

GENERAL TERMS AND CONDITIONS OF SERVICE

ACCEPTANCE: These General Terms and Conditions of Services (“terms”) are applicable to services provided by X-Rite to Client, pursuant to a Statement of Work signed by X-Rite and Client and referencing these Terms and together with such Statement of Work (“Agreement”) are the sole and exclusive terms and conditions applicable to the subject matter covered by the Agreement. X-Rite hereby objects to and rejects any other terms and conditions appearing on, incorporated by reference in, or attached to, Client’s orders or other documentation. CLIENT’S SIGNATURE ON A STATEMENT OF WORK ACKNOWLEDGES CLIENT HAS READ AND UNDERSTANDS THESE TERMS AND CONSTITUTES ITS ACCEPTANCE OF THESE TERMS.

1. DEFINITIONS.

The following capitalized terms used in this Agreement are used as defined in this Section 1. Each of the following definitions shall be equally applicable to the singular and plural forms of the terms defined.

“**Affiliate**” means, as to either party, any other person or entity controlled by, controlling or under common control with same, and “control” means the power to manage or direct the affairs of the person or entity in question, whether by ownership of voting securities, by contract, or otherwise.

“**Client**” means the client identified in a Statement of Work.

“**Confidential Information**” means any information (whether tangible or intangible, printed, electronic, or otherwise) and items embodying information (including graphs, photographs, samples, working models, and prototypes) at any time furnished by either party or one of its Affiliates to the other, or to which either party or one of its Affiliates is exposed whether before or during the term of this Agreement, including, without limitation, (a) the identities of or information concerning the discloser’s customers, suppliers, or other business partners, (b) information concerning discloser’s business and business plans, (c) discloser’s marketing plans and materials, (d) financial information concerning discloser and its Affiliates, (e) information concerning discloser’s pending patents or other trade secrets, (f) discloser’s business techniques and methodologies, operating procedures, systems operations, management tools, manuals, sketches, drawings, designs and specifications, data models, concepts, ideas, inventions, know-how, processes, templates, apparatus, equipment, algorithms, formulas, ingredients, software programs, software source documents, and formulas, (g) information from third parties that discloser is obligated to treat as confidential, and (h) information that is derived from Confidential Information (for example through testing, analysis or processing).

“**Effective Date**” means the effective date specified in this Agreement.

“**Intellectual Property Rights**” means domain names, company names, patents, trademarks, trade

names, trade dress, trade secrets, copyrights, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property, rights in other tangible and intangible assets of a proprietary nature, and the like.

“**Services**” means the services performed or to be performed by X-Rite under the terms of this Agreement.

“**Statement of Work**” or “**SOW**” is defined in Section 2.1.

“**Work Product**” is defined in Section 5.1.

“**X-Rite**” means X-Rite, Incorporated with office at 4300 44th Street SE, Grand Rapids, MI 49512 or any X-Rite, Incorporated’s Affiliate identified on the Statement of Work

2. SERVICES.

2.1 **Statement of Work.** Each purchase of Services shall be documented in a signed statement of work (the “**Statement of Work**” or “**SOW**”).

2.2 **Conflicting Terms.** Each SOW shall be a part of and be governed by these Term. Where these Terms expressly contemplate that the SOW may provide otherwise, the terms of the SOW shall control. Any other amendment to any term of these Terms in a SOW shall not be effective unless identified by reference in a separate section of the SOW with the following legend:

“Notwithstanding anything to the contrary contained in the General Terms and Conditions of Services , the following provisions of this SOW shall govern the obligations of the parties with respect to this SOW, only, but shall not otherwise amend or supersede the General Terms and Conditions of Services: [Insert references to specific provisions of the General Terms and Conditions of Services]”

3. TERM

3.1 **This Agreement.** This Agreement shall remain in effect until terminated by either party as provided in Section 8 below.

3.2 **SOWs.** Each SOW shall remain in effect until: (a) it is terminated as provided in Section 8.1 or 8.2 below; (b) it has expired on its own terms; or (c) the Services and/or deliverables described have been completed in accordance with the SOW and this Agreement, whichever is sooner.

4. **PRICE AND PAYMENT**

4.1 **Pricing.** The Services provided by X-Rite shall be at the pricing stated in the applicable SOW.

