

End User License Agreement

This End User License Agreement (“EULA”) is incorporated by reference into the Installed Software License Agreement (the “Agreement”) by and between Vibrantz and Customer and governs Customer’s access to and use of the Software which is provided by Vibrantz Color Solutions Finland OY (“Vibrantz”, “we”, “our”, and “us”).

This is a legal agreement. By installing, operating, or using the software product set forth on **Exhibit “A”** hereto and incorporated herein by reference (the “Software”), Customer agrees that Customer has read and understands this EULA and the Privacy Policy. If Customer does not agree with this EULA, do not install, operate, or use the Software. The term “Software” includes any bundled database, data files, formula libraries, or components required for the full operation of the Innovatint Software, including but not limited to the Vibrantz or Innovatint Database.

Customer represents and warrants that Customer has the right, authority, and capacity to accept and agree to this EULA. If Customer does not agree with any of the provisions of this EULA, Customer should cease installing, operating, and using the Software.

SECTION 8 BELOW DESCRIBES IMPORTANT LIMITATIONS OF THE SOFTWARE AND RELATED SERVICES. PLEASE READ THESE DISCLOSURES CAREFULLY, AS YOU ARE ACKNOWLEDGING AND ACCEPTING THEM.

1. Grant of License.

Subject to the terms of this EULA and the payment by Customer of the Annual License Fees, we grant to Customer the license set forth on **Exhibit “B”** attached hereto and incorporated herein (the “License”).

Customer agrees to pay the Annual License Fees applicable to Customer’s license to the Software as set forth in any agreement, order, documentation, invoice, or other similar document provided by Vibrantz (the “documentation”). The Annual License Fees shall be due and shall be paid in the manner prescribed by the documentation. The Annual License Fees do not include local, state, or federal taxes, or other costs associated with the use of the Software which, when applicable, shall be paid by Customer.

Customer hereby grants Vibrantz a non-exclusive, world-wide, perpetual, irrevocable, fully-paid-up, royalty free license to use, copy, distribute, and otherwise exploit operations and maintenance data and other statistical and aggregated data derived from Customer’s use of Software (the “Aggregated Data”) for Vibrantz’s business purposes, including the provision of products and services to its customers. Vibrantz reserves the right to charge Customer additional license and other fees if Customer exceeds the level of usage authorized hereunder. Customer will execute and cause to be executed all documents and instruments that Vibrantz deems to be necessary or appropriate to vest all rights, title, and interest in and to the Software in Vibrantz.

2. Term and Termination

Subject to the payment by Customer of all Annual License Fees when due under this Agreement, the term of the Agreement and the License granted under the Agreement shall commence upon payment of the initial installment of the Annual License Fees and shall continue for a period of **[three (3)/four (4)]** years thereafter (the “License Term”). This EULA is effective on the date Customer first installs, operates, or uses the Software and shall continue for the License Term. Vibrantz may terminate this EULA at any time if Customer fails to comply with any of the term(s) hereof or fails to pay any Annual License Fees due under the Agreement. Upon termination of this EULA, the Agreement and the License granted under the Agreement will terminate and Customer must stop installing, operating, and using the Software.

Either Customer or Vibrantz may terminate this Agreement by written notice to the other party if the other party ceases business operations, makes a general assignment for the benefit of creditors, becomes insolvent or the subject of voluntary bankruptcy or receivership proceedings, or if bankruptcy or receivership proceedings are initiated against it and not lifted within 10 days.

Either Customer or Vibrantz may terminate this Agreement by delivery of written notice of termination, for material breach of this Agreement by the other party, if the other party does not cure such breach within 30 days following receipt of such notice; provided, that, in the event of material breach by Vibrantz, if such breach cannot reasonably be cured within such 30 day period but Vibrantz has taken reasonable steps toward a cure during such 30 day period, such 30 day period shall be extended for an additional reasonable period to permit Vibrantz to complete such cure. Such notice shall set forth in reasonable detail the nature of the breach and the date of termination.

Termination or expiration of this Agreement shall automatically terminate the License.

