

## **Editshare Terms & Conditions of Sale and License**

### **1. General**

These general terms and conditions (“Terms and Conditions”) exclusively govern all transactions for the purchase of EditShare hardware and the subscription or license for the use of EditShare software products (“Products”) between any Buyer and the EditShare LLC and its affiliates, worldwide (“EditShare”).

Transactions may be initiated by an EditShare quotation, offer or proposal (“Quotation”), that is accepted, in writing, by the Buyer or by Buyer’s issuance and EditShare’s acceptance of a purchase order (the entity accepting the EditShare offer or issuing the purchase order is hereinafter referred to as the “Buyer”). These Terms and Conditions shall be exclusive of and prevail over all other terms and conditions, written or oral, implied by trade, custom or course of dealing, wherever appearing or however introduced (including those in any buyer general terms and conditions, request for quotation, order or confirmation) unless expressly otherwise agreed by EditShare in writing. All other terms or conditions are expressly rejected by EditShare.

Defined Terms, as used herein, are set forth in Appendix A

### **2. Packaging, Shipment and Delivery**

EditShare will pack the Hardware Products in such manner and with such materials, as EditShare believes is appropriate. The cost of special packaging, if agreed or deemed necessary by EditShare, shall be an additional charge. EditShare will deliver the Hardware Products (“Delivery”) by shipping them, Ex Works, from the EditShare manufacturing or warehouse location, and Buyer shall be responsible for all shipping and insurance costs. Delivery dates are estimates only and EditShare shall not be responsible or liable for any delays in Delivery. EditShare may make partial deliveries and partial delivery shall not affect the Buyer’s obligation to pay for any other part of the order.

### **3. Acceptance**

Buyer shall have the right to inspect the Products upon receipt and shall promptly notify EditShare of any damage, defect or discrepancy (“Defect”). Buyer will be deemed to have accepted the Products unless it notifies EditShare of a Defect within three business days of receipt. If Buyer rightfully rejects the Products, EditShare shall have a reasonable opportunity to replace or correct the Products, and if it cannot do so, then EditShare’s sole liability shall be to accept return of the Products and refund all payments made by Buyer for the Defective products

### **4. Price and Payment**

The price for the Products shall be the relevant price in the valid EditShare Quotation or the current EditShare price list at the date of order, less any discount agreed by EditShare in writing. EditShare may change its price list at any time, without notice. The Buyer shall bear the cost of any applicable

sales, value added, excise, or similar tax in relation to the goods unless the Buyer provides EditShare with a tax exemption certificate or license acceptable to the taxing authorities before shipment.

Buyer shall pay for all Products ordered hereunder net thirty days from the date of invoice, which shall be issued upon Delivery. Notwithstanding the foregoing, EditShare may impose commercially reasonable credit terms on any transaction and may withhold Delivery pending satisfaction with such terms. Interest shall accrue on overdue payments at the rate of 2% per month. EditShare shall retain title to the Hardware Products until it has received payment in full of all sums due and/or owing in connection with the supply of all Products to the Buyer at any time.

## **5. Hardware Specifications**

EditShare supplies Hardware Products in accordance with the relevant manufacturer's standard specifications but EditShare reserves the right for manufacturers to make such improvements and modifications in such specifications without prior notice in the suppliers discretion, without obligation to modify goods previously delivered or to supply new goods in accordance with earlier specifications.

If the Buyer wishes to change or customize the specification of any Products to be supplied by EditShare then EditShare shall not be obliged to agree to such change. If EditShare does agree to any proposed change requested by the Buyer then EditShare shall be entitled to adjust the price, delivery and warranty accordingly.

All technical information and particulars of Hardware Products or their performance given by EditShare are given as accurately as possible but are not to be treated as binding or as forming part of any contract with the Buyer unless specifically confirmed or agreed by EditShare in writing.

## **6. Software License**

**6.1** All Software products supplied by EditShare (whether embedded in the Hardware Product, contained on disks or other media or provided in a Cloud Environment) including all related Documentation (collectively "Software") are delivered subject to the terms of the following license agreement:

EditShare grants Licensee a non-exclusive, non-transferable (except as provided below) license (i) to use the EditShare Software with and on the specified Hardware or (ii) in the Cloud Environment from which it is provided, for the duration of the Subscription Term and within the Scope of the License ordered and paid for by Licensee. The "Subscription Term" for Software delivered on or with a Hardware Product is for the duration of the time that the Buyer uses the Hardware Product.

**6.2** If ordered by Licensee, EditShare shall install the Software on the Customer's own hardware or in 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. For Private Deployments, Licensee shall secure access by

EditShare to the customer's Cloud Environment, as necessary to enable EditShare to perform installation, maintenance and support, professional services, and to verify Licensee's compliance with its License Scope.

