

## PANTONELIVE/COLORCERT/MEASURECOLOR TEAMS SAAS TERMS OF SERVICE

**Last Updated: March 18, 2025**

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 PantoneLive/ColorCert/MeasureColor Teams 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. PROVISIONING OF SERVICES**

**1.1 Service Provision and Access.** X-Rite will (a) make the Services available to You for the Subscription Term solely for use by You and Your Authorized Users in accordance with these Terms, the Documentation, and the Order Form, (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 this Agreement. 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.

**1.2 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 Data will be deleted at end of the trial period unless You subscribed to the same Services, before the end of the trial period.

**1.3 Subscriptions.** Unless otherwise provided in the Order Form or Documentation the Services are purchased as Subscriptions for the Subscription Term stated in the Order Form or in the applicable online purchasing portal. You agree that Your purchases are not contingent on the delivery of any future functionality or features or dependent on any oral or written public comments made by X-Rite regarding future functionality or features.

**1.4 Usage Limits.** Services are subject to the usage limits specified in Order Form and Documentation. Unless otherwise expressly provided in the Order Form, 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. Certain Services may be restricted to a specific physical location or site in accordance with the Order Form. By agreeing to be bound by the terms of this Agreement, and following such other registration process as X-Rite may

require, You will be given a set of Access Credentials that will allow You to use the Services in accordance with the Agreement. You agree to prevent and protect the Access Credentials and the Services from unauthorized disclosure or use, including without limitation sharing Access Credentials internally.

**1.5 Use Restrictions.** You will not (a) sell, resell, rent or lease, the Services to any third party; (b) provide access to any Services to any person who is not an Authorized User; (c) copy, download, modify, translate, create derivative work (including partial or full database) from, any X-Rite software and/or database hosted as part of the Services in any manner not expressly authorized by this Agreement, (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to any Services, except to the extent expressly permitted by applicable law; (e) remove or obscure any proprietary or other notices contained in the Services; (f) use the Services in violation of any applicable law, rules and regulations or the Acceptable Use Policy, or (g) access the Services to build a competitive service or product, or copy any feature, function, or graphic.

**1.6 Subcontracting.** You acknowledge that X-Rite uses the services of third-party subcontractors for the provisioning of the Services, including but not limited to third-party data centers, and You consent to the corresponding subcontracting of X-Rite's obligations under this Agreement.

## **2. FEES AND PAYMENT**

**2.1 Fees.** Except as may be set forth in the Order Form, Statement of Work or by the Payment Processor, fees hereunder are due and payable net thirty (30) days from the invoice date. Except as expressly set forth in this Agreement, all payment obligations hereunder are non-cancelable and non-refundable.

**2.2 Taxes.** Fees do not include any taxes, levies, duties, or similar governmental assessments, including, for example, value-added, sales, use, or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchase hereunder. If X-Rite has the legal obligation to pay or collect Taxes for which You are responsible under this section, X-Rite or the Payment Processor will invoice You, and You will pay that amount unless You provide X-Rite or the Payment Processor with a valid tax exemption certificate. Upon X-Rite's or the Payment Processor's request, You will provide with proof of withholding tax remittance from the respective tax authority. Where applicable, You will provide Your VAT/GST Registration Number(s) on the Order Form. For clarity, X-Rite is solely responsible for taxes assessable against it based on its income, property, and employees.

**2.3 Payment Disputes.** X-Rite will not exercise its rights under Section 7.3 (Suspension of Service) with respect to non-payment by You provided You are disputing the applicable charges reasonably and in good faith and cooperating diligently to resolve the dispute.

**2.4 Late Fees.** X-Rite reserves the right to charge late payment interests in the amount of the lesser of (i) 1.5% per month or (ii) the maximum amount allowed by applicable law or as otherwise communicated by the Payment Processor. You are also liable for all costs of collection incurred by X-Rite for past due sums, including without limitation, collection agency fees, reasonable attorneys' fees and court costs.

**2.5 Payment Processor.** Orders for the Services can be processed either through the Payment Processor or directly by X-Rite. When processed through the Payment Processor, 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 the 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.

## **3. PROFESSIONAL SERVICES**

**3.1 Provision of Professional Services.** Upon Your request, X-Rite will perform the Professional Services as set forth in the Order Form or a Statement of Work, subject to these Terms.

**3.2 Your Materials.** You hereby grant X-Rite a limited right to use any materials provided to X-Rite in connection with the Professional Services (“Your Materials”) solely for the purpose of providing You with Professional Services.

**3.3 License to Deliverables.** X-Rite hereby grants to You a limited, non-exclusive, royalty-free, non-transferable worldwide license to use the Deliverables in connection with the Services for the Term of the Services.

