END USER LICENSE AGREEMENT

Last updated: August 24, 2026

THIS AGREEMENT IS BY AND BETWEEN YOU AND X-RITE. IT CONSISTS OF THE TERMS AND CONDITIONS SET FORTH BELOW, ANY ATTACHMENTS, ADDENDA, OR EXHIBITS REFERENCED HEREIN, AND THE ORDER DOCUMENT. IT IS EFFECTIVE BETWEEN YOU AND X-RITE AS OF THE DATE ON WHICH YOU ACCEPT THIS AGREEMENT (THE "EFFECTIVE DATE").

BY USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS CONTENT. YOU ALSO AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN X-RITE AND YOU AND SUPERSEDES ALL PRIOR REPRESENTATIONS OR AGREEMENTS, ORAL OR WRITTEN, BETWEEN X-RITE AND YOU REGARDING THE SUBJECT MATTER OF THIS AGREEMENT.

This Agreement also covers software owned by third parties. If no license or specific terms and conditions are presented for acceptance the first time that third party software is invoked, then the use of that third party software will be governed by this Agreement.

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.

1. Definitions

Affiliate – means a company controlled by, controlling or under common control with a party to this Agreement.

Agreement – means this End User License Agreement , any attachments or exhibits and the Order Document referenced herein.

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.

Authorized Users, in view of a Named User License, means named individuals or processes assigned by You to use the Software, which may include, as far as individuals are concerned, Your officers, employees and/or consultants and agents performing services for You or on Your behalf. Authorized Users may be assigned and changed using only the license administration tools provided in combination with or as part of the Software licensed, provided that access credentials are not shared amongst users, and provided further that the total number of Authorized Users active at any point in time does not exceed the total number of licenses procured.

Beta/Trial Software - means X-Rite Software or functionality that is made available to You and designated as beta, trial, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

Client Seat – means any computer system, software application, or service that can access and run a program window. This includes, but is not limited to, PCs, work-stations, terminals, Terminal Services Clients, virtual PCs and servers.

X-RITE – means X-Rite, Incorporated, having its principal place of business at 4300 44th Street SE, Grand Rapids, MI 49512, or any Affiliate of X-Rite that sells and/or fulfills Your Software order.

Object Code – means work in a machine readable form that is not convenient to human understanding of the program logic, and that can be executed by a computer using the appropriate operating system without compilation or interpretation. Object Code specifically excludes Source Code.

Open Source License Terms – means any terms or conditions which meet the definition of Open Source found at http://www.opensource.org/docs/osd.

Order Document – means a quote, order confirmation and any other document(s) provided to You by X-RITE which sets forth the Software product or products licensed to You under this Agreement, the Usage Restrictions applicable to that Software and other commercial terms.

Profile - means the data stored in look-up tables for characterizing various input, display, and output Measurement Devices. Profiles are used for providing transformations between well-defined color metrics and for the characterization and calibration of Measurement Devices.

Software – means the Object Code form of software and related manuals and documentation, including X-Rite software and other third party software, 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.

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

You – means the customer entity identified in the Order Document.

Your Data means any data, information, files or other materials transmitted by You to X-Rite, uploaded or stored by You in X-Rite's datacenters, or otherwise provided by You or by the Authorized Users for use in combination with the Software licensed.

2. Grant of License

X-Rite grants You, and You accept from X-Rite, a limited, non-exclusive, non-transferrable license to use the Software solely for Your internal business purposes. The duration of such license shall be controlled by the Order Document, and shall either be perpetual or recurring (i.e. a Subscription based license) based upon the Order Document. Your continued use of the Software is subject to the timely payment of charges as they become due.

You grant X-Rite and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services or products any suggestion, enhancement request, recommendation, correction, or other feedback provided by You or Authorized Users relating to the operation of the Software or other X-Rite's or its Affiliates' services and/or products.

3. Limitations on Use

The following terms shall apply based on the type of license that you purchase:

The use of the Software is limited to the number of licenses procured.

Pertaining to Client Seat licenses, the same is licensed for use in the number of Client Seats set forth by the Order Document. If the Software is licensed for installation on a wide area network serving more than one location of Your business, You are responsible for ensuring that the Software is not used by more than the number of client Seats licensed, either by means of technical user or administrative credentials even if the license management routines do not prevent that use.

Pertaining to Concurrent User licenses, the number of users using the Software simultaneously, may at no point in time, exceed the number of licenses procured.

Pertaining to Named Users, the use of the Software, at any time, is limited solely to use by the Authorized Users appointed and licensed at such time.

Pertaining to a Beta/Trial License, unless the Order Document states differently, Your use of the Software is limited to one Client Seat and for thirty (30) days only, solely for internal testing and evaluation, and excludes any commercial use.

Pertaining to all licenses: You will not use, sell, re-license, sublicense, assign, lease or rent the Software or any copy thereof. You may not modify or translate the Software. If the Software is provided with or as part of a specific product or device, You may not remove the Software from that product or device, and You may not use any portion of the Software separately from or independent of that product or device. You will not reverse engineer, decompile, or disassemble the Software or otherwise attempt to discover the Source Code of the Software except to the limited extent expressly allowed by non-waivable provisions of applicable law. You will not tamper with, bypass or alter the license management routines included in the Software or use the Software in violation of any Usage Restrictions and/or the license granted. If You receive an upgrade or update of the Software, You may continue to use the Software, or the upgraded or updated version of the Software, but not both. Unless otherwise expressly permitted in writing, You shall not use, or permit any third party to use, the Software (i) for or on behalf of any third party, (ii) to operate an outsourcing business, retail, service bureau or similar enterprise or (iii) for any purpose other than Your internal business purposes.

The Software includes license management routines, designed to limit the functionality of the Software to the licensed functionality and/or prevent the use of the Software outside the scope of the license granted. In order to do so, certain information (such as access credentials and other information as stated in X-Rite's Privacy Policy published at https://www.xrite.com/legal/privacy-policy is collected by the Software and/or processed by X-Rite in geographical areas inside or outside the European Economic Area (including but not limited to the United States of America). By entering into or accepting this Agreement, You consent to the above.

DISTRIBUTION TO THE US GOVERNMENT –
The Software is deemed to be "commercial software" and "commercial computer software documentation," respectively, pursuant to DFARS §227.7202-3 and FAR 12.212, as applicable, developed exclusively at private expense. Any use, modification, reproduction, release, performance, display, or disclosure of the Software by the U.S. Government or any of its agencies or by a U.S. Government prime contractor or subcontractor (at any tier) shall be governed solely by the terms of this Agreement, and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

4. Profile use

If the Software creates Profiles, then the license to use the Software shall include a non-exclusive license to use the Profiles, subject to the additional restrictions below:

(a) You may use each Profile only for the specific display, input or output device owned by You, for which the device Profile was created;
(b) A Profile may be shared with third parties for proofing purposes, provided that the Profile (i) is embedded within an image or publication; or (ii) sent to a service provider along with an image or publication for use exclusively with that image or publication;
(c) A Profile may be used by a third party only on a specific display, input or output device owned by the third party for which the device Profile was created as part of Your commercial profiling service to such third party.
(d) Except as expressly permitted in this Agreement, You may not yourself or through any other person, do any of the following: (i) sell, license, sublicense, lease, rent, lend, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any Profile; (ii) allow any third party to use a Profile; or (iii) distribute to any third party a Profile in any way or form, whether by networks, electronic bulletin boards, web sites or otherwise. X-Rite may permit certain distribution rights under a separate written distribution agreement.

5. Limitations on Duplication

Your license includes making one complete copy of the Software solely for back-up purposes and use in the event the original copy of the Software is unavailable.

6. Beta/Trial Software

From time to time, X-Rite may invite You to use Beta/Trial Software at no charge. You may accept or decline the use of any such Beta/Trial Software at your sole discretion. Beta/Trial Software will be designated as beta, trial, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta/Trial Software is for evaluation purposes only and not for production use, is provided "as is" without support, and may be subject to additional terms. Unless otherwise communicated in writing by X-Rite, any Beta/Trial Software will be made available for a limited period determined by X-Rite in its sole discretion, which may be changed or terminated at any time. To the maximum extent permitted by applicable law, X-Rite will have no liability for any harm, loss or damage arising out of or in connection with any Beta/Trial Software.

7. Ownership and Copyright

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8. Warranties and Limitation of Liability

X-Rite warrants for a period of 90 calendar days after delivery (for time limited licenses, during the Subscription Period in the event that the Subscription Period is less than 90 calendar days) (the "Warranty Period"), the Software will perform substantially in accordance with the accompanying user documentation provided that the Software is used under normal operating and maintenance conditions, as directed in the documentation, and in compliance with this Agreement. The warranties set forth in this Agreement will not apply if defects arise out of accident, neglect, misuse, failure of utilities, equipment failures, causes beyond X-Rite's control, or use other than ordinary use for which the Software is intended. Any modifications to the Software by any persons other than X-Rite will void the warranty described in this Agreement and cause an event of default under this Agreement.

In the event of a claim during the Warranty Period, X-Rite's sole obligation will be to cause the Software to substantially conform to its documentation (to the extent technically and reasonably possible and on the condition that the error is reproducible) by amending or updating the Software or supplying an alternative version of the product in which it is embedded. In the event that X-Rite is unable to bring the Software into compliance with the warranty, You may return the Software to X-Rite and You will be entitled to recover, as Your sole and exclusive remedy, the fees paid for that non-complying Software, depreciated in accordance with standard accountancy practices. Outside the United States, these remedies are not available without proof of purchase from an authorized non-U.S. source.

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IN NO EVENT WILL X-RITE BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, LOSS OF PRODUCTION, LOSS OF ANTICIPATED SAVINGS OR ANY OTHER ECONOMICAL ADVANTAGE WHETHER CLAIMED BY REASON OF BREACH OF WARRANTY OR OTHERWISE, AND WITHOUT REGARD TO THE FORM OF ACTION IN WHICH THAT CLAIM IS MADE.
IN NO EVENT WILL X-RITE'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SOFTWARE PROCURED UNDER THIS AGREEMENT, REGARDLESS OF LEGAL THEORY AND FOR ALL CLAIMS IN AGGREGATE, EXCEED THE PRICE YOU PAID TO X-RITE FOR THE SOFTWARE GIVING RISE TO THE CLAIM.

THE PREVIOUS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND SHALL NOT OPERATE TO EXCLUDE OR LIMIT X_RITE'S OR ITS EMPLOYEES OR AGENT'S LIABILITY FOR FRAUD OR FRAUDULENT MISREPRESENTATION, WILLFUL INTENT OR GROSS NEGLIGENCE.

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

ALL THIRD PARTY SOFTWARE, AND BETA/TRIAL SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS WITHOUT CONDITION OR WARRANTY OF ANY KIND, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, EITHER EXPRESS OR IMPLIED.

9. CONFIDENTIALITY AND PROTECTION OF YOUR DATA

9.1 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 include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the party disclosing Confidential Information ("Disclosing Party"), (ii) was known to the party receiving Confidential Information ("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. For the avoidance of doubt, the non-disclosure obligations set forth herein apply to Confidential Information exchanged between the parties in connection with the evaluation of additional X-Rite services.

9.2 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.

9.3 Your Data. You own Your Data, and You represent and 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.

9.4 Collection and use of data by X-Rite. X-Rite collects data on the performance and operation of its products, including the Software and the Measurement Devices, as well as information regarding product feature usage and and/or combines such data with aggregated anonymized customer data (collectively, "Usage Data''). X-Rite may aggregate such Usage Data and, where applicable, process it in a manner designed to prevent identification of individual end-users. X-Rite collects and uses Usage Data for the purposes of operating, maintaining, supporting, analyzing, and improving its products and services, and for related business purposes, in each case in accordance with applicable data protection laws and the X-Rite Privacy Policy, available at https://www.xrite.com/page/terms-conditions (the "Privacy Policy").

To the extent that any Usage Data constitutes personal data under applicable data protection laws, X-Rite acts as the data controller with respect to such personal data and shall process it in accordance with this Agreement, the Privacy Policy, and all applicable data protection laws.

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 and Usage 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 made them available to its customers and otherwise for X-Rite's business purposes, all as further described in the Privacy Policy.

9.5 Artificial Intelligence Features. Certain Software may incorporate artificial intelligence, machine learning, predictive analytics, generative artificial intelligence, or similar technologies (collectively, "**AI Features**") made available by X-Rite or its subcontractors as part of the Software. For purposes of this Section: "**AI Input**" means Your Data and other content submitted by You or Your Authorized Users to, or processed through, an AI Feature. "**AI Output**" means recommendations, predictions, insights, analyses, reports, guidance or other content and/or output generated by an AI Feature based in whole or in part on AI Input. You retain all right, title and interest in and to AI Input, including all rights in and to Your Data. Nothing in this Section transfers ownership of AI Input to X-Rite. Subject to the terms of this Agreement, You may use AI Output solely in connection with Your use of the Software. Subject to the rights granted under Section 9.4, You authorize X-Rite to process AI Input through AI Features for purposes of providing, maintaining, supporting, diagnosing, securing, improving and enhancing the Software and related products and services.

You acknowledge and agree that:
(a) AI Output may be generated through automated means;
(b) AI Output may be incomplete, inaccurate, outdated, misleading, or otherwise unsuitable for a particular purpose;
(c) AI Output is provided solely for informational and assistive purposes and does not constitute professional, technical, manufacturing, quality, regulatory, legal, commercial or business advice;
(d) You are solely responsible for independently reviewing, validating and determining the appropriateness of any AI Output before acting upon or relying upon it; and
(e) AI Features may generate the same or similar AI Output for X-Rite or other customers, and such AI Output shall not be considered Your Data or Your Confidential Information.

Except as expressly stated in this Agreement, X-Rite makes no representation, warranty or guarantee regarding the accuracy, completeness, reliability, suitability or fitness for a particular purpose of any AI Output.
You shall not, and shall not permit any third party to: (i) use any AI Feature or AI Output to develop, train, improve or operate a competing artificial intelligence model, product, service or technology; (ii) attempt to extract, discover, reconstruct, reverse engineer or derive the underlying models, algorithms, weights, prompts, training data or other components of any AI Feature; or (iii) use automated means to systematically extract AI Output from the Software.
Nothing in this Section limits X-Rite's rights under Section 9.4 to use Your Data, excluding personal data, to provide, improve and support the Software, perform diagnostics, analyze trends, conduct research, or develop and provide products and services.

10. Export and United States Government Restrictions

You may not export or re-export the Software in violation of any applicable laws or regulations including but not limited to those of the United States of America, the European Union and the United Kingdom. In addition, if the Software is identified as export controlled items under the export laws of the United States of America, the European Union or the United Kingdom, You represent and warrant that You are not a citizen, or otherwise located within, an embargoed nation and that You are not otherwise prohibited under applicable export laws from receiving or using the Software. Moreover if Your acquisition of the Software is subject to the laws of the United States of America, You represent and warrant that You will comply with any specific restrictions and regulations that might be applicable to all contracts or agreements (including but not limited to the reproduction of the "restricted rights" proprietary notices and/or legends) concluded with the United States government or its agents and representatives. All rights to use the Software are granted on the condition that those rights are forfeited if You fail to comply with the terms of this Agreement.

11. Term and Termination

License commencement date. Each license granted hereunder is effective from the earlier of the date provided in the corresponding Order Document or date of activation of the Software.

Perpetual licenses: Unless otherwise defined by the Order Document, the Software is licensed on a perpetual basis.

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.

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

Termination and suspension of the license. Without prejudice to any other remedy available to X-Rite:

- In case You fail to make a payment when due, X-Rite may through technological means, or by providing You a corresponding notification, forthwith suspend Your license and prevent further use of the Software.

- 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.

  Upon termination of this license, You will cease all use of the Software and return or destroy all copies, full or partial, of the Software, as will be instructed to You, on a case-by-case basis, by X-Rite. Termination may include but not limited to deactivation of certain software functionality or access prevention to certain databases using the Software by technological means. If You lose Your software security key(s) that are provided with the Software, if any, this Agreement will likewise terminate immediately. X-Rite may, in its sole discretion, provide replacement Software if the original Software is lost, stolen, or corrupted. You agree to only use the replacement Software or, if found or rendered usable, the original Software. You will not otherwise dispose of the replacement or original Software.

12. 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.

13. Open Source License Terms

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.

14. 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 the X-Rite entity identified in the Order Document 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 the X-Rite entity identified in the Order Document is located, and the parties irrevocably accept and submit to the exclusive jurisdiction of such courts. Notwithstanding the foregoing, if X-Rite GmbH is the Seller, this Agreement shall be governed by and construed in accordance with the laws of Switzerland and the sole and exclusive venue shall be Zurich, Switzerland. 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.