

Zoomer Analytics GmbH End User License Agreement

Last updated: January 9, 2020

This End User License Agreement together with the Order Form (the "Agreement") is between Zoomer Analytics GmbH, a Zurich/Switzerland corporation ("Zoomer Analytics"), and the Customer signing this Agreement and/or downloading the Software ("Customer"). This Agreement shall be effective as of the Subscription Term Start Date as defined in the applicable Order Form or the date of the download of the Software (the "Effective Date"). Please read this Agreement carefully before using the Software. The parties agree to be bound by the following terms and conditions in connection with the subscription to and use of Zoomer Analytics Software as defined herein. If the Customer does not accept the terms of this Agreement, then the Customer must not Access, install or use the Software.

1. DEFINITIONS

- 1.1. **Access** or **Accessing** shall mean accessing, installing, using, or viewing the Software or any other proprietary information owned by Zoomer Analytics.
- 1.2. **Authorized Developer** means named individual users who write source code based on one or more Software products mentioned on the Order Form. As an example, this includes users who write code based on xlwings PRO.
- 1.3. **Authorized User** means named individual users who use one or more Software products mentioned on the Order Form as end users without changing source code. As an example, this includes users of xltrail or users of deployed tools based on xlwings PRO.
- 1.4. **Content Updates** means content used by certain Zoomer Analytics Software which is updated from time to time.
- 1.5. **Documentation** means the documentation for the Software generally supplied by Zoomer Analytics to assist its customers in their use of the Software, including user and system administrator guides, manuals, and the functionality specifications.
- 1.6. **Order Form** means Zoomer Analytics' order form or other ordering document signed or referenced by Customer or its authorized reseller which identifies the specific Software ordered, the Product Limitations, and the price agreed upon by the parties.
- 1.7. **Product Limitations** means the capacity indicated on the Order Form, including, as applicable, number of installations and named individual users of the Software.
- 1.8. **Software** shall mean the version of the proprietary Software mentioned on the Order Form and related intellectual property, including any third-party software, whether proprietary or open source, that is ordered by and provided to the Customer in any form, including binary form. Software shall also include any Support and Maintenance Services provided to you under this Agreement. Unless otherwise noted, the Software and Documentation are referred to collectively herein as "Software".
- 1.9. **Subscription Term** means the period in which Customer is authorized to utilize the Software. The Subscription Term shall be listed on the applicable Order Form and shall commence on the Effective Date.

2. SOFTWARE LICENSES

- 2.1. **License to Products.** Zoomer Analytics hereby grants to Customer, during the applicable Subscription Term only, a non-exclusive, non-transferable license to use the Software listed on the Order Form within the Product Limitations, for Customer's internal business purposes only, and solely in accordance with the applicable Documentation. The Software shall not be used on or for any third party unless otherwise stated below.
- 2.2. **Evaluation Licenses.** If Customer's license is for a trial or evaluation only, then the Subscription Term shall be thirty days, or the trial or evaluation term specified on the Order Form. Customer may not utilize the same software for more than one trial or evaluation term in any twelve-month period, unless otherwise agreed to by Zoomer Analytics. Zoomer Analytics may revoke Customer's evaluation or trial license at any time and for any reason. Sections 4 (Limited Warranty) and 9.1 (Indemnification) shall not be applicable to any evaluation or trial license.
- 2.3. **Use by Affiliates.** Subject to the Product Limitations, Customer may make the Software available to its Affiliates under these terms, provided that Customer is liable for any breach of this Agreement by any of its Affiliates. "Affiliate(s)" means any entity now existing that is directly or indirectly controlled by Customer. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.
- 2.4. **Delivery and Copies.** Delivery shall be deemed to have been made upon Zoomer Analytics providing instructions to download or activate the Software, as applicable. Notwithstanding anything to the contrary herein, Customer may make a reasonable number of copies of the Software for the sole purpose of backing-up and archiving the Software. Each copy of the Software is subject to this Agreement and must contain the same titles, trademarks, and copyright notices as the original.
- 2.5. **Restrictions.** Except for the End User License granted to the Customer in Section 2.1, Zoomer Analytics does not grant to the Customer any other licenses to Software or any other proprietary information owned by Zoomer Analytics. Notwithstanding any other provision of this Agreement, neither the Customer nor any Authorized User or Authorized Developer shall:
 - a) Modify, disassemble, decompile, reverse engineer, or otherwise attempt to determine the source code or protocols from the object code of Software or knowingly permit or encourage any third party to do so.
 - b) Use Software in any manner to provide service bureau, time-sharing or other computer services to third parties.
 - c) Use Software, or allow the transfer, transmission, export, or re-export of Software or portion thereof in violation of any export control laws or regulations administered by any government agency.

- d) Remove, modify or obscure any copyright, trademark, legal notices, or other proprietary notations in Software.
- e) Distribute Software, in part or in whole.
- f) Allow Access to, disclose, transfer, or distribute the Software to any party other than to an Authorized User or Authorized Developer.
- g) Capture, download, reproduce, upload, save, print or otherwise retain the Software or other Zoomer Analytics proprietary information, or any portion thereof, except as expressly provided for hereunder.
- h) Permit or provide others Access to the Software in any manner, including using the login name and password of any other Authorized User or Authorized Developer.
- i) Rent, sublicense, lease, or sell the Software, or make any attempt to do so.
- j) Make derivative works of the Software or combine the Software or any part of the Software with any other works.
- k) Use the Software to perform any illegal, dishonest, or fraudulent act, to damage or injure a third party, or to infringe the intellectual property or privacy rights of any person or entity.
- l) Use the Software in any manner that could be detrimental to Zoomer Analytics.

The Customer represents and warrants to Zoomer Analytics that the Customer will comply at all times with the terms of this Agreement and all applicable laws and regulations in using the Software. If the Customer or any Authorized Users or Authorized Developers uses the Software in an unlawful manner, for unlawful purposes or in any way that does not comply with this Agreement or all applicable laws and regulations, then the Software License may be revoked by Zoomer Analytics and, in such event, the Customer and its Authorized Users and Authorized Developers will immediately cease any use of the Software.

- 2.6. **Ownership of Software.** Zoomer Analytics retains all right, title, and interest in and to the Documentation, Software, Content Updates and in all copies, modifications and derivative works thereto including, without limitation, all rights to patent, copyright, trade secret, trademark, and other proprietary or intellectual property rights.
- 2.7. **Customer Systems.** Customer represents and warrants that it has the appropriate authorizations from the owner of the hardware and other involved systems on which it deploys the Software.
- 2.8. **Third-Party Code.** The Software may contain or be provided with components which are licensed from third parties ("Third Party Code"), including components subject to the terms and conditions of "open source" software licenses ("Open Source Software"). Open Source Software may be identified in the Documentation, or in a list of the Open Source Software provided to you upon your written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

3. FEES AND PAYMENT TERMS

Customer agrees to pay the fees, charges, and other amounts in accordance with the Order Form from the date of invoice. All fees are nonrefundable, unless otherwise stated herein. If Customer is purchasing the Software through a Zoomer Analytics authorized reseller, then the fees shall be as set forth between Customer and reseller and the applicable fees shall be paid directly to the reseller. Customer shall be responsible for all taxes levied on any transaction under this Agreement, including, without limitation, all federal, state, and local sales taxes, levies and assessments, and local withholding taxes in Customer's jurisdiction, if any, excluding, however, any taxes based on Zoomer Analytics' income. In the event Customer is required to withhold taxes from its payment or withholding taxes are subsequently required to be paid to a local taxing jurisdiction, Customer is obligated to pay such tax, and Zoomer Analytics as applicable, will receive the full payment, net of any such taxes, as agreed in the applicable Order Form and Customer shall provide to Zoomer Analytics written evidence that such withholding tax payment was made. Note that for Swiss based Customers only, VAT will be added to the total amount of fees and included in the invoice.

4. LIMITED WARRANTY

- 4.1. **Software Warranty.** Zoomer Analytics warrants that for a period of ninety days following the initial delivery of any Software to Customer the Software will conform, in all material respects, with the applicable Documentation. Zoomer Analytics makes no warranty regarding third party features or services. For a breach of the above warranty, Zoomer Analytics will, at no additional cost to Customer, use commercially reasonable efforts to provide remedial services necessary to enable the Software to conform to the warranty. If Zoomer Analytics is unable to restore such functionality, Customer shall be entitled to terminate the applicable Order Form and receive a pro rata refund of the fees paid. Customer will provide Zoomer Analytics with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.
- 4.2. **Disclaimer.** ZOOMER ANALYTICS DOES NOT REPRESENT THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR WILL MEET CUSTOMER'S REQUIREMENTS. EXCEPT FOR THE WARRANTY ABOVE, ZOOMER ANALYTICS MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

5. LIMITATION OF LIABILITY

- 5.1. **Limitation on Indirect Liability.** NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL,

CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE.

- 5.2. **Limitation on Amount of Liability.** NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ZOOMER ANALYTICS HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
- 5.3. **Exceptions to Limitations.** The limitations of liability in Section 5.2 apply to the fullest extent permitted by applicable law, except that there is no limitation on loss, claims, or damages directly arising out of violations of: (i) a party's intellectual property rights by the other party; (ii) use of the Software in excess of the Product Limitations; or (iii) a party's indemnification obligations.

6. PRODUCT LIMITATIONS

- 6.1. **Usage verification.** Customer understands and acknowledges that the Software may enforce its Product Limitations. Additionally, upon Zoomer Analytics' written request, such request not to exceed once every six months, Customer shall provide Zoomer Analytics with a signed certification verifying that the Software is being used in accordance with this Agreement. In addition to the foregoing, at Zoomer Analytics' written request, Customer will permit Zoomer Analytics to review and verify Customer's records, deployment, and use of the Software for compliance with the terms and conditions of this Agreement, at Zoomer Analytics' expense. Any such review shall be scheduled at least ten days in advance, shall be conducted during normal business hours at Customer's facilities, and shall not unreasonably interfere with Customer's business activities.
- 6.2. **Excess Usage.** In the event that usage verification reveals the Software is being used in excess of the Product Limitations, following a reasonable notification period Customer shall be liable for, and Zoomer Analytics reserves the right to invoice Customer for, the fees for such excess usage at Zoomer Analytics' then current list rates, or as otherwise set forth on the Order Form, notwithstanding the limitation on liability in Section 5.2 of this Agreement.

7. CONFIDENTIALITY

- 7.1. **Confidential Information.** During the term of this Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential as confidential ("Confidential Information"). Confidential Information shall also include information which a reasonable person familiar with the disclosing party's business and the industry in which it operates would know is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees

and shall protect the other party's Confidential Information in the same manner as it protects its own Confidential Information, but in no event with less than reasonable care. The parties expressly agree that the terms and pricing of this Agreement are Confidential Information. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

- 7.2. **Exclusions.** Information will not be deemed Confidential Information if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that, unless prohibited from doing so by law enforcement or court order, the receiving party gives the disclosing party reasonable prior written notice, and such disclosure is otherwise limited to the required disclosure.

8. TERM & TERMINATION

The Subscription Term will not automatically renew. Instead, Zoomer Analytics will reach out 90 days before the end of the Term to see if Customer wants to renew. In case of a renewal, a new Agreement will be extended to the Customer.

This Agreement or an Order Form may be terminated: (i) by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty days of such filing; or (ii) by either party if the other party materially breaches this Agreement or the Order Form and fails to cure such breach to such party's reasonable satisfaction within thirty days following receipt of written notice thereof. Customer's license to use the Software shall also terminate upon the expiration of the applicable Subscription Term. Upon any termination of this Agreement or an Order Form by Zoomer Analytics, all applicable licenses are revoked and Customer shall immediately cease use of the applicable Software and certify in writing to Zoomer Analytics within thirty days that Customer has destroyed or returned to Zoomer Analytics such Software and all copies thereof. Termination of this Agreement or a license granted hereunder shall not relieve Customer of its obligation to pay all fees that have accrued, have been paid, or have become payable by Customer hereunder. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive such termination.

9. INDEMNIFICATION

- 9.1. **By Zoomer Analytics.** Zoomer Analytics will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs

and reasonable attorneys' fees) arising out of a third-party claim that the Software infringes or misappropriates any intellectual property right of such third party. Notwithstanding the foregoing, in no event shall Zoomer Analytics have any obligations or liability under this Section arising from: (i) use of any Software in a manner not anticipated by this Agreement or in combination with materials not furnished by Zoomer Analytics; or (ii) any content, information or data provided by Customer or other third parties. If the Software is or is likely to become subject to a claim of infringement or misappropriation, then Zoomer Analytics will, at its sole option and expense, either: (i) obtain for the Customer the right to continue using the Software; (ii) replace or modify the Software to be non-infringing and substantially equivalent to the infringing Software; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Zoomer Analytics, then Zoomer Analytics may terminate Customer's rights to use the infringing Software and will refund pro-rata any prepaid fees for the infringing portion of the Software. THE RIGHTS GRANTED TO CUSTOMER UNDER THIS SECTION 9.1 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE SOFTWARE OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.

- 9.2. **By Customer.** Customer will indemnify, defend, and hold harmless Zoomer Analytics from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding Customer's: (i) use of the Software in violation of applicable law; or (ii) breach of the representation and warranty made in Section 2.7 of this Agreement.

10. TECHNICAL SUPPORT

- 10.1. **Support and Maintenance Services.** The support and maintenance shall be set forth on the applicable Order Form.

11. GENERAL PROVISIONS

- 11.1. **Miscellaneous.** (a) This Agreement shall be construed in accordance with and governed for all purposes by the laws of Zurich/Switzerland for all questions and controversies arising out of this Agreement and waives all objections to venue and personal jurisdiction in these forums for such disputes; (b) this Agreement, along with the accompanying Order Form(s) constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral; (c) this Agreement and each Order Form may not be modified except by a writing signed by each of the parties; (d) in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but rather this Agreement shall be construed as if such invalid, illegal, or other unenforceable

provision had never been contained herein; (e) Customer shall not assign its rights or obligations hereunder without Zoomer Analytics' advance written consent; (f) subject to the foregoing subsection (e), this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns; (g) no waiver of any right or remedy hereunder with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion; (h) nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement, including but not limited to any of Customer's own clients, customers, or employees; (i) the headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and (j) in the event of a conflict between the terms of this Agreement and the terms of an Order Form, the terms in the Order Form shall take precedence.

- 11.2. **Data Privacy.** Customer represents and warrants that Customer has obtained all necessary rights to permit Zoomer Analytics to process Customer Data from and about Customer.
- 11.3. **Relationship of the Parties.** Zoomer Analytics and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.
- 11.4. **Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, or internet disturbance) that was beyond the party's reasonable control.
- 11.5. **No Reliance.** Customer represents that it has not relied on the availability of any future version of the Software or any future product or service in executing this Agreement or purchasing any Software hereunder.
- 11.6. **Publicity.** Customer acknowledges that Zoomer Analytics may use Customer's name and logo for the purpose of identifying Customer as a customer of Zoomer Analytics products and/or services. Zoomer Analytics will cease using the customer's name and logo upon written request.