3. Description of Other Rights and Limitations

- a. In connection with the License, the parties acknowledge and agree that Vibrantz is expressly not selling to Customer, and Customer is not acquiring any right, title or interest in or to, any patents, copyrights, trade secrets, trademarks, service marks, trade names, or other intellectual property or proprietary rights of Vibrantz (collectively, "Vibrantz Intellectual Property"), and Customer will use the Software strictly in accordance with Vibrantz's standards, policies and procedures as specified by us from time to time, all of which are incorporated herein.
- b. **Restrictions on Use.** Customer shall not:
 - i. make the Software available to, or use the Software for the benefit of, anyone other than Customer;
 - ii. market, sell, distribute, sublicense, use, modify, translate, reproduce, create derivative works from, dispose of, rent, lease, or authorize or permit access or use of any portion of the Software;
 - iii. reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law;
 - iv. interfere with or disrupt the integrity or performance of the Software;
 - v. copy the Software or any part, feature, function thereof;
 - vi. alter the Software or any part, feature, function thereof;
 - vii. export or use the Software in violation of U.S. law, including Department of Commerce export administration regulations;
 - viii. remove any copyright and other proprietary notices contained in the Software;
 - ix. use the Software in a manner which infringes or violates any of the intellectual property, proprietary, or other rights of any third party;
 - x. use the Software, its underlying code (source or object), or any data, information, or materials of Vibrantz to create Software that is the same as or similar to, or is based on, the Software or is a derivative work of the Software; or
 - xi. operate and use the Software in any manner that is inconsistent with the terms of the Agreement and this EULA.
- c. **Additional Obligations.**
 - i. Customer shall comply in full with all federal, state, local and foreign laws, rules and regulations in connection with Customer's installation, operation, and use of, the Software.

- ii. The Software may be installed, operated, and used only in a form and manner approved by Vibrantz in its sole discretion, and only in accordance with the terms and conditions of the Agreement and this EULA.

Customer acknowledges that the Software contains valuable trade secret and proprietary information of Vibrantz, that any actual or threatened breach of this Section 3 will constitute immediate, irreparable harm to Vibrantz for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

4. **DISCLAIMER.**

ACCESS TO AND USE OF THE SOFTWARE IS PROVIDED “AS IS”, “WITH ALL FAULTS”. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS EULA, NO WARRANTY OR CONDITION, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT. Please note that some jurisdictions may not allow the above exclusion of implied warranties, so some of the above exclusions may not apply to Customer.

CUSTOMER USE THE SOFTWARE IS AT ITS OWN DISCRETION AND RISK. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR (AND VIBRANTZ DISCLAIMS) ANY AND ALL LOSS, LIABILITY, OR DAMAGES, RESULTING FROM YOUR USE OF THE SOFTWARE. VIBRANTZ AND ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTY THAT DEFECTS WILL BE CORRECTED OR THAT THE SOFTWARE: (I) WILL MEET YOUR REQUIREMENTS; (II) WILL BE COMPATIBLE WITH YOUR COMPUTER SYSTEM; (III) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (IV) WILL BE ACCURATE OR RELIABLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM VIBRANTZ SHALL CREATE ANY WARRANTY.

5. **LIABILITY CAP AND LIMITATION OF LIABILITY**

- a. **LIABILITY CAP. CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF THIS EULA BY VIBRANTZ OR ANY DISSATISFACTION WITH RESPECT TO THE VIBRANTZ IS TO DISCONTINUE INSTALLING, OPERATING, AND USING THE SOFTWARE. IN NO EVENT SHALL VIBRANTZ’S TOTAL LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED THE TOTAL ANNUAL LICENSE FEES ACTUALLY PAID TO VIBRANTZ BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**
- b. **LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS EULA, NEITHER VIBRANTZ NOR ANY OF ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE, UNDER ANY CIRCUMSTANCES, LIABLE TO YOU OR ANY OTHER PERSON, FIRM OR ENTITY (WHETHER IN AN ACTION ARISING FROM CONTRACT, TORT OR OTHER LEGAL THEORY) FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES RESULTING FROM THE ACCESS OR USE OF THE SOFTWARE, OR OTHERWISE, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, SUCH DAMAGES.**

6. **Limitations of the Software.**

The Software may contain support for programs that are not fault tolerant (e.g., JAVA technology) and is not designed, manufactured, or intended for use or resale as control equipment in hazardous environments or emergency services requiring fail-safe performance in which the failure of such software programs could lead directly to death, personal injury, or severe physical or environmental damage. VIBRANTZ DISCLAIMS ALL DAMAGES INCLUDING DIRECT, INDIRECT AND CONSEQUENTIAL DAMAGES RELATING TO THE FAILURE OF THE SOFTWARE.

