

## **DEFINITIONS**

- 1.1 "Effective Date" means the date which you commence using the Services.
- 1.2 "Services" means the provision of the services as selected by you during the ordering process and confirmed by email from Innofile:
- 1.3 "Transaction Fee" means the fee payable by you in respect of the provision of the Services, and may be varied by Innofile on notice to you from time to time. Transaction Fee is charged for each activated File Package.
- 1.4 "Subscription Period" means the period from the Effective Date until this Agreement is terminated in accordance with the provisions herein.
- 1.5 "Activation Code" means a code of eight (8) characters that is provided for users of Services. Activation Codes are sent to users after they have completed the ordering process of Services.
- 1.6 "File Package" means one or more files that are bound together during the file upload process as part of Services and then activated by Activation Code.

## **GRANT OF RIGHTS; RESTRICTIONS**

- 2.1 Subject to all the terms and conditions of this Agreement, Innofile shall supply the Services to you and grant you a personal, non-transferable, terminable licence to use the Services from the Effective Date for the Subscription Period.
- 2.2 You may request and Innofile may agree to upgrade or downgrade the Services provided to you and the Transaction Fees payable will be amended accordingly for the next payment, if applicable. When specified in a separate order confirmation Innofile may agree to refund pre-paid, but not used Activation Codes.
- 2.3 Innofile shall use all reasonable endeavours to ensure that access to the Services is available at all times subject to planned and emergency downtime as set out at clause 2.5.
- 2.3 You hereby agree not to use the Services for any use that is:
- 2.3.1 obscene, libellous, blasphemous, defamatory, inciting hatred, terrorism or any similar offence ;
- 2.3.2 unlawful or misleading;
- 2.3.3 for any use that breaches third party copyright, including, without limitation, storing or sharing copyrighted music or other copyrighted material that has not been legally obtained;
- 2.3.4 undertaken on behalf of third parties;
- 2.3.5 in contravention of any applicable local, state, national and foreign laws, treatises and regulations;

In the event that you are in breach of this clause 2.3 or in Innofile's opinion, reasonably likely to become in breach, Innofile may suspend the Services forthwith

without notice and you hereby indemnify Innofile in full for any loss or damage suffered by Innofile as a result of your breach.

2.4 You hereby acknowledge and agree that if, per any File Package created by you, usage materially exceeds more than the average level of usage of Innofile's customers for the same Services then Innofile reserves the right to terminate or suspend your account without notice.

2.5 Innofile shall use all reasonable endeavours to notify you of planned downtime and unavailability of the Service however notwithstanding such obligation, Innofile shall not be liable for any Service unavailability which arises as a result of emergency downtime and Service unavailability.

2.6 Unauthorized use of the Service, and/or the resale of the Services without Innofile's prior written consent, is expressly prohibited.

### **PROPRIETARY RIGHTS**

3.1 Innofile has sole and exclusive ownership of all right, title, and interest in and to the Services and any software included in the Services, including all copyright and any other intellectual property rights therein. This Agreement conveys a limited right and license to use the Services and any software made available to you and shall not be construed to convey title to or ownership of the Services or the software contained therein to you. All rights in and to the Services not expressly granted to you are reserved by Innofile.

3.2 The password and log-on details, if provided to you, are confidential to you and you hereby agree that you shall not share such information with any third parties. You shall notify Innofile forthwith if you are aware of any third party having access to such information.

### **FEE**

4.1 In consideration for the provision of the Services, you shall pay Innofile the non-refundable Transaction Fee per File Package.

4.2 Innofile shall issue invoices in respect of the Transaction Fees and shall collect the Transaction Fees as specified during the ordering process of Services. Both parties agree that no refunds shall be given in any circumstances.

4.3 The Transaction Fee is exclusive of VAT or other sales tax which, if applicable to you, shall be payable by you at the then prevailing rate.

4.4 In the event that the Transaction Fee, as appropriate, is not collected in accordance with the provisions herein, Innofile may deny you access to the Services without notice.

### **TERM AND TERMINATION**

5.1 This Agreement shall commence on the Effective Date and shall continue in effect until all File Packages created by you have expired. This clause is not applicable if otherwise agreed by you and Innofile.

5.2 If either party breaches this Agreement in any material respect, the other party may give written notice to the breaching party of its intent to terminate, and if such breach is not cured within thirty (30) days after the breaching party's receipt of such

notice, this Agreement shall terminate without any further notice required. Without prejudice to the foregoing, in the event that you breach the provisions of clause 2, Innofile may suspend and/or terminate the Services forthwith without notice.

5.3 Upon any termination of this Agreement, (a) the rights and licenses granted to you herein shall terminate; (b) you shall cease all use of the Services; and (c) Innofile shall at its own discretion remove and/or purge your data and account from the system.

#### **WARRANTIES AND LIABILITY**

6.1 Innofile does not represent or warrant that: (i) the use of the Services will be timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (ii) the Services will meet your requirements or expectations, (iii) errors or defects will be corrected, (iv) the Services or the server(s) that make the Services available are free of viruses or other harmful components. The Services are provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law.

6.2 Your sole remedy with respect to any claims arising out of this Agreement shall be limited in the aggregate to the monies paid by you to Innofile under this Agreement during the twelve (12) month period preceding the event giving rise to such liability.

6.3 In no event shall Innofile be liable for:

(a) any special, indirect, incidental or consequential damages, including loss of profits and goodwill, business or business benefit, or the cost of procurement of substitute products or services by you even if advised of the possibility of such damages;

(b) any delay or failure to provide the Services that is due to third parties, including, without limitation, internet service providers, data centres, server hosting companies and telecommunications companies;

(c) credit card fraud committed against you by any third party provider of credit card services.

#### **GENERAL**

7.1 You shall not assign this Agreement, in whole or in part, without the prior written consent of Innofile.

7.2 You consent to the use by Innofile of your name in customer lists and other publicity, including interviews, case studies, and conference discussions, provided that such publicity accurately describes the nature of the relationship between you and Innofile.

7.3 This Agreement and its performance shall be governed by and construed in accordance with and the parties hereby submit to the exclusive jurisdiction of the laws of Finland.

7.4 You agree that because of the unique nature of the Services and Innofile' proprietary rights therein, a demonstrated breach of this Agreement by you would irreparably harm Innofile and monetary damages would be inadequate compensation. Therefore, you agree that Innofile shall be entitled to preliminary and permanent injunctive relief, as determined by any court of competent jurisdiction to enforce the provisions of this Agreement.

7.5 If any provision of this Agreement or the Services thereof is declared void, illegal, or unenforceable, the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

7.6 Any failure by any party to this Agreement to enforce at any time any term or condition under this Agreement will not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.

7.7 Neither party will be responsible for delays resulting from circumstances beyond the reasonable control of such party, provided that the nonperforming party uses reasonable efforts to avoid or remove such causes of non-performance and continues performance hereunder with reasonable dispatch whenever such causes are removed.

7.8 This Agreement (i)constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, oral and written, made with respect to the subject matter hereof, and (ii)cannot be altered except by agreement in writing executed by an authorised representative of each party. No purchase order and/or standard terms of purchase provided by you shall supersede this Agreement.

7.9 Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against Innofile and such third parties shall not be entitled to enforce any term of this Agreement against Innofile.

If you have any questions regarding this Agreement or if you wish to discuss the terms and conditions contained herein please contact Innofile Corporation using the contact details at [www.innofile.com](http://www.innofile.com) or at Pohjoinen Rautatiekatu 21 B, 00100 Helsinki, Finland.