**6.3** The Software contains proprietary, trade secret and confidential information belonging exclusively to EditShare or its licensors. Title to, ownership of and all proprietary rights in the Software and all copies of the Software, including translations or compilations or partial copies, are reserved to and will at all times remain with EditShare and its licensors. Buyer shall not attempt to disassemble, decompile, reverse engineer or otherwise endeavor to discover or disclose the methods and concepts embodied in the Software. Except as expressly allowed under this Agreement, Buyer shall not copy, modify, transcribe, store, translate, sell, lease, or otherwise transfer the Software in whole or in part. Buyer will not alter or remove any copyright or other proprietary legends or notices on the Products, including copies of the Software.

**6.4** For Software in a Cloud Environment, 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.

## **7. Warranty**

**7.1 Hardware Warranty.** EditShare warrants that Hardware Products sold hereunder shall be free of defects in materials and workmanship and will conform to any agreed specification(s) at the time of Delivery and for such period thereafter, if any, as notified by EditShare to the Buyer in writing and as selected and purchased by the Buyer. If the Buyer alleges that the goods were defective during the warranty period, the Buyer shall forthwith notify EditShare in writing of the alleged defects and shall, at EditShare's option, return the goods and packing at its own expense to EditShare or, where so directed, hold the goods and packing for inspection by EditShare. If the goods are proved to have been defective during the warranty period, EditShare undertakes to arrange for the repair or replacement of such defective goods free of charge.

**7.2 Software Warranty.** EditShare warrants that during the Warranty Period, the Software will perform materially in accordance with the Documentation. For Software licensed on a Subscription basis, the Warranty Period is the duration of the Subscription. For Software licensed on a perpetual basis, the Warranty Period is 90 days from Delivery. 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.

**7.3 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.

**7.4 Support.** EditShare shall also provide Maintenance and Support and/or Professional Services for the Products as provided in the EditShare standard Terms of Support and Maintenance and Master Services Agreement, available at the EditShare website.

**7.5** 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.

## **8. LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, PROFIT OR BUSINESS, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY. EACH PARTYS LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (in contract or tort), SHALL BE LIMITED TO THE PURCHASE PRICE STATED IN THE PARTICULAR PURCHASE ORDER FOR THE PRODUCT(S) THAT CAUSED THE DAMAGES OR ARE THE SUBJECT MATTER OF THE CAUSE OF ACTION. No action arising out of or in connection with this Agreement or any transaction hereunder may be brought by either party more than eighteen (18) months after the cause of action has arisen, except for an action for non-payment.

## **9. 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.

## **10. Confidential Information**

Buyer shall not, without EditShare's written consent, disclose to any third party any secret or confidential information supplied by EditShare to the Buyer. The Buyer shall not copy or reproduce drawings, specifications, or other written material supplied by EditShare in connection with the goods or any of the goods themselves or any part thereof.

## **11. Termination**

If the Buyer fails to comply with any material term or condition of these Terms and Conditions, and fails to remedy such breach within thirty (30) days after receiving written notice of such breach from EditShare, or if the Buyer makes an assignment for the benefit of creditors or is the subject of any bankruptcy or reorganization proceeding, EditShare may terminate this Agreement upon written notice and EditShare may, without prejudice to any other rights, cancel any undelivered or uncompleted portion of the order and stop any goods in transit.

## **12. Cancellation of Orders**

No cancellation of any order by the Buyer shall be accepted by EditShare unless, (i) Buyer's request for cancellation is received by EditShare in writing; (ii) EditShare accepts the cancellation in writing and (iii) Buyer agrees to pay (a) the sales price of that part of the Products completed and work done in connection with the order; (b) the sales value of any items or materials bought by EditShare that cannot reasonably be used elsewhere by EditShare and (c) any other costs and liabilities that EditShare incurs by reason of the Buyer's cancellation. Orders may not be cancelled or returned after Delivery, except upon written agreement by EditShare which EditShare may refuse in its sole discretion. EditShare may condition any return or cancellation upon payment of a restocking fee and payment by Buyer of all shipping charges.

## **13. Compliance with Law**

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. Buyer expressly agrees that it will not export or permit export of any EditShare Products without complying with and obtaining appropriate permits in accordance with all applicable export and custom laws. Buyer further agrees that it will comply with all applicable laws and regulations in its purchase and use of the EditShare Products.

## **14. Force Majeure**

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 and governmental demands or requirements. EditShare shall be entitled to cancel or rescind any contract and shall not be liable for any loss or damage if its ability to perform its obligations under the contract is adversely affected by an event of Force Majeure.

## **15. Miscellaneous**

**15.1 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.

**15.2** 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.

**15.3** 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.

**15.4** 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.

**15.5** 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.

**15.6** 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.



## Appendix A Definitions

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 "**Cloud Environment**" means the Linux or Windows cloud-based computing environment that Licensee uses of (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.

1.3 "**Private Deployment**" means a deployment of the EditShare Software in a cloud computing environment managed or controlled by or for the Buyer.

1.5 "**SaaS Deployment**" means a service whereby EditShare provides access to the EditShare Software via remote access in a cloud environment provided and managed by EditShare.

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 Private Deployment of a SaaS Deployment, as ordered by the Licensee.