



## **SUBSCRIPTION AND SOFTWARE LICENSE AGREEMENT**

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE PROCEEDING. BY USING THE EDITSHARE SOFTWARE YOU ARE AGREEING TO THE TERMS OF THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT PROCEED WITH THE INSTALLATION OR USE OF THE EDITSHARE SOFTWARE.

### **1. Definitions (As Used In This Agreement):**

1.1 "Software" means all EditShare software products, as offered by EditShare from time to time, in object code only, delivered by EditShare to Licensee, the Authorization Key, and all EditShare-authorized maintenance updates, replacements or modifications of the EditShare software provided to Licensee for use under the terms of this Agreement. Software does not include Third Party Software or open source software (such as Linux) which Licensee may obtain for use with the EditShare Software.

1.2 "Third Party Software" means the software that must be licensed from a commercial third party other than EditShare.

1.3 "Cloud Environment" means the Linux or Windows cloud-based computing environment that Licensee uses (either through EditShare or through arrangement with a third-party cloud computing service provider) for operation of the Software. The Cloud Environment must comply with the recommendations provided by EditShare.

1.4 "Client Cloud Deployment" means a deployment of the EditShare Software in a third-party cloud computing environment, as arranged for the Licensee.

1.5 "On Premises Deployment" means a deployment of the EditShare software on the customer premises, as arranged for the Licensee.

1.6 "Documentation" means the user guides, reference manuals, installation materials and other written materials (in whatever format, including electronic or hardcopy) relating to the complete Software delivered by EditShare to Licensee.

1.7 "Authorization Key" means the key delivered by EditShare that contains a unique series of data elements that enables use of the Software.

1.8 "Subscription Type" means either a Client Cloud Deployment or On Premises Deployment..

1.9 "System" means the sum of the Software, Cloud Environment, Authorization Key and Documentation.



1.10 “Subscription Term” means the duration of the Subscription to use the Software ordered and paid for by Licensee.

1.11 “Scope” means the extent of Licensee’s right to use the Software during the Subscription Term. The elements of Scope shall be defined by EditShare and shall be either a number of simultaneous users of the Software or the total amount of memory/storage used in conjunction with the Software.

1.12 “Order” shall mean Licensee’s purchase order or similar document that specifies a Subscription Type, Subscription Term and Scope for Licensee’s use of the Software and any ancillary services to be provided by EditShare. If license fees are established by a written Quote from EditShare, the Order shall reference the Quote. All Orders are subject to acceptance by EditShare.

## **2. Grant Of License.**

EditShare grants Licensee the following non-exclusive, non-transferable (except as provided below) license rights, without the right to sublicense, subject to the terms and conditions of this Agreement:

- Use. A non-exclusive term license to use the EditShare Software in the specified Cloud Environment for the duration of the Subscription Term and within the Scope of the License ordered and paid for by Licensee. In addition, a non-exclusive license to use EditShare Client Software solely on client workstations that are linked via a network connection to an EditShare Server;
- Documentation. A non-exclusive license to use the Documentation in conjunction with the System; and
- Backup Copy. A non-exclusive license to make and store backup copies of the Software solely for the purposes of restoring or reinstalling the Software in the event of a hard drive failure.

## **3. Installation, Support And Access**

3.1 If ordered by Licensee, EditShare shall install the Software on the customer’s Cloud Environment and configure it for use in accordance with Licensee’s Order and mutually agreed upon Statement of Work. EditShare shall notify Licensee when it has completed installation and the Software is operational in accordance with the Statement of Work (“Acceptance”). Should Licensee use the Software for production purposes, it shall constitute Acceptance, regardless of whether installation is fully complete.



EditShare shall also provide maintenance and support for the Software, as outlined in the Service Agreement appended hereto. In addition, Licensee may engage EditShare to perform professional services in support of Licensee's use of the Software, in which case the parties shall execute a Statement of Work specifying such services.

Licensee shall secure access by EditShare to the customer's environment, as necessary to enable EditShare to perform installation, maintenance and support, professional services, and to verify Licensee's compliance with its License Scope.

Licensee acknowledges that EditShare may collect analytic data regarding Licensee's use of the Software, and Licensee gives EditShare permission to use such information only in a collective, anonymized manner for the sole purpose of analyzing and improving the performance and usability of the Software. Licensee will be presented with a screen pop-up upon initial installation of the Software, which will require it to affirmatively "turn on" analytics reporting and Licensee may "turn off" analytics reporting at any time by contacting EditShare support. EditShare will not use any such information to identify or contact any individual, for any purpose.