4.2 **Reimbursable Expenses.** Unless otherwise provided in the applicable SOW, Client shall reimburse X-Rite for all reasonable and actual out of pocket expenses, including, without limitation, travel and living expenses, incurred by X-Rite in connection with the performance of Services. Reimbursable expenses shall be invoiced on a monthly basis. Upon request by Client, X-Rite shall provide reasonable documentation supporting any expense for which X-Rite seeks reimbursement.

4.3 **Invoices.** Unless otherwise provided in the SOW, X-Rite will submit invoices for charges and expenses on a monthly basis to the address set forth in the SOW. Each invoice shall be due and payable within thirty (30) days of the receipt of an invoice.

5. **INTELLECTUAL PROPERTY**

5.1 **Ownership.** Any and all inventions, improvements, developments, materials, trade secrets, deliverables and work whether owed by X-Rite on the Effective Date or produced by X-Rite in the course of its performance of the Services, including, without limitation, all Intellectual Property Rights or the like (hereinafter referred to collectively as the "Work Product") shall be the sole and exclusive property of X-Rite.

5.2 **License.** X-Rite grants to Client a nonexclusive, royalty free right and license to use the Work Product to the extent necessary to utilize the Services as intended hereunder. Client shall be responsible for obtaining any consent of third parties necessary for Client to fully exercise its rights hereunder.

6. **CONFIDENTIALITY**

6.1 **Nondisclosure.** Discloser and Recipient. As to any particular Confidential Information (defined below), the Discloser is the party disclosing the Confidential Information and the Recipient is the party receiving the Confidential Information.

6.2 **Restrictions on Use; Non Disclosure.** Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient agrees that it will not:

6.2.1 use the Confidential Information of Discloser for any purpose other than the purpose for which Discloser disclosed the information;

6.2.2 directly or indirectly copy, transfer, or otherwise disclose or reveal Confidential Information of Discloser to any person or entity other than its employees, directors, officers, agents, Affiliates and consultants who (i) have a need to know to further the purpose of this Agreement; (ii) have been advised of the information's confidential status; and (iii) are subject to legally binding obligations of confidentiality as to such information no less restrictive than those contained in this Agreement, provided, that Recipient shall at all times be fully responsible to Discloser for the compliance by such persons and entities with this Agreement; or

6.2.3 if requested by Discloser, disclose its business relationship with Discloser.

6.3 **Exceptions.** The obligations set forth in this Section 6 shall not apply to Confidential Information that:

6.3.1 before the time of its disclosure was already in the lawful possession of the Recipient; or

6.3.2 through no wrongful act of the Recipient, at the time of its disclosure to Recipient is, or later becomes, available to the general public; or

6.3.3 Recipient demonstrates with appropriate written documentation to have been lawfully independently developed by Recipient without the use of or reliance upon any Confidential Information of the other party and without any breach of this Agreement.

6.4 **Standard of Care.** Recipient shall use its reasonable efforts to prevent unauthorized access to and unauthorized use of any Confidential Information of Discloser.

6.5 **Ownership; No License.** Each party shall retain ownership of all rights, including all intellectual property rights, in its Confidential Information.

6.6 **Ownership; No Reverse Engineering.** Recipient agrees not to assert any claim of title or ownership to the Discloser's Confidential Information or any portion thereof. If Confidential Information consists of computer software disclosed in object code form, Recipient shall not, and shall not permit any other party to, reverse engineer, reverse compile, or disassemble

such object code, or take any other steps to derive a source code equivalent thereof. If Confidential Information is embodied in an item, such as a model or prototype, then except as specifically approved in writing by Discloser Recipient shall not, and shall not permit any other party to, reverse engineer such item to derive drawings, plans, or designs, specifications, or other embodied information, and any such derived information shall constitute Confidential Information protected by this Agreement.

6.7 **Disclosures Required by Law.** If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Recipient shall notify Discloser of the requirement promptly in writing so that Discloser may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, Recipient agrees to furnish only that portion of the information which Recipient is advised by counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.

6.8 **Duration.** The obligations set forth in this Section shall survive for three (3) years following termination of this Agreement.

6.9 **Remedies.** The parties acknowledge and agree that a breach of this Section by either party may cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law may be inadequate, and that Discloser shall therefore be entitled, in the event of any actual or threatened violation of this Agreement by Recipient, and in addition to any other remedies available to it, to seek a temporary restraining order and to injunctive relief against the other party to prevent any violations thereof, and to any other appropriate equitable relief.