7. **Misuse by Customer.**

Notwithstanding anything to the contrary contained in this EULA, Customer shall not be entitled to any remedy under the Agreement, this EULA, or otherwise, and Vibrantz shall have no liability whatsoever, if any defect deficiency, error or problem with the Software arises from or results from Customer's violation of the Agreement or this EULA, or from accident, abuse, misapplication, abnormal or unauthorized installation, operation, access or use of the Software.

8. **Intellectual Property and Data Ownership.**

- a. **Software.** The Software, and all patents and patent rights, copyrights, trademark and trademark rights, trade secrets and trade secret rights, and other proprietary rights therein and thereto, is the intellectual property of and is owned by Vibrantz and/or its licensors. In connection with the license of the Software hereunder, the parties acknowledge and agree that Vibrantz is expressly not selling to Customer, and Customer is not acquiring any right, title or interest in or to the Software, but that Customer will be granted a limited, personal, non-exclusive, non-transferable, non-assignable license by Vibrantz to use the Software only for Customer's personal purposes and for no other purposes. The structure, design, and organization of the Software are the exclusive property, valuable trade secrets and confidential information of Vibrantz and/or its licensors and title to the Software shall at all times remain with Vibrantz and/or its licensors. Except as expressly stated herein, this EULA does not grant Customer any intellectual property rights in the Software, or any component or element thereof, and all rights not expressly granted to Customer under this EULA are reserved to and retained by Vibrantz and/or its suppliers. Notwithstanding anything contained in this EULA to the contrary, Vibrantz reserves the right to make available, distribute or release the Software under different license terms or to stop distributing, making available or releasing the Software at any time.
- b. **Data.** Each party shall own all data related to such party. Within thirty (30) days following the expiration or termination of this Agreement for any reason, each party shall return to the other party all data that is in such party's possession or control, but is owned by the other party, and shall retain no copies (archival or otherwise) of such data. The parties acknowledge and agree that Vibrantz will have access to all customer data generated by use of the Software, and generated in any way that is associated with the processes related to use of the Software, by the Customer and its customers (collectively, the "Customer Data"). Customer hereby grants to Vibrantz, a worldwide, non-exclusive, irrevocable, royalty-free, license to use the Customer Data to understand how colorant consumption trends, sales trends, how they correspond to each other, for factory planning, for product planning, in connection with Vibrantz's production, to enable Vibrantz to better serve its customers, and to enable Vibrantz to provide its customers better service for Vibrantz's products. The parties acknowledge and agree that Vibrantz's access to Customer Data is automatic when the Software is installed on a Customer server; provided, that, Customer Information is not anticipated to include personally identifiable information except basic contact information for people using the Software, and Customer Data will not be used to analyze information regarding the colorants of companies other than Vibrantz.
- c. **Customer Obligations.** Customer agrees to notify Vibrantz immediately of any pirating, infringement or imitation of the Software or intellectual property rights of Vibrantz which comes to Customer's attention during the Term. If Customer learns of a threat, demand, allegation, or indication that the Software infringes or misappropriates any third party intellectual property rights (including but not limited to any patent, copyright, trademark, trade dress, or trade secret) ("Intellectual Property Claim"), Customer will notify Vibrantz promptly of such claim. Vibrantz may, in its sole discretion, elect to

assume sole control of the defense and settlement of said Intellectual Property Claim and Customer will provide reasonable information and assistance to Vibrantz for the defense of such claim.

9. Indemnity.

Customer shall indemnify, defend and hold harmless Vibrantz and its Affiliates, employees, agents, officers, directors, shareholders, representatives, successors and assigns from and against any loss, liability, cause of action, cost or expense (including reasonable attorneys' fees) arising from, arising in connection with or related to: (i) Customer's breach of the Agreement or this EULA; (ii) Customer's acts and omissions in connection with the installation, operation, and use of the Software; (iii) Customer's negligence or willful misconduct in connection with the installation, operation, and use of the Software; or (iv) Customer's violation, infringement or misappropriation of the intellectual property, proprietary or other rights of Vibrantz or any third party. If any claim is commenced against Vibrantz under this paragraph, Vibrantz will provide notice of the claim and copies of all related documentation to Customer, and Customer will assume control of the defense of such claim at Customer's cost and expense, provided that Customer may not settle such case without the prior written consent of Vibrantz. Such notice and documentation will be provided as promptly as possible; provided, that in no event shall Customer be relieved of its indemnification obligations hereunder unless the failure to provide notice promptly hereunder results in, and then only to the extent of, actual prejudice to Customer's rights. Vibrantz may, at its own cost and expense, participate, through its attorneys or otherwise, in the investigation, trial and defense of such claim and any appeal. In such case, Customer will reasonably cooperate with the Vibrantz's attorneys.

10. Export Rules.

Customer agrees that Customer will not provide access to or use of the Software to any citizen of a country to which access or use thereof is barred, or to which exports or shipments are barred, by the United States government. Further, Customer will not ship, transfer or export the Software into any country or use the Software in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as export controlled items under the Export Laws, Customer represents and warrants that Customer is not a citizen, or otherwise located within, an embargoed nation and that Customer is not otherwise prohibited under the Export Laws from receiving access to or using the Software. All rights to access and use the Software are granted on condition that such rights are forfeited if Customer fails to comply with the terms of this EULA.

11. Applicable Law.

This EULA is governed, construed and enforced in accordance with the laws of the Nation of Finland, without giving effect to any principles of conflicts of laws. Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The seat of arbitration shall be Helsinki, Finland and the language of the arbitration shall be English unless both parties are domiciled in Finland, in which case the language shall be Finnish. The foregoing shall not restrict the right of Vibrantz to demand payment of Annual License Fees in the court that would have jurisdiction in the absence of this clause.

12. Entire Agreement.

The Agreement and this EULA are the entire agreement between Customer and Vibrantz relating to the subject matter of this EULA and supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the subject matter of this EULA. Vibrantz may amend, modify or update this EULA at any time in its discretion.

13. Notices.

All notices and demands hereunder shall be in writing and shall be served by personal service, electronic mail, or by mail at the address of the receiving party set forth in this EULA (or at such different address as may be designated by such party by written notice to the other party). All notices or demands by mail shall be by certified or registered

mail, return receipt requested, or by nationally recognized private express courier and shall be deemed complete upon receipt.

14. Confidentiality.

Customer acknowledges that Customer may receive or become aware of confidential information and trade secrets of Vibrantz such as source code of the Software or subcomponents of the Software ("Confidential Information"). Customer agrees to maintain and protect the confidentiality of all Confidential Information of which Customer becomes aware (whether or not identified or marked as confidential at the time of its disclosure) and not disclose any Confidential Information, except as required by law (for example, under a court order or subpoena), to any person, firm, or entity, and Customer shall use at least reasonable care to preserve and protect the confidentiality of all Confidential Information of which Customer becomes aware. Further, Customer shall not use or disclose any Confidential Information for any purpose not permitted by this EULA. The restrictions on disclosure set forth above shall not apply when, and to the extent that, Confidential Information: (a) is part of the public domain through no action or failure to act by Customer; (b) is made available to the general public by Vibrantz or a third party who is lawfully in possession of such information, not as a result of any action or failure to act on Customer's part; (c) was previously known to Customer free of any obligation to keep it confidential; (d) is subsequently disclosed to Customer free of any obligation to keep it confidential; or (e) is independently developed by Customer or a third party other than in breach of this EULA. In addition, Customer will not be considered to have breached its obligations under this EULA to the extent Confidential Information is required to be disclosed by court order or order of a governmental authority or by applicable law, provided Customer advises Vibrantz in writing prior to making such disclosure so that the Vibrantz may object to such disclosure and takes action to ensure confidential treatment of the Confidential Information. Violations of this Section 14 are likely to cause irreparable harm and therefore Vibrantz may seek immediate injunctive relief without the need of posting bond in the event of a violation of this Section 14.

15. U.S. Government Restricted Rights.

If the Software is licensed to agencies of the U.S. Government, the Software is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. § 12.212, and is provided to the U.S. Government only as a commercial end item. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, all U.S. Government End Users acquire use of the Software with only those rights set forth herein.

16. Force Majeure.

Vibrantz shall not be responsible for delays or failure of performance resulting from acts beyond the reasonable control of Vibrantz. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failures, Internet or telecommunications failures, cyberattacks, earthquakes, or other disasters.

17. Compliance with License and Laws.

Customer shall comply with all federal, state, local and foreign laws, regulations, rules and ordinances pertaining to the License. In the event that any part of the Agreement or this EULA is determined to violate any applicable federal, state, local or foreign laws, rules or regulations, then the remaining provisions of this license shall remain in full force and effect and shall be enforced to fullest extent permitted by law.

18. Survival.

Sections 3-22 shall survive the termination or expiration of the EULA for any reason.

19. Headings.

The titles and headings of the various sections and paragraphs in this EULA are intended solely for reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this EULA. The opening four paragraphs to this EULA are incorporated herein.

20. Forms.

No provisions in either party's purchase orders, or in any other business forms employed by either party, will supersede the terms and conditions of this EULA.

21. Waiver/Assignment.

A waiver of any provision of this EULA shall only be effective if in a writing signed by the party against which the waiver is claimed. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. Failure to enforce or delay in enforcing any provision of this Agreement will not constitute a waiver of any rights under any provisions of this Agreement. This EULA may not be assigned by Customer without the prior written consent of Vibrantz. This EULA may be assigned by Vibrantz, by operation of law or otherwise, without the consent or approval of Customer or any other person, firm or entity. Each and all of the covenants, terms, provisions and agreements herein contained will be binding upon and inure to the benefit of the parties hereto and, to the extent expressly permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

22. Severability.

If any term in this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such term shall be reformed to the maximum extent allowed by law to reflect the original intent of the parties (or, in absence of such intent, the same economic effect) as closely as possible to the invalid, illegal, or unenforceable term, and the other terms of this Agreement will remain in full force and effect in such jurisdiction. Such invalidity, illegality, or unenforceability shall not affect any other term in this Agreement, or invalidate or render unenforceable such term, in any other jurisdiction.

23. No Construction Against Drafter.

If an ambiguity or question of intent or interpretation arises with respect to any term of this Agreement, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise, and no rule shall be enforced, favoring or disfavoring either party by virtue of authorship of any of the terms of this Agreement.

24. Counterparts.

This Agreement, and any amendments hereto or thereto, may be signed and delivered in one or more counterparts, all of which shall constitute one and the same instrument. Facsimile, photo or electronically produced copies of this signed Agreement or of any signed Software Order or amendment will legally bind the parties to the same extent as an original document.

25. Audits. Vibrantz may audit the books and records of Customer applicable to this Agreement in order to verify Customer's compliance with this Agreement by reasonable prior written notice to Customer, during Customer's regular business hours, and in a manner that does not disrupt Customer's business operations. In the event that such an audit reveals the Customer is not in compliance with this Agreement, Vibrantz shall so notify Customer whereupon Customer immediately shall cure any non-compliance identified by Vibrantz.

EXHIBIT "A"

SOFTWARE The term "Software" includes any bundled database, data files, formula libraries, or components required for the full operation of the Innovatint Software, including but not limited to the Vibrantz or Innovatint Database.

[A proprietary software system for managing color, color formula, paint, and tinting information.]

EXHIBIT "B"

LICENSE

[A limited, non-exclusive, non-transferable, non-assignable, non-sublicenseable revocable license to install, operate, and use the Software on a computer owned or controlled by Customer for Customer's internal business purposes and as described in this EULA. The License is for the object code version of the Software only and not for the source code version of the Software. Customer may not modify, reverse engineer, decompile, or disassemble the Software, in whole or in part, or create any derivative works from, or sublicense any rights in, the Software. Customer may not translate or otherwise attempt to create the source code for the Software, or rent, lease, grant a security interest in, or otherwise transfer any rights to, copy, distribute, transmit, display, perform, reproduce, publish, license, or transfer the Software, or remove or alter any trademark, logo, copyright, patent or other proprietary notices in the Software.]