Content infringes any patent, copyright or trademark, or misappropriates any trade secret, Client shall defend SaaS Provider and its directors, officers and employees against the claim at Client’s expense and Client shall pay all losses, damages and expenses (including reasonable attorneys’ fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Client, to the extent arising from the claim.    12. ***Conditions for Indemnification.*** A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party’s expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.      1. **CONFIDENTIALITY**    1. ***Definition***. “Confidential Information” means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as “confidential” or “proprietary,” (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be “confidential” or “proprietary” within 30 days of such disclosure, (c) is specifically deemed to be confidential by the terms of this SaaS Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of Client Content as contemplated by this SaaS Agreement, Client Content is deemed Confidential Information of Client. SaaS Provider software and Documentation are deemed Confidential Information of SaaS Provider.    2. ***Confidentiality.*** During the term of this SaaS Agreement and for 5 years thereafter (perpetually in the case of software), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this SaaS Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party’s Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party.    3. ***Exceptions.*** Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each party may disclose the existence of this SaaS Agreement and the relationship of the parties, but agrees that the specific terms of this SaaS Agreement will be treated as Confidential Information; provided, however, that each party may disclose the terms of this SaaS Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and investors. 2. **MISCELLANEOUS**    1. ***Non-Exclusive Service.*** Client acknowledges that Software is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict SaaS Provider’s ability to provide the Software or other technology, including any features or functionality first developed for Client, to other parties.    2. Any amendments and supplements to this Agreement are valid only if made in writing and signed by duly authorized representatives of both Parties. Such amendments and supplements will be an integral part of this Agreement.    3. None of the Parties has the right to assign their rights and obligations under this Agreement without written consent of the other Party.    4. The documents transmitted by e-mail, have legal effect under condition of presence on them of the signature and other attributes of the Party allowing identifying unambiguously that the document is sent by the Agreement Party.    5. Notifications made in accordance with the terms of this Agreement shall be rendered via Courier Service, via notification receipt letter (registered letter) or by Email to the addresses of the Parties indicated in the Agreement. Any such notification shall be considered delivered after three days from the date of their dispatch via Post or, if being sent off by Courier Service, should be considered received upon handing, or, in case of sending off via Email, after the Email confirmation receipt.    6. Notices sent by e-mail are considered to be acceptable by the parties.    7. After signing this Agreement all previous negotiations and correspondence related to the subject-matter hereof loses their legal force.    8. ***Electronic Execution and Delivery.*** A facsimile, .PDF or other reproduction of this Agreement (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding, effective for all purposes and documents are considered signed by a simple electronic signature and are recognized by the parties as equivalent to paper documents signed by the parties' handwritten signature. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, .PDF or other reproduction hereof.    9. The Parties have agreed that all correspondence under this Agreement shall be performed in English.    10. ***Waiver.*** No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this SaaS Agreement shall not constitute a waiver of any other or subsequent breach.    11. ***Severability.*** If any term of this SaaS Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this SaaS Agreement shall remain in full force.    12. ***Publicity.*** SaaS Provider may include Client’s name and logo in its Client lists and on its website. Upon signing, SaaS Provider may issue a high-level press release announcing the relationship and the manner in which Client will use the SaaS Provider solution. SaaS Provider shall coordinate its efforts with appropriate communications personnel in Client’s organization to secure approval of the press release if necessary.    13. No Third Party Beneficiaries. This SaaS Agreement is an agreement between the parties, and confers no rights upon either party’s employees, agents, contractors, partners of Clients or upon any other person or entity.    14. ***Independent Contractor.*** The parties have the status of independent contractors, and nothing in this SaaS Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this SaaS Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party’s personnel.    15. ***Statistical Information.*** SaaS Provider may anonymously compile statistical information related to the performance of the Services for purposes of improving the SaaS service, provided that such information does not identify Client’s data or include Client’s name.    16. The Parties guarantee that they have all rights, authorities and documents necessary for conclusion and execution of this Agreement. |