#### **4. WARRANTY AND DISCLAIMER OF WARRANTY**

**4.1 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.

**4.2 Professional Services Warranty.** X-Rite warrants (i) that the Professional Services will be provided in a professional and workmanlike manner, and (ii) for a period of ninety (90) calendar days following delivery, the Professional Services and any Deliverables will materially conform to the specifications set forth in the Order Form or the Statement of Work (“Specifications”). If the Professional Services fail to meet this warranty, X-Rite shall re-perform the Professional Services as necessary. If the Professional Services are still non-conforming despite re-performance, X-Rite shall, as your sole and exclusive remedy, refund the portion of Professional Services fees attributable to the non-conforming Professional Services. This warranty will not apply unless You provide written notice of a claim within thirty (30) days following performance of the Professional Services or delivery of the affected Deliverable.

**4.3 Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES, PROFESSIONAL SERVICES, DELIVERABLES, 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.

#### **5. INTELLECTUAL PROPERTY AND OWNERSHIP**

**5.1 Retention of Rights.** The Services and associated software and databases 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. You agree that X-Rite or its licensors retain all right, title, and interest (including all intellectual property rights) in and to the Services and associated software and databases, the Documentation, any Deliverables, and any derivative works, modifications, or improvements of any of the foregoing (collectively, the “X-Rite Technology”). Except for the expressly limited rights set forth in these Terms, no right, title, or interest in any X-Rite Technology is granted to You.

**5.2 Trademarks.** All trademarks on or related to the Services are the sole and exclusive property of X-Rite or its Affiliates (collectively the “Trademarks”) and are protected by US and international trademark laws. Nothing in this Agreement shall give You any right, title, or interest in or to any Trademarks, nor give You any right to use the Trademarks for any purpose without the prior written approval of X-Rite. You agree that You will do nothing inconsistent with X-Rite’s or its Affiliates’ ownership of the 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 the Trademarks.

**5.2 Ownership of Your Data and Your Materials.** As between the parties, You or Your licensors retain all right, title, and interest (including any and all intellectual property rights) in and to Your Data and Your Materials. You warrant that You have and will maintain sufficient rights in Your Data and Your Materials to grant the rights to X-Rite under this Agreement and that Your Data and Your Materials will not violate the rights of any third-party.

**5.3 License to Use Feedback.** To the extent You or your Authorized Users provide X-Rite with any feedback, ideas, improvement suggestions or recommendations about the Services (“Feedback”), You hereby assign to X-Rite all rights in and to the Feedback. 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.

## **6. MUTUAL INDEMNIFICATION**

**6.1 Indemnification by X-Rite.** X-Rite will defend You against any claim by a third party alleging that any Services or Deliverables infringe any intellectual property right of such third party and will indemnify and hold You harmless from any damages and costs finally awarded against You or agreed in settlement by X-Rite (including reasonable attorneys’ fees) resulting from such claim. If Your use of the Services or Deliverables results (or in X-Rite’s opinion is likely to result) in an infringement claim, X-Rite may either: (a) substitute functionally similar products or services; (b) procure for You the right to continue using the Services or Deliverable; or if (a) and (b) are not commercially reasonable in X-Rite’s opinion, (c) terminate this Agreement, Order Form or Statement of Work and refund associated pre-paid unused fees. The foregoing indemnification obligation of X-Rite will not apply if the claim arises from (i) modification of the Services or Deliverables by any party other than X-Rite or based on Your specifications or requirements; (ii) the combination of the Services or Deliverables with products or processes not provided by X-Rite; (iii) any use of the Services or Deliverables that is not compliant with this Agreement; or (iv) any action arising as a result of Your Data, Your Materials or any deliverables or components not provided by X-Rite. This Section 6.1 sets forth Your sole remedy with respect to any claim of intellectual property infringement.

**6.2 Indemnification by You.** You will defend X-Rite against any claim by a third party arising from or relating to (i) any breach of this Agreement or (ii) Your Data or Your Materials 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.

**6.3 Indemnification Procedures.** In the event of a potential indemnity obligation under this Section 6, 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.

## **7. TERM AND TERMINATION**

**7.1 Term of Agreement.** This Agreement commences on the Effective Date and continues for the period indicated in the Order Form unless terminated earlier in accordance with Section 7.2 below. The Subscription 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 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.

**7.2 Termination.** Either party may terminate this Agreement for cause upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or if the other party becomes the subject of a petition in bankruptcy or any other similar proceeding. In addition, in the event of material breach by You, X-Rite shall also have the right to suspend the Services in accordance with Section 7.3 below.