7. WARRANTIES AND LIMITATION OF LIABILITY

7.1 **Authority to Contract.** Each Party represents and warrants that it has the right to enter into this Agreement and perform its obligations hereunder.

7.2 **Workmanlike Fashion.** X-Rite represents and warrants that all Services shall be performed in a professional and workmanlike fashion.

7.3 **Disclaimer of Other Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, X-RITE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.4 **Disclaimer of Certain Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL, EQUITABLE OR STATUTORY CLAIM, CAUSE OF ACTION OR LEGAL THEORY, REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE. FURTHER, IN NO EVENT SHALL X-RITE'S AGGREGATE LIABILITY UNDER EACH SOW EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO X-RITE FOR SERVICES UNDER SUCH SOW.

8. TERMINATION

8.1 **By Either Party.** Either party shall have the right to terminate this Agreement and/or any SOW upon written notice of the occurrence of either of the following events:

8.1.1 *Default.* If the other party defaults in the performance of any of its material obligations under this Agreement or SOW and such default continues for a period of fifteen (15) days after receipt of written notice specifying the nature of the breach.

8.1.2 *Ceases Doing Business, Etc.* If the other party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization.

8.2 **By Client.** Unless otherwise provided in the SOW, Client shall have the right to suspend performance or terminate Services under any SOW upon at least thirty (30) days' prior written notice to X-Rite. Client shall pay X-Rite for all Services performed as well as for any expenses incurred by X-Rite on behalf of Client through the date of termination in accordance with the applicable SOW.

8.3 **Deliverables.** If Client terminates this Agreement or any SOW under Section 8.2, then upon Client's request and subject to full payment by Client, X-Rite shall advise Client of the extent to which performance has been completed through the termination notice date, and deliver to Client all completed deliverables.

9. GENERAL TERMS AND CONDITIONS

9.1 Non-Recruitment; Non-Solicitation of Employees. Each party recognizes that the employees of the other party, and such employees' loyalty and service to that other party, constitute a valuable asset of that other party. Accordingly, each party agrees not to canvass, solicit directly or indirectly, contract, or hire any employee of the other party during the term of this Agreement and for twelve (12) months after any termination of this agreement, or six (6) months following termination of employment of an employee with the other party, whichever occurs first.

9.2 Independent Contractor. The parties are independent contracting parties and nothing in this Agreement shall be deemed to make either party an agent, employee or joint venturer of the other party. Neither party shall be entitled to any benefits that the other party provides for its own employees, including, without limitation, workers' compensation and unemployment insurance. Each party shall be solely and entirely responsible for its own acts and the acts of its employees, agents and subcontractors.

9.3 Delays. Neither party shall be liable to the other party for any delay or failure to perform its obligations if such delay or failure arises from any cause beyond the reasonable control of that party.

9.4 Notices. Except as otherwise provided herein, any notice or other communication between the parties hereto regarding the matters contemplated by this Agreement may be sent by U.S. mail (first-class, airmail or express mail), commercial courier, facsimile or electronic mail, in each case delivered to the address set forth above for the recipient or at such other addresses as the parties may designate in writing. Any written notice required to be sent under Section 8 ("Termination") must be sent by U.S. mail (first-class, airmail or express) or commercial courier.

9.5 Subcontractors. X-Rite may engage third parties to perform any Services under any SOW without the prior written consent of Client, provided that X-Rite shall remain fully responsible for the Services performed by its subcontractors to the same extent it is responsible for its own performance hereunder.

9.6 Amendment. No provision of this Agreement may be modified except by a written document signed by a duly authorized representative of the parties.

9.7 Assignment. Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; except that X-Rite may assign its rights and obligations under this Agreement or in any SOW to any Affiliate.

9.8 Waiver. No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach of the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

9.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of X-Rite and Client and their respective legal representatives, successors and authorized assigns.

9.10 Counterparts. This Agreement may be executed simultaneously in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

9.11 Severability. If any provisions of this Agreement shall be prohibited or unenforceable by any applicable law, the provision shall be ineffective only to the extent and for the duration of the prohibition of unenforceability, without invalidating any of the remaining provisions.

9.12 Remedies. The rights and remedies provided herein shall be cumulative and in addition to any other remedies available at law and in equity.

9.13 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the State of Michigan (without regard to its conflict of law principles). 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.