

END USER LICENSE AGREEMENT FOR COLORCERT DESKTOP AND MEASURE COLOR ON PREMISE SOFTWARE

Last updated: February 25, 2025

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If You are not willing to comply with the terms and conditions of this Agreement, do not use the Software. You should promptly return the Software to X-RITE or its authorized reseller.

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Authorized Functionality – means the functionality of the Software which You are authorized to use and which may be set forth in the Order Document.

Authorized Number of Users – means the number of users registered with X-Rite to use the Software.

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Software – means the Object Code form of software and related manuals and documentation, licensed under this Agreement.

Source Code – means work when written in a form or language understandable to humans, generally in a higher level computer language, and further including embedded comments in the English language.

Subscription Period – means the period during which the Software may be used by You as set forth in an Order Document.

Usage Restrictions – means the Authorized Number of Users, Authorized Functionality and other usage parameters set forth in an Order Document.

Color Measurement Devices – means X-Rite’s or other third party color measurement devices. This Agreement governs any information collected by X-Rite from Your Color Measurement Devices such as operational information, warranty status, color measurement accuracy, return status/RMA, etc. This Agreement does not govern the purchase, delivery, performance, maintenance or support of the X-Rite Color Measurement Devices.

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ANY ACTION ARISING AGAINST X-RITE MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION FIRST ACCRUES.

7. CONFIDENTIALITY AND PROTECTION OF YOUR DATA

7.1 Definition of Confidential Information. Your Confidential Information includes Your Data. Confidential Information of X-Rite includes the Software and the terms and conditions of this Agreement (including pricing). Confidential Information does not

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7.2 Confidentiality Obligations. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care) to not use any Disclosing Party Confidential Information for any purpose outside the scope of this Agreement and except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who have a need to know and who are under similar confidentiality obligations as those herein. If the Receiving Party is required by law or court order to disclose Confidential Information, then Receiving party shall, to the extent legally permitted, provide the Disclosing Party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information.

The Receiving Party acknowledges that disclosure of Confidential Information may cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. Upon termination of this Agreement, both parties shall either return or destroy any Confidential Information in its possession.

7.3 Your Data. You own Your Data, and You warrant that You have sufficient rights, title and interest in the same. You bear responsibility for Your Data, including its accuracy and quality. Supplemental to X-Rite’s data retention obligations, if any, You are also responsible for retaining backup copies of Your Data, and for implementing Your own disaster recovery plan.

7.4 Protection of Your Data. X-Rite will maintain appropriate administrative, physical, and technical safeguards for the protection of the security, confidentiality, and integrity of Your Data, as described in the documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Your Data (other than by You or your Authorized Users). The terms of the Data Processing Addendum at <https://www.xrite.com/page/terms-conditions> (“DPA”) posted as of the Effective Date are hereby incorporated by reference.

7.5 Collection and use of data by X-Rite. X-Rite collects data on the performance of its products including but not limited to the Software and its color measurement devices and on features used by customers, and/or combines such data with aggregated anonymized customer data in accordance with applicable laws and the X-Rite Privacy Policy which may be found at <https://www.xrite.com/page/terms-conditions> (“Privacy Policy”). You hereby grant X-Rite a worldwide, irrevocable, non-transferable, non-assignable (except as permitted under this Agreement), sub-licensable, non-exclusive license to access, and use Your Data (a) in connection with the performance of its obligations under this Agreement; (b) to create aggregated, anonymized data to monitor, analyze, develop, support, or improve X-Rite’s products and services and otherwise for X-Rite’s business purposes, all as further described in the Privacy Policy.

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Subscription based licenses are granted for the term defined by the Order Document. Unless otherwise agreed between You and X-Rite in the Order Document, your subscription based license is a twelve month time limited license.

Trial licenses are granted for the term of thirty (30) days, unless otherwise agreed between You and X-Rite.

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- This Agreement may be terminated for "Cause" as follows: this Agreement will terminate automatically if a party fails to cure a breach of any of its obligations within thirty (30) days from receipt of a written notice from the other party stating such breach. If the breach is not capable being remedied, termination will be effective upon receipt of the notification. X-Rite further reserves the right to terminate this Agreement upon written notice if You fail to make any payment when due.

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10. Audit

X-RITE shall have the right, at any time, to audit Your use of the Software to monitor compliance with this Agreement. If the audit is conducted on Your premises, X-RITE shall give You at least ten (10) days' prior written notice and such audit shall be conducted during Your normal business hours.

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If any part of the Software is subject to any Open Source License Terms, as indicated by separate Open Source License Terms provided with the Software, the use and the license of that part of the Software will be subject to those Open Source License Terms. In the event of any contradiction or uncertainty between the license terms contained in this Agreement and the Open Source License Terms with respect to the portions of the Software governed by Open Source License Terms, the applicable Open Source License Terms will prevail.

12. Applicable law and competent jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the country, state or other geographic designation where X-Rite is located, without reference to its conflicts of laws principles. The United Nations Convention on the International Sale of Goods will not apply. Each party hereby consents that any litigation between the parties relating to this Agreement, breach, termination, or invalidity thereof, shall be conducted in the courts of the country, state or other geographic designation where X-Rite is located, and the parties irrevocably accept and submit to the exclusive jurisdiction of such courts. Notwithstanding the foregoing, X-Rite shall also be entitled to bring any actions against You in the courts of the jurisdiction or place where You are established, domiciled or operating, if the action concerns (1) the collection of a debt, money owed or nonpayment of invoices, or the return of property, or (2) the enforcement of X-Rite's intellectual property rights.