#### **4. Title And Secure Use**

4.1 The Software and Documentation are protected by patents, copyright and other intellectual property laws and treaties, and this Agreement is not a sale of the Software, the Documentation or any copy thereof. Except as stated herein, this Agreement does not grant Licensee any rights to patents, copyrights, trade secrets, trademarks or any other rights in respect of Software and Documentation. Licensee may not reverse engineer, decompile, or disassemble the Software. Licensee will include and will not alter or remove any copyright, patent, trade secret, proprietary and/or other legal notices contained on or in the System, including the Software, Authorization Key, or the Documentation.

4.2 Licensee shall control access to use of the Software by assigning and controlling password access through its account. Licensee is responsible for maintaining the security of its passwords, shall be responsible for all use made of the Software through its account and shall indemnify EditShare for any illegal use or damage to any third party caused by Licensee through its account. Licensee will take all reasonable steps to safeguard the Software and the Documentation and to ensure that no unauthorized persons have access to the Software or the Documentation, and that no persons authorized to have such access shall take any action which would be prohibited by this Agreement if taken by Licensee.

#### **5. Warranty, Support And Maintenance**

**5.1 Warranty.** EditShare warrants that during any Subscription Term, the Software will perform materially in accordance with the Documentation. If EditShare receives notice from Licensee that the Software is not performing in accordance with the Documentation, EditShare will use commercially reasonable efforts to remedy or fix such defect in accordance with the Maintenance and Support procedures appended hereto. In addition, EditShare will install



maintenance releases, feature enhancements and all new versions and releases of the EditShare Software during the Term. EditShare will use commercially reasonable efforts to provide Company with ongoing notice of such maintenance activity.

**5.2 Licensee Responsibility.** Licensee acknowledges, (i) that the Software is intended as a tool only and not a guarantee of a particular outcome or result; Licensee is solely responsible for the results achieved using the Software; (ii) that Licensee has control of and is solely responsible for the security of its data while on the Server, including transit to and from the Server; and (iv) that Licensee is responsible to maintain and back up all Licensee data, including the results achieved using the Software.

**5.3** EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, EDITSHARE DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, AND EDITSHARE DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

## **6. Subscription License Fees**

License fees shall commence upon acceptance and shall be based on and calculated in accordance with EditShare's standard published price list or on an authorized quotation provided to Licensee by EditShare, in accordance with its terms. Licensee shall pay EditShare the License Fees in advance as provided in the quote, during the Subscription Term. If applicable, Licensee shall, within thirty days of the end of each quarter, reconcile and pay fees for any overage use of the licensed software, as applicable, during the previous quarter. Licensee shall grant EditShare access to the Software and Cloud Environment to enable EditShare to audit and confirm Licensee's usage of the Software and compliance with its License Scope.

Licensee shall have the right to dispute amounts due hereunder in which case the parties shall work together expeditiously and in good faith to resolve the issue. Interest shall accrue on undisputed overdue payments at the rate of the prime interest rate (as published weekly in the Wall Street Journal) plus three percent. Should Licensee be more than thirty days late in paying any undisputed Licensee Fee, Licensee's right to use the Software shall be suspended, upon notice by EditShare, until such time as the Licensee Fee, plus interest, is paid in full. All taxes imposed upon the licensing or use of the Software hereunder shall be the responsibility of Licensee, except for any taxes based on or measured by EditShare's net income.

## **7. Term And Termination**

**7.1 Term.** This Agreement is effective until the expiration of the last to expire Subscription Term purchased by Licensee or until terminated as provided below. Licensee may license Software for additional Terms by placing additional Orders, subject to acceptance by EditShare.

**7.2 Termination for Cause.** Either party may terminate this Agreement if the other party breaches any of the material terms of this Agreement and does not cure such breach within thirty



days of notice from the non-breaching party. If EditShare terminates this Agreement for cause, all Licensee Fees for the then-current Term shall immediately become due and payable. If Licensee terminates this Agreement for Cause, EditShare shall refund to Licensee all License Fees paid by Licensee for any periods subsequent to the date of the notice of breach by Licensee. Upon termination for cause by either party, Licensee shall immediately cease all use of the Licensed Software and shall return or destroy all copies of the Licensed Software in its possession or control, except for one archival copy to be held for record keeping purposes only.

## **8. Confidentiality**

During the course of this Agreement each Party may provide to the other information that it considers to be proprietary or confidential (“Confidential Information”). Each party agrees to use reasonable commercial efforts to mark its Confidential Information with a “Confidential” or “Proprietary” legend. Each Party shall hold the other’s Confidential Information in confidence, use it only to further the purposes of this Agreement and not reveal it to any third party. Each Party shall disseminate the other’s Confidential Information only to those of its employees, contractors or consultants who have a need to know such information for the furtherance of this Agreement, and who have executed appropriate agreements requiring them to maintain the confidentiality of such Confidential Information. Each Party’s obligations shall not extend to information generally available to or known to the public, known prior to its disclosure by the other party, independently developed, or lawfully disclosed to it by a third party. The foregoing shall not restrict any disclosure by either party required by law or government authority, provided that it gives the other party reasonable notice and opportunity to seek a protective order or other method of limiting the scope of such disclosure.

## **9. Export Restrictions.**

Licensee acknowledges that the Software is of U.S. origin and subject to U.S. export jurisdiction. Licensee agrees to comply with all applicable international and national laws that apply to the Product, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments.

## **10. Infringement Indemnity**

EditShare shall indemnify, defend and hold Licensee harmless from and against any claims, actions, or demands alleging that the Software, or any part thereof, directly infringes or misappropriates any United States patent, trademark, copyright, or trade secret right of any third party, provided that Licensee promptly notifies EditShare of any such claim, allows EditShare to control the defense and provides reasonable information and assistance to EditShare (at EditShare’s expense) in the defense of the claim. Licensee shall permit EditShare to replace or modify any affected Software to avoid infringement, or to procure for Licensee the right to continue to use such Software. If neither of such alternatives is reasonably possible, EditShare may require Licensee to cease using the Software and EditShare’s sole liability in regard shall be to refund to Licensee any License fees paid by Licensee for periods after such cessation of use. EditShare shall have no obligation with respect to claims, actions, or demands to the extent that they are based upon (i) the combination of Software with any items not supplied by EditShare,



(ii) any modification or change to the Software by Licensee, (iii) any failure by Licensee to implement modifications or replacements distributed by EditShare to address any alleged infringement or (iv) any intellectual property right in which Licensee or any affiliate of Licensee has a proprietary interest. This Section states the entire liability of EditShare with respect to indemnification or liability for infringement of patents, copyrights or other proprietary rights by the Software or any part thereof or by their use or operation.

## **11. Limitation of Liability.**

THE MAXIMUM LIABILITY OF EDITSHARE AND ITS RESELLERS, DISTRIBUTORS AND LICENSORS ARISING OUT OF OR RELATED TO SUBSCRIPTION TO OR USE OF THE SOFTWARE, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PAYMENT MADE BY LICENSEE FOR THE SUBSCRIPTION TERM THAT IS THE SUBJECT OF THE CAUSE OF ACTION. IN NO EVENT SHALL EDITSHARE OR LICENSEE BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF DATA OR LOSS OF USE DAMAGES (INCLUDING WITHOUT LIMITATION "DOWNTIME") AND LOST PROFITS, ARISING HEREUNDER OR FROM THE SUBSCRIPTION TO OR USE OF THE SOFTWARE OR THE PROVISION OF SERVICES EVEN IF EDITSHARE OR LICENSEE HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

## **12. Miscellaneous**

**12.1 U.S. Government License Rights.** All Product provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein.

12.2 Neither party may assign this Agreement, or its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, however, either party may assign all, but not less than all, of its rights and obligations hereunder to a successor party in the event that such party merges or sells its relevant assets to such successor party, or engages in a similar type transaction, and provided that such successor party agrees to be bound by all of the terms and conditions of this Agreement.

12.3 Each party shall comply with all applicable laws and regulations of governmental bodies or agencies in its performance under this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (excluding its choice of law rules.) The exclusive jurisdiction for any legal proceeding regarding this Agreement shall be in the state or federal courts located in the Commonwealth of Massachusetts and each party hereto expressly submits to the jurisdiction of said courts and hereby waives any objection to the venue in such courts.



12.4 Neither party shall, by lapse of time or inaction, be deemed to waive any breach by the other party of this Agreement. No waiver shall be effective unless in writing and signed by the party against which enforcement of such waiver is sought. The waiver by either party of a particular breach of this Agreement by the other party shall not be a continuing waiver of such breach, or of other breaches of this Agreement. Neither party shall be in default if failure to perform any obligation hereunder is caused by conditions beyond that party's control, including acts of God, civil commotion, strikes, labor disputes, and governmental demands or requirements.

12.5 All notices and other communications under this Agreement shall be sent either by U.S. mail as registered mail, return receipt requested, or by overnight courier service, postage prepaid, and addressed to the party at the address noted above, unless by such notice a different address shall have been designated in writing. All such notices shall be effective when delivery is made or attempted by the Postal or Courier Service.

12.6 If any provision of this Agreement shall be held unenforceable or illegal, the validity of the remaining portions or provisions hereof shall not be affected thereby. The parties agree that this Agreement is the complete and exclusive statement of their agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the parties relating thereto. Only a writing that refers to this Agreement and is duly signed by both parties may amend this Agreement.