

# ZOOM Performance Analytics Terms of Use

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THESE TERMS OF USE ("TERMS OF USE") GOVERN ALL ACCESS TO AND USE OF ZOOM PERFORMANCE ANALYTICS SUBSCRIPTION SERVICES (AS DEFINED BELOW), WHETHER ON A FREE TRIAL OR PURCHASED SUBSCRIPTION BASIS, AS WELL AS THE PROVISION OF ANY ANCILLARY SERVICES (AS DEFINED BELOW) BY ZOOM INTERNATIONAL S.R.O ("ZOOM", OR "WE", AND COLLECTIVELY WITH ITS THIRD PARTY PROVIDER OF THE SUBSCRIPTION SERVICES, "PROVIDERS").

BY ACCEPTING THESE TERMS OF USE, EITHER BY CLICKING A BOX TO INDICATE ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT INCORPORATES THESE TERMS OF USE BY REFERENCE, YOU ("YOU" OR "CUSTOMER") AGREE TO BE BOUND BY ALL TERMS HEREOF. IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS OF USE.

ZOOM may update or change these Terms of Use from time to time. We will notify you of any material changes to these Terms of Use. You understand and agree that your continued use of the Subscription Services after we notify you that these Terms of Use have changed constitutes your acceptance of these Terms of Use as revised.

These Terms of Use were last updated on December 1<sup>st</sup>, 2015.

## 1. DEFINITIONS.

1.1. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2. "Ancillary Services" means fee-based implementation, training or other consulting services that may be described in a SOW executed by the parties pursuant to these Terms of Use.

1.3. "Customer Data" means all data submitted, stored, posted, displayed, transmitted or otherwise used together with the Subscription Services.

1.4. "Documentation" means the online user instructions and help files made available as part of the Subscription Services, as may be updated from time to time.

1.5. "Order Form" means the ordering documents for Services that are executed hereunder by the parties from time to time. Order Forms shall be deemed incorporated herein. Customer Affiliates may purchase Subscription Services subject to the terms of these Terms of Use by executing Order Forms hereunder.

1.6. "Services" means the Subscription Services and any Ancillary Services.

1.7. "Statement of Work" or "SOW" means a statement of work entered into and executed by the parties describing Ancillary Services to be provided to Customer.

1.8. "Subscription Services" means the online, web-based data analytics and reporting technologies provided by ZOOM via the URL <https://analytics.zoomint.com> or such other websites designated by ZOOM, including: (a) all proprietary technology (software, hardware, processes, algorithms, user interfaces, know-how, techniques, templates, designs and other tangible or intangible technical material or information) of ZOOM, its licensors and service providers used to provide the Subscription Services, and (b) associated support and maintenance services, as may be applicable.

1.9. "Third Party Offerings" means services delivered or performed by third parties related to the Subscription Services, or other online, web-based CRM, ERP, or other business application subscription services, and any associated offline products provided by third parties, in each case that interoperate with the Subscription Services.

1.10. "Users" means Customer's or its Affiliates' employees, consultants, contractors or agents who are authorized by Customer or its Affiliates to access and use the Subscription Services and who have been supplied user identifications and passwords for such purpose.

## 2. FREE TRIAL SERVICES

2.1. Provision of Free Trial Services. If ZOOM has made the Subscription Services available on a free trial basis ("Trial Services") and Customer has registered for such Trial Services, ZOOM will make the Trial Services available to Customer until the earlier of: (a) the end of the then-current Trial Services period offered by ZