

X-RITE
AUTURA CLOUD
SAAS TERMS OF SERVICE

Last updated: September 5, 2024

BY SIGNING THE ORDER FORM, CLICKING “ACCEPT” or “AGREE” WHEN PROMPTED, ACCESSING OR USING ANY SERVICES OR OTHERWISE INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE ANY SERVICES. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU. IF YOU ARE USING ANY SERVICES AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP, OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO ACCEPT, SIGN FOR AND BIND SUCH ENTITY, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL. IF YOU REGISTER FOR A FREE TRIAL OF THE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

This Agreement is by and between You and X-Rite. It consists of these Autura Cloud SaaS Terms of Service (these “Terms”) any attachments, addenda, or exhibits referenced herein, and the Order Form. It is effective as of the date on which You accept this Agreement (the “Effective Date”).

1. Definitions. Terms not otherwise defined herein shall have the following meanings:

“**Access Credentials**” means usernames and password and/or other access keys or controls enabling access to the Services.

“**Acceptable Use Policy**” means the Acceptable Use Policy published at <https://www.xrite.com/page/terms-conditions> considered incorporated herein by reference.

“**Affiliate**” means any business entity controlling, controlled by or under common control with X-Rite or You, whereby “control” shall mean direct or indirect ownership of (i) fifty percent (50%) or more of the shares or voting interest; or (ii) fifty percent (50%) or more of the interest in the profit or income if there are no shares.

“**Applicable Data Protection Law**” means all applicable laws and regulations relating to the privacy, confidentiality, security or protection of Personal Data, including, without limitation, the European Union General Data Protection Regulation (“GDPR”).

“**Authorized Users**” means Your employees, officers, directors, contractors and/or affiliated locations You authorize to access and use the Services on Your behalf, by providing such persons Access Credentials directly or by authorizing X-Rite to issue Access Credentials to such persons. Authorized Users shall have access to Customer Data accessible through the Services.

“**Your Data** or **Customer Data**” means any information transmitted, uploaded or stored by You or your Authorized Users to the Services.

“**Documentation**” means user manuals, online help files, technical manuals, and other materials published by X-Rite which describe the Services and its uses, features, specifications, and/or technical requirements.

“**Malicious Code**” means (i) any code, program, or sub-program the knowing or intended purpose or effect of which is to damage or maliciously interfere with the operation of a computer system containing the code, program or sub-program, or to halt, disable, or interfere with the operation of the software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent without authorization the normal security of any software or system containing the code.

“**Order Form**” means the X-Rite document including without limitation, X-Rite quote and/or proposal that references these Terms detailing the scope of the Services ordered.

“**Payment Processor**” means Bright Market, LLC d/b/a FastSpring or any other third party appointed by X-Rite who provides payment processing services to X-Rite and acts as merchant of record for all orders.

“**Processed Data**” means all information that is collected by X-Rite, or to which X-Rite has access that relates to You and Your Authorized Users’ use of the Services or X-Rite Devices. Processed Data includes, but is not limited to, Your Data and the results

generated through use of the Services. Except in relation to the provision of the Services to You, any use of Processed Data will be masked or aggregated by X-Rite so that You and Your Authorized Users are not identified as the original provider of the data.

“**Security Policy**” is the policy detailing X-Rite’s information security controls for the Services published at X-Rite’s website <https://www.xrite.com/page/terms-conditions> which is incorporated herein by reference.

“**Services**” means X-Rite’s Autura software-as-a-service solution designed for laboratory formulation of supported color materials, including all associated hardware, software, applications, data storage, and infrastructure necessary for X-Rite to host and operate the Service, including its Documentation as set forth in the Order Form and ordered by You through the Payment Processor.

“**Services Commencement Date**” means, the specific date set forth in the Order Form, or in the absence thereof, the date you completed the payment to the Payment Processor and received instructions from the Payment Processor that the Services are now accessible. .

“**Services Subscription Term**” means the twelve month period starting from Services Commencement Date, unless otherwise specified in the Order Form.

“**SLA**” means X-Rite’s service level agreement for the Services attached hereto as Exhibit A and made a part hereof.

“**Updates**” means the release by X-Rite of bug fixes, patches, error corrections, workarounds, and other enhancements to the Services during the Services Subscription Term. Updates shall be considered “Services” governed by this Agreement. Updates exclude new products for which X-Rite generally charges a separate license fee or upgrade fee.

“**Subscription**” means the term-based access to the Services purchased in the Order Form.

“**X-Rite**” means the X-Rite entity that executed or issued Your Order Form.

“**X-Rite Devices**” means X-Rite’s color measurement devices. This Agreement governs any information collected by X-Rite from Your X-Rite Devices such as operational information, warranty status, color measurement accuracy, return status/RMA, etc. This Agreement does not govern the purchase, delivery, maintenance or support services for the X-Rite Devices.

“**You**” or “**Your**” means the customer identified in the Order Form.

2. Services

2.1 Access to Services. X-Rite will (a) make the Services available to You during the Services Subscription Term solely for use by You and Your Authorized Users for Your internal business purposes subject to the terms of Your Order Form, the Documentation, and these Terms, (b) provide the SLA and (c) provide the Services in accordance with its obligations under the laws and government regulations applicable to X-Rite’s provision of the Services. By permitting Your Authorized Users to access the Services, You agree to be responsible for Your Authorized Users’ compliance with these Terms. Furthermore, You acknowledge and agree that Your Authorized Users may have access to Your Data and X-Rite shall not be responsible or liable for any misuse of the Services or Your Data by any such Authorized Users.

2.2 Free Trial

If You register with X-Rite for a free trial of the Services, X-Rite will make the applicable Service(s) available to You on an “as is” basis and with no warranty. The Services will be provided free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) the start date of any purchased Services subscriptions ordered by You for such Service(s). Additional trial terms and conditions may appear on the Order Form. Any such additional terms and conditions, if any are incorporated into this Agreement by reference and are legally binding.

Your Customer Data will be deleted at end of the trial period unless You subscribed to the same Services before the end of the trial period.

3. Usage

3.1 Usage Restrictions. You agree (i) not to copy, download (or save onto any media whatsoever), modify or translate any software and/or database hosted as part of the Services in any manner not expressly authorized by this Agreement; (ii) not to reverse engineer, decompile, or disassemble any software and/or database hosted as part of the Services, or otherwise attempt to discover the underlying source code of the Services; (iii) not to tamper with, bypass or alter the security features of the Services or any of the hosted infrastructure, (iv) not to rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise provide any access to or use of the Services or any features or functionality of the Services to any person or entity other than Your Authorized Users, or

use the Services to run an outsourcing business; (v) not to use the Services or Documentation in violation of any law, regulation, or rule; and (vi) not to use the Services or Documentation for purposes of competitive analysis, the development of a competing software product or service, or any purpose that is detrimental to X-Rite or to its commercial disadvantage.

3.2 User Reassignment. Services are subject to the usage limits specified in the Order Form and Documentation. Authorized User subscriptions are for designated Authorized Users only and cannot be shared or used by others but may be reassigned to new Authorized Users replacing former Authorized Users who no longer require use of the Services. Unless otherwise specified in the relevant Order Form, the replacement Authorized User shall be under the same Services Subscription Term of the original Authorized User.

4. Your Obligations; Your Data

4.1 Your Obligations. Only You and your Authorized Users may use the Services. By granting Your Authorized Users access to the Services, You acknowledge and agree that Your Authorized Users, if granted by You may have access to Your Data, that X-Rite shall not be responsible or liable for any misuse of the Services, Your Data and/or other Authorized Users' Customer Data by any Authorized Users and You will indemnify and hold X-Rite harmless for and against any claim concerning misuse of Customer Data by any Authorized User. You further agree that all use of the Services by Your Authorized Users must comply with the terms of the Acceptable Use Policy and this Agreement provided that You shall not disclose the commercial terms of this Agreement, and that You will be liable for, and shall indemnify X-Rite for any breach of this Agreement by Your Authorized Users' or through Your Access Credentials, including by Your third party contractors, or affiliated locations or customers. You shall implement reasonable security measures to safeguard Your Access Credentials.

4.2 Minimum Standards. You must maintain all hardware, software and network connectivity needed to connect to the Services, including but not limited to the minimum (system) requirements set forth in the Documentation, if any.

4.3 Security. You will use reasonable security precautions in light of Your use of the Services, including encrypting any information while in transit to or from the Services which identifies an individual, such as name, national-identification number or other government-issued number (including social security number), date of birth, address, telephone number, biometric data, mother's maiden name; or any other Personal Data. You agree to implement commercially reasonable actions and precautions to prevent the introduction and proliferation of Malicious Code in the Services.

You will reasonably cooperate with any investigations or audits by X-Rite into Service outages, security problems, and/or suspected breaches of this Agreement. You will not seek to block or otherwise interfere with any such investigations or audits. You agree to allow X-Rite access to Your premises, computers (including, but not limited to, hardware, software, and network services) and personnel at all reasonable times for the purposes of such monitoring.

4.4 Your Data. To the extent that any of Your Data comprises personal data, as defined in any Applicable Data Protection Law ("Personal Data"), as between You and X-Rite, You are the data controller, and X-Rite is the data processor. You are solely responsible for the accuracy, content, and legality of all Your Data and warrant that You have and will maintain sufficient rights in Your Data to grant the rights to X-Rite under this Agreement and that Your Data will not violate the rights of any third party. You grant X-Rite authorization to view, store, copy, and delete or otherwise process Your Data as part of X-Rite's standard performance of the Services to prevent or address service or technical problems with the Services, or as may be required by law and You consent and agree to the processing of Your Data by X-Rite for such purpose at or from geographical locations within or outside of the European Economic Area (including but not limited to the United States of America). You further grant X-Rite a perpetual, worldwide, irrevocable, royalty-free license, with the right to grant sublicenses, to use Your Data (with the exception of Personal Data) for the purpose of providing and improving the Services (including for diagnostic purposes) and to analyze trends, perform market research, and to develop and provide Services to You and others. You will defend X-Rite against any claim by a third party arising from or relating to any processing and/or use of Your Data by X-Rite in accordance with the terms of this Agreement, and will indemnify and hold harmless X-Rite from and against any damages and costs awarded against X-Rite or agreed in settlement by You (including reasonable attorneys' fees) resulting from such claim.

4.5 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 Security Policy. 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.

5. Security; Back-Up.

X-Rite has a Security Policy in order to comply with Applicable Data Protection Law, internal security requirements and Customer's security needs as set forth in the Security Policy. X-Rite disclaims any liability for unauthorized access, use or release of Your Data, unless such access, use or release results from X-Rite's failure to meet its security obligations set forth by the Security Policy. X-Rite will back up Your Data if and to the extent provided in the SLA. X-Rite will implement industry standard anti-virus and encryption software.

6. Intellectual property rights.

6.1 Retention of Rights. The Services and associated software, databases and its design are owned by X-Rite (and its licensors) and are protected by applicable intellectual property laws and regulations, including United States and international copyright laws. As between the parties hereto, X-Rite (and its licensors) retains all right, title and interest in and to the Services and associated software, databases and design and any derivative works that are created and/or developed based, in whole or in part, on access to and use of the Services (collectively, the "X-Rite Technology"). Nothing herein shall operate to transfer or convey to You any rights in the X-Rite Technology. You agree to promptly notify X-Rite if You become aware of, or suspect any unauthorized, access, use or misuse of the X-Rite Technology. Similarly, You retain all right, title and interest in and to Your Data.

6.2 License to Use Feedback. To the extent You or your Authorized Users provide X-Rite with any feedback, ideas, or technical improvement suggestions about the Services ("Feedback"), You acknowledge and agree that X-Rite will be the owner of all such Feedback and may use and incorporate the Feedback into the Services without compensation or attribution to You or your Authorized User. To the extent that ownership cannot be assigned, You hereby grant X-Rite and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into any X-Rite products or services any such Feedback. Further, you acknowledge and agree that X-Rite shall have the right to anonymize and aggregate Your Data and use it for its own purposes as set forth in this Agreement.

6.2 Trademarks. All trademarks on or related to the Services are the sole and exclusive property of X-Rite (and its licensors) and are protected by US and international trademark laws. Nothing in this Agreement shall give You any right, title, or interest in or to X-Rite's (and its licensors') trademarks, nor give You any right to use X-Rite's (and its licensors) trademarks for any purpose without the prior written approval of X-Rite. You agree that You will do nothing inconsistent with X-Rite's (and its licensors) ownership of its trademarks and will not register, nor attempt to register, any trade name or trademark which, in whole or in part, incorporates or is confusingly similar to any of X-Rite's (and its licensors') trademarks.

7. Confidentiality

7.1 Definition of Confidential Information. Your Confidential Information includes Your Data. Confidential Information of X-Rite includes the Services, and any information or data marked as such or which, reasonably determined, constitutes information/data of a proprietary or confidential nature, however, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party, (iii) is received from a third party without breach of any obligation owed to the disclosing party, or (iv) was independently developed by the receiving party.

7.2 Confidentiality Obligations. Each party, as a recipient ("Recipient"), agrees to use the disclosing party's ("Discloser") Confidential Information solely for the purposes of performing its obligations or exercising its rights under this Agreement. Recipient will not disclose Discloser's Confidential Information to any third party other than its Authorized Recipients. As used herein, "Authorized Recipients" are a party's and its affiliates' officers, employees, agents and consultants who require access to the Confidential Information for the purpose set forth in this Agreement and who are bound by confidentiality obligations at least as stringent as those set forth herein. Recipient shall use commercially reasonable standards to protect the Confidential Information from disclosure using equal measures as it uses to protect its own Confidential Information of a similar nature.

The obligations set forth in this Section 7 shall survive until five (5) years from the termination or expiration of this Agreement except regarding trade secret information which shall be protected for the statutory period, and Personal Data which shall be protected for so long as it is in Recipient's possession.

8. Term & Termination; Suspension.

8.1 Term. This Agreement shall commence on the Effective Date and continue until the end of the Services Subscription Term. The Subscriptions for the Services are not subject to automatic renewal, unless You consent to the autorenewal of the Services on the buyer portal hosted by our Payment Processor. If you consent to the autorenewal, the Services Subscription Term will auto-renew by

consecutive one (1) year periods, unless You cancel the Subscription within the My X-Rite online portal or on the buyer portal hosted by the Payment Processor with 30 days notice prior to the renewal date.

8.2 Termination for cause. Either party may terminate this Agreement by written notice to the other party, if:

- (i) the other party breaches any material obligation under this Agreement and does not remedy such breach (if capable of being remedied) within thirty (30) days following receipt of written notice of such breach. If the breach is not capable of being remedied, termination may occur forthwith by means of a written notification; or
- (ii) if a receiver is appointed over the other party or its property; if the other party becomes insolvent or materially unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors; or if any proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy, insolvency or debtor's relief laws and such proceedings are not vacated or set aside within sixty (60) days from the date of the commencement thereof;

8.3 Suspension of Services. X-Rite may suspend the Services at any time if: (i) X-Rite reasonably believes that the Services are being used in violation of law, rules or regulations or infringes upon third party rights; (ii) Your use of the Services interferes with the normal operations of the Services or other customer's use of the same; (iii) the security of the Services or Your Data, or your access rights being compromised or there is another event for which X-Rite reasonably believes suspension of the Services is necessary to protect the X-Rite network or X-Rite's other customers; or (iv) in any event where X-Rite is entitled to terminate this Agreement for cause. X-Rite will endeavor to give You advance notice of pending suspension under this Section of at least twelve (12) hours unless X-Rite reasonably determines that a suspension on no or shorter notice is necessary to protect X-Rite, You or any third party.

8.4 Effect of Termination. Upon termination of this Agreement (i) Your access rights shall lapse, X-Rite shall no longer be required to provide any Services, and You will cease using the Services; (ii) each party shall use commercially reasonable efforts to return or to destroy all Confidential Information in accordance with Section 7; and (iii) You will permanently delete from any hardware and storage device all downloads and backup copies of any X-Rite information obtained from the Services, in particular but without limitation from any associated databases. Upon request, You agree to provide X-Rite with written certification by an authorized officer that all information from the Services has been removed and deleted from all of Your hardware and storage devices. Termination of this Agreement will not relieve a party from any accrued payment obligations. X-Rite will not be liable to You for any claims or damages of any kind arising out of termination of this Agreement, or suspension of Services in accordance with this Section 8. The provisions which are identified for such purpose or which by their nature are meant to survive (including but not limited to Sections 6, 7, 11.3, 12 and 13 shall survive the termination or expiration of this Agreement

8.5 Return of Data. Within a reasonable time following your written request, but no more than ten (10) days following the termination or expiration of this Agreement X-Rite shall deliver to You a copy of Your Data to a secure FTP site in a format determined by X-Rite.

9. Fees and Payment Terms.

9.1 Fees. Fees hereunder are due and payable as stipulated by the Payment Processor. Except as expressly set forth in this Agreement, all payment obligations hereunder are non-cancelable and non-refundable. The fees applicable to any renewal term may be adjusted by notifying You through the Payment Processor of the same at least 45 days prior to the start of a renewal term. If you do not agree with the new fees notified to You in accordance with the terms herein, You may provide the Payment Processor with a notice of non-renewal in accordance with Section 8.1.

9.2 Late Fees. X-Rite may suspend the Services or terminate this Agreement for non-payment by You to the Payment Processor, as set forth in Section 8.3. You will pay a late fee equal to the maximum amount allowed by law on all past due amounts or as otherwise communicated by the Payment Processor. You are also liable for all costs of collection incurred by the Payment Processor for past due sums, including without limitation, collection agency fees, reasonable attorneys' fees, and court costs.

9.3 Taxes. You are responsible for the payment of all taxes related to the provision of the Services to You, including, but not limited to all local and federal sales, use, value added, rental receipt, personal property or other taxes and similar taxes which may be levied or assessed in connection with this Agreement (excluding taxes based on X-Rite's net income). The Payment Processor may collect taxes on behalf of X-Rite. If X-Rite is required by law to pay taxes on the provision of the Services, You must pay the Payment Processor the amount of the tax that is due or provide the Payment Processor with satisfactory evidence of Your exemption from the tax.

9.4 Payment Processor. All payments made for the Services are processed through the Payment Processor and X-Rite does not access or store any financial information including without limitation credit card numbers, bank account numbers or any other information by which a charge can be made. By utilizing the Payment Processor, You agree to Payment Processor's separate terms of service and privacy policy. You understand that X-Rite will not be held liable for your failure to complete a payment transaction through the Payment Processor.

10. Service Level Agreement (SLA)

Support Services; Service Level Agreement. X-Rite provides the Services in accordance with the terms set forth in the SLA. X-Rite however does not warrant that the Services will be completely uninterrupted or error-free. The Services do not include, and X-Rite will not provide access to, any third-party support, client-side hardware or software, programming training, hardware, or software unless and to the extent set forth in the SLA. Throughout the Services Subscription Term, X-Rite shall release and install Updates on an as-needed basis to maintain the Services in conformance with its Documentation. All Updates are tested by X-Rite on X-Rite's staging environment in order to be released in a manner designed to minimize any disruption to Your business, prior to release on production environment. X-Rite shall also provide Support Services for the Services as set forth in the SLA.

11. Representations and Warranties; Disclaimers.

11.1 Services Warranty. X-Rite warrants that the Services will operate in substantial conformity with the applicable Documentation. If X-Rite is not able to correct any reported non-conformity with this warranty, You may terminate the Order Form, and as Your sole and exclusive remedy, You will be entitled to receive a refund of any pre-paid unused fees for the applicable Services purchased thereunder.

11.2 Your Warranty. You represent and warrant that Your use of the Services will be in compliance with any and all applicable laws, rules and regulations and that You have all sufficient rights, title, and interests in and to Your Data, and all necessary permissions to upload and use Your Data within the Services and to grant X-Rite license to use Your Data on the terms set forth in this Agreement.

11.3 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND TECHNICAL SUPPORT ARE PROVIDED "AS IS," AND X-RITE MAKES NO IMPLIED OR STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. X-RITE DOES NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

12. LIMITED LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL X-RITE BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS OR LOST DATA, RELATING TO THE SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SERVICES OR OTHERWISE ARISING OUT OF THE USE OF OR FAILURE TO USE THE SERVICES, WHETHER OR NOT DUE TO X-RITE'S NEGLIGENCE. THE TOTAL CUMULATIVE LIABILITY OF X-RITE AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF THE FEES PAID BY CUSTOMER IN THE TWELVE MONTHS PRIOR TO WHEN THE FIRST OF ANY SUCH LIABILITIES AROSE.

13. Indemnification.

13.1 X-Rite Indemnification. X-Rite shall defend You from and against any third-party claim, demand, lawsuit or legal action brought against You during the Term: (i) alleging that the X-Rite Services infringe or violate the intellectual property rights of a third party; or (ii) arising from X-Rite's violation of its obligations under this Agreement with respect to Confidential Information, and indemnify Customer against any damages, attorneys' fees or other costs finally awarded against it in connection with the foregoing, provided that You give X-Rite (i) prompt written notice of such claim, (ii) control over the defense and the settlement thereof, and (iii) reasonable assistance, cooperation and information in connection with the defense of the claim.

13.2 Customer Indemnification. Customer shall defend X-Rite from and against any third party claim demand, lawsuit or legal action: (i) alleging that Your Data infringes or violates the intellectual property rights of a third party; or (ii) arising from a violation by You of your obligations under this Agreement with respect to Confidential Information, and indemnify X-Rite against any damages, attorneys' fees or other costs awarded against it in connection with the foregoing, provided that X-Rite gives You (i) prompt written notice of such claim, (ii) control over the defense and the settlement thereof, and (iii) reasonable assistance, cooperation and information in connection with the defense of the claim.

13.3 Indemnification Procedures. In the event of a potential indemnity obligation under this Section 13, the indemnified party will: (i) promptly notify the indemnifying party in writing of the claim, (ii) allow the indemnifying party the right to control the investigation, defense, and settlement (if applicable) of such claim at the indemnifying party's sole cost and expense, and (iii) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. The indemnifying party may not settle any claim that would bind the indemnified party to any obligation (other than payment covered by the indemnifying party or ceasing to use infringing materials) or require any admission of fault by the indemnified party without the indemnified party's prior written consent, such consent not to be unreasonably withheld.

13.4 Future remedy. If the Services provided under this Agreement, or any part thereof, are held to constitute or are alleged to constitute an infringement and the use of that same is enjoined, X-Rite shall, at its sole option and cost, (i) obtain for You the right to continue using the Services; or (ii) substitute the same with other non-infringing products or services with similar functionalities; or (iii) modify the same so that it is no longer infringing while giving substantially similar functionality. If those remedies are not commercially reasonably available to X-Rite, X-Rite or You may terminate the affected portion of the Services, and X-Rite shall refund to the Payment Processor an equitable portion of the price or fee paid for the Services which the Payment Processor will refund to You.

13.5 Exceptions. Notwithstanding Sections 13.1 and 13.3, X-Rite shall have no obligation or liability in relation to any claim based on (i) any software, equipment, services or other materials not provided by X-Rite under this Agreement; (ii) the combination of the Services with any software, equipment or materials not provided by X-Rite under this Agreement; (iii) any use of the Services outside the scope of the access granted or not in accordance with the Documentation; and (iv) any modification to the Services by any party other than X-Rite.

14. Export Control. You may not use or otherwise export or re-export the X-Rite Technology except as authorized by United States law and the laws of the jurisdiction(s) in which the X-Rite Technology was obtained. In particular, but without limitation, the X-Rite Technology may not be exported or re-exported (a) into any U.S. embargoed and/or sanctioned countries, including without limitation: Cuba, Belarus, Iran, North Korea, Russia, Syria and Russian occupied territories in the Ukraine or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or any other restricted party lists. By using the X-Rite Technology, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the X-Rite Technology for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

15. Modifications. X-Rite reserves the right to change or modify the terms of this Agreement and/or the Acceptable Use Policy upon written notice to You. All such changes will: (a) be applied prospectively; and (b) will apply to all similarly situated users of the Services. If any changes to this Agreement are unacceptable to You, You may terminate your access to the Services by providing ten (10) days' written notice of termination to X-Rite, delivered at any time within sixty (60) days of the effective date of the change. Continued use of the Services following the effective date of any changes constitutes Your acceptance of the changes but does not affect the foregoing right of termination. For purpose of this Section 15 the posting of an updated copy of this Agreement and/or the Acceptable Use Policy to X-Rite's website at <https://www.xrite.com/page/terms-conditions> shall constitute written notice of the change(s) to this Agreement.

16. Miscellaneous.

16.1 Notices. Except as otherwise provided herein, notices under this Agreement will be deemed to be sufficiently given, effective on the date received, when delivered personally or by overnight express, or nationally recognized courier services, or three (3) business days after mailing when sent by certified or registered mail, postage prepaid. Notice required to be given to You hereunder will be sent to the address specified in the Order Form at the attention of Your designated contact person. Notice required to be given to X-Rite should be sent to Your designated X-Rite Sales Representative with a copy to X-Rite at the address provided in the Order Form.

16.2 Entire Agreement. This Agreement constitutes the complete agreement between X-Rite and You regarding use of the Services and supersedes all previous communications between the parties relating to the subject matter herein.

16.3 Assignment. You may not assign this Agreement, or the license granted hereunder without X-Rite's prior written consent. X-Rite's failure to enforce any rights hereunder, irrespective of the length of time for which such failure continues, shall not constitute a waiver of those or any other rights.

16.4 Governing Law, Venue. If this Agreement is between You and X-Rite, Incorporated, this Agreement shall be governed by the laws of the State of Michigan without reference to its conflicts of law principles and any dispute regarding this Agreement shall be determined in the Circuit Court for Kent County, Michigan or the United States District Court for the Western District of Michigan, Southern Division. If this Agreement is between You and X-Rite Europe GmbH, or X-Rite GmbH, this Agreement shall be governed by the laws of Switzerland without reference to its conflicts of law principles and you consent to the exclusive personal jurisdiction and venue of the courts located in Zurich, Switzerland. If this Agreement is between You and any other X-Rite entity, this Agreement shall be governed by the laws of the country where such X-Rite entity is located without reference to its conflicts of law principles, and you consent to the exclusive personal jurisdiction and venue of the courts located in such country. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods from application to this Agreement. The parties agree that any claim arising out of or related to this Agreement must be brought within one (1) year after the date it first accrued.

16.5 Force Majeure. Except for payment obligations, neither party shall be held responsible for any delay or failure in its performance to the extent that such delay or failure is caused by causes beyond its reasonable control.

16.6 Severability, Waiver. If any part of this Agreement is found unenforceable by a court of competent jurisdiction, such provision(s) will be ineffective to the extent of the court's ruling and the remainder of the Agreement will remain in full force and effect. The waiver by a party of any breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach. The parties' relationship is that of independent contractors. Neither party is an agent for the other, nor does either party have the right to bind the other to any agreement with a third party. The captions used in this Agreement are for convenience only and are not binding.

EXHIBIT A

SERVICE LEVEL AGREEMENT (“SLA”)

This Service Level Agreement (“SLA”) is subject to and made a part of the X-Rite Autura Cloud SaaS Terms of Service to which this SLA is attached (the “Agreement”).

This SLA shall apply to Autura SaaS Services:

1. **Availability.** X-Rite shall make each Service provided under the Agreement available 98% of the time, except as provided below. Availability will be calculated per calendar quarter, as below. For any partial calendar quarter during which You subscribe to the Services, availability will be calculated based on the entire calendar quarter, not just the portion for which You subscribed.

$$\text{Availability} = (\text{Maximum Availability} - \text{Downtime}) / \text{Maximum Availability} \times 100\%$$

Maximum Availability = period (in minutes) during which the services could have been available at their maximum. This equals 60 minutes x 24 hours x the number of days in the month x 3 months.

Downtime = period (in minutes) during the applicable calendar quarter during which the services were not available, not including downtime due to any of the Exceptions below.

2. **Exceptions.** Downtimes resulting from the following items or situations are excluded from X-Rite's calculation of the Availability:
 - a. Attacks (i.e. hacks, denial of service attacks, viruses) by third parties, and other acts not caused by X-Rite, provided X-Rite makes every reasonable effort to maintain current versions of software patches.
 - b. Events of force majeure, including acts of war, god, earthquake, flood, embargo, riot, sabotage, labor dispute (outside of X-Rite's or its designees' own employees), government act, or failure of the Internet.
 - c. Suspension of the Services by X-Rite in accordance with Section 8.3 of the Agreement;
 - d. Modifications to hardware, system applications or application code configuration, or code not authorized by X-Rite. Changes or modifications to code that contributed to downtime.
 - e. Unavailability of Your System due to Your programming, modifications to OS, content, development, staging and/or testing period(s) or Your acts or omissions which are not performed in accordance with X-Rite's standard change control processes.
 - f. Unavailability of Your System caused by failures of third-party systems or services not under X-Rite's control.
 - g. Any planned downtime for which X-Rite provides You twenty-four (24) or more hours' notice in accordance with the Agreement or via a conspicuous on-screen message in the Service. X-Rite will use commercially reasonable efforts to schedule all planned downtime Tuesday – Saturday between 10:00 p.m. and 2:00 a.m. US Eastern Standard Time. However, for major Service releases, X-Rite will use commercially reasonable efforts to schedule any downtime on Monday – Tuesday between 9:00 p.m. and 3:00 a.m. US Eastern Standard Time.
3. **Remedies.** If the Services are unavailable as set forth in Section 1 above in a calendar quarter, X-Rite will provide You with a credit as provided in the table below (“Credit(s)"). Credits may be used by You against any payments due in any immediately following Services Subscription Renewal.

Actual Availability	Credit
93% - 97.9%	10% of Pro-rated Quarterly Price Paid for the Services

88% - 92.9%	30% of Pro-rated Quarterly Price Paid for the Services
Below 88%	50% of Pro-rated Quarterly Price Paid for the Services

4. **Reporting, Claims and Notices.** To claim a remedy under this SLA, You shall send X-Rite written notice containing the following details:

- Billing information, including company name, billing address, billing contact and billing contact phone number
- Downtime information with dates and time periods for each instance of downtime during the relevant period
- An explanation of the claim, including any relevant calculations.

You will make any claims on a calendar quarter basis, within ten (10) business days after the end of the applicable quarter, except where a Service Subscription Term ends on a date prior to the last day of the applicable calendar quarter, in which case any claim related to that subscription must be submitted within 10 business days after the Services Subscription Term end date.

All claims will be verified against X-Rite's or its providers' system records. Should X-Rite dispute any period of unavailability You allege, X-Rite will provide You with a record of Service availability for the applicable period.

General: Services designated in writing as beta, limited release, developer preview, development or test bed environments, or by descriptions of similar import, are excluded from this SLA. X-Rite shall have no obligations under this SLA during any period You are in material breach of the Agreement, including any period in which You have failed to meet its payment obligations thereunder. The remedies in this SLA are Your sole and exclusive remedies for X-Rite's failure to meet the 98% availability, and any other of its obligations in this SLA.

5. **Support Services.**

Technical support requests can be submitted via the following link 24/7 (maximum 4 business hour response):

<https://www.xrite.com/contact-us/contact-us-form?pi=3>

Locations and hours (ALL Regions Mon – Fri)

Region	Email Contact (8 hour response)	Phone Contact (4 hour response)	Business Hours
Asia	APTechSupport@xrite.com	+8621-6448-1155	8:00am – 5:30pm UTC+8
EMEA	EMEATechSupport@xrite.com	+800 700 300 01 Option 3	9:00am – 5:00pm UTC+1 (Summer UTC+2)

Americas	XRSupport@xrite.com	888-826-3042 Option 3	8:00am – 5:00pm UTC-5 (Summer UTC-4)
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6. Data backup /Disaster recovery

a. Backup and Disaster Recovery

As part of the Services, Customer Data & application services configuration will be backed up daily and stored off-site. Backup and recovery procedures are outlined below in the event of data loss or a disaster event.

b. Backup

X-Rite will make commercially reasonable efforts to ensure that Your Data is backed up, replicated to redundant datacenters, retained for 30 days and made available for retrieval as needed. In the event of information processing errors caused by X-Rite, upon reasonable request and subject to reasonable security procedures, You shall be permitted to request a restoration of Your Data from the most recent backup during normal business hours.

c. Disaster Recovery (DR)

In the unlikely event of a disaster resulting in the inability to provide Services from the primary data center, X-Rite will use all reasonable efforts to restore the Services at the secondary service center.

The X-Rite Disaster Recovery plan is executed according to the following:

- Disaster is defined as a significant disruption event to the Services from which X-Rite is prepared to recover from and does not include a force majeure event.
- Recovery Point Objective (“RPO”) is the maximum possible interval of time before a disaster to which X-Rite will restore the system. All data changes from the moment of the disaster backward until RPO time is assumed to be lost in the event of a disaster.
- Recovery Time Objective (“RTO”) is the maximum possible interval of time between the moment of a disaster and the moment where the system is back up and fully functioning in the status defined by the RPO. The system is assumed to be down from the moment of the disaster until RTO time after the disaster.

Data Restoration and Objectives

- In case of significant disruption to the primary datacenter, the RPO is 24 hours
- In case of significant disruption to the primary datacenter, the RTO is 72 hours for 1TB of data or less (estimate required for greater than 1TB of data)
- Disaster Recovery is executed manually by X-Rite with Your approval (no automatic fail-over restoration)