**7.3 Suspension of Services by X-Rite.** X-Rite may suspend the Services if: (i) X-Rite reasonably believes that the Services are being used in violation of applicable law, rules and regulations; (ii) Your use of the Services interferes with the normal operations of the Services or other customers’ use of the same; (iii) there is an attack on the Services

or Your server(s), 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; (iv) Your payment of any invoiced amount is overdue and You fail to pay the overdue amount within ten (10) days of X-Rite's or where applicable, the Payment Processor's written notice; (v) You breach any obligation relating to X-Rite's (or its suppliers') intellectual property rights. X-Rite will endeavor to give You advance notice of pending suspension or termination under this Section of at least twelve (12) hours unless X-Rite determines, in X-Rite's reasonable commercial judgment, that a suspension on no or shorter notice is necessary to protect X-Rite, its customers, or others.

**7.4 Refund or Payment upon Termination.** If this Agreement is terminated by You solely in accordance with Section 7.2, X-Rite shall refund to You any pre-paid, unused fees or where applicable to the Payment Processor which the Payment Processor will refund to You. If this Agreement is terminated by X-Rite in accordance with Section 7.2, You will pay any unpaid fees due covering the remainder of the term of the Order Form. In no event shall termination relieve You of Your obligation to pay any fees payable to X-Rite or the Payment Processor for the period prior to the effective date of termination.

**7.5 Effect of Termination.** Upon termination of this Agreement: (i) You will cease using the Services; (ii) each party shall continue to protect Confidential Information in accordance with Section 8; 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. 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.

**7.6 Data Portability and Deletion.** For thirty (30) days following the effective date of termination or expiration of this Agreement, X-Rite shall at its option (i) make Your Data available to You for export or download if provided in the Documentation or (ii) provide You with a copy of Your Data in a format determined by X-Rite. If X-Rite provides You with a copy of Your Data or makes Your Data available to You for export or download as stated above, X-Rite shall have no further obligation to maintain Your Data and shall thereafter delete or destroy all copies of Your Data as provided, unless legally prohibited.

**7.7 Survival.** The following sections will survive any expiration or termination of this Agreement: 1.5 (Use Restrictions), 2 (Fees and Payment), 4.3 (Warranty Disclaimer), 5 (Intellectual Property and Ownership), 6 (Mutual Indemnification), 7 (Term and Termination), 8 (Confidentiality and Protection of Your Data), 9 (Limitation of Liability), 10 (Miscellaneous), and 11 (Definitions).

## **8. CONFIDENTIALITY AND PROTECTION OF YOUR DATA**

**8.1 Definition of Confidential Information.** Your Confidential Information includes Your Data. Confidential Information of X-Rite includes the Services and the terms and conditions of this Agreement (including pricing), 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.

**8.2 Confidentiality Obligations.** The receiving party shall not use any disclosing party's 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 will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of same importance (but not less than reasonable care).

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, each party shall either return or destroy any Confidential Information of the other party in its possession, unless otherwise provided by law, reasonable internal retention policies, or except for copies retained in receiving party's data-back up systems, provided that the confidentiality obligations hereunder shall continue to apply to such information retained.

**8.3 Your Data.** To the extent that any of Your Data or Your Materials 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 Your Materials and warrant that You have and will maintain sufficient rights in Your Data and Materials to grant the rights to X-Rite under this Agreement and that Your Data and Your Materials 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 and Your Materials 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 and Materials 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 and Materials (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 or Your Materials 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.

**8.4 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 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.

**8.5** 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 such investigations or audits. You agree to allow X-Rite access to Your premises, computers (including, but not limited to, hardware, software and network systems).

## 9. LIMITATION OF LIABILITY

**9.1 EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS OR LOST DATA, RELATING TO THE SERVICES AND/OR PROFESSIONAL SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL SUPPORT OR OTHER INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SERVICES OR OTHERWISE ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT DUE TO X-RITE'S NEGLIGENCE.

**9.2 LIABILITY LIMITATIONS.** IN NO EVENT WILL X-RITE'S AGGREGATE LIABILITY HEREUNDER FOR ALL CLAIMS IN THE AGGREGATE, EXCEED THE TOTAL FEES PAID BY YOU TO X-RITE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INITIAL CLAIM.

## 10. MISCELLANEOUS

**10.1 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.

**10.2 Governing Law; Venue.** All disputes arising from or related to this Agreement will be governed by the laws of the country and state, or other applicable geographic designation, where X-Rite is located, without reference to its conflicts of law principles. Each party hereby consents to the exclusive personal jurisdiction and venue of the courts where X-Rite is located. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods from application to this Agreement.

**10.3 Assignment.** You may not assign this Agreement without the express written consent of X-Rite. Any attempted assignment in violation of this provision will be void.

**10.4 Severability; Waiver.** If any part of the Agreement is found unenforceable by a court of competent jurisdiction, the remainder of the Agreement will remain in full force and effect. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived.

**10.5 Relationship of the Parties.** The parties' relationship is that of independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**10.6 Entire Agreement; Order of Precedence.** This Agreement constitutes the entire agreement of the parties and supersedes all previous communications between the parties relating to this Agreement and to the subject matter of the Agreement. No terms or conditions stated in any purchase order You may issue, or in a vendor onboarding process or web portal, shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void, notwithstanding any language to the contrary therein. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (i) the Order Form (ii) these Terms, and (iii) the Documentation.

**10.7 Modifications.** X-Rite reserves the right to change or modify the terms of this Agreement 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 10.7 the posting of an updated copy of this Agreement to X-Rite's website at <https://www.xrite.com/page/terms-conditions> shall constitute written notice of the change(s) to this Agreement.

**10.8 Force Majeure.** Neither party will be responsible for, nor be in default under this Agreement (except for a failure to pay Fees) due to any delays or failure of performance resulting from acts or causes beyond its reasonable control, including without limitation, acts of war, export regulations, third-party labor strikes, power failures, natural disasters or other similar events ("Force Majeure Events"). In the event that either party is unable to perform any

of its obligations under this Agreement because of a Force Majeure Event, the party who has been so affected will promptly give notice to the other and will exercise all reasonable efforts to resume performance as soon as feasible.

## 11. DEFINITIONS

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

“Access Credentials” means usernames and passwords or similar credentials enabling access to the Services.

“Access Management Protocols” means the technical protocols that limit the functionality of the Services to the specific functions and features licensed, the specific named Authorized Users, or to the number of Subscriptions purchased to prevent non-compliant use of the Services.

“Affiliates” means any entity controlling, controlled by, or under common control with, X-Rite or You, whereby “control” shall mean direct or indirect ownership or control of (i) more than fifty percent (50%) of the shares or voting interest in an entity; or (ii) the power to direct the management or policy of an entity.

“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.

“Authorized Users” means individuals assigned by You or, subject to your permission, granted access by X-Rite, to use the Services, which may include, Your officers, employees, consultants and agents and/or officers or employees of third parties suppliers performing services solely for You or on Your behalf. With respect to Authorized Users granted access by X-Rite with your permission, You acknowledge and agree that X-Rite may charge such Authorized Users separately for using the Services.

“Agreement” means these Terms, any attachments, addenda, or exhibits referenced therein, and the Order Form.

“Confidential Information” means all information disclosed by a party (the “Disclosing Party”) to the other party (the “Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

“Deliverables” mean the final work product(s) delivered by X-Rite as part of the Professional Services, as specified in the applicable Order Form or Statement of Work.

“Documentation” means X-Rite’s user guides, documentation, and help and training materials, as updated from time to time and provided to You.

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

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

“Statement of Work” is a variant of an Order Form used when only Professional Services are being 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.

“Professional Services” means the technical, consulting, configuration, or implementation services provided by X-Rite to You in accordance with the Order Form or a Statement of Work.

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

“Services” means PantoneLive, ColorCert ScoreCard Server and/or ColorCert Repository Server or MeasureColor Teams software-as-a-service offering made available and ordered by You as set forth in the Order Form.

“Services Commencement Date” means the specific date set forth in Your Order Form, or in the absence thereof, the date on which X-Rite provides You with Your Access Credentials or the date on which you completed the payment to the Payment Processor and received instructions from the Payment Processor that the Services are now accessible.

“SLA” means the X-Rite Service Level Agreement for the Services attached hereto as Exhibit A.



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

“Subscription Term” means the duration of the Subscription set forth in the Order Form starting from Services Commencement Date.

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

“Your Data” means any electronic data and information submitted by You to the Services.

**EXHIBIT A  
SERVICE LEVEL AGREEMENT**

This Service Level Agreement (SLA) is subject to and made a part of the PantoneLive/ColorCert/MeasureColor Teams SaaS Terms of Service into which it is incorporated by reference (the "Agreement"). Any of the services to be provided by X-Rite in this SLA may be provided by X-Rite's designees at X-Rite's option. This SLA does not apply to any Services that are provided via a X-Rite reseller.

1. Availability. X-Rite shall make the Services 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.

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

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 the Terms.
  - d. Unavailability of Your system due to Your programming, modifications to Your 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.
  - e. Unavailability of Your system caused by failures of third party systems or services not under X-Rite's control.
  - f. 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 Services. 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)"), based on the fees paid for the non-conforming Services. Credits may be used by You against any payments due in any immediately following renewal term of the Agreement.

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
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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 ends on a date other than the last day of a calendar quarter, in which case any claim related to that subscription must be submitted within 10 business days after the subscription 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.

5. General: Services designated in writing as beta, limited release, developer preview, development, free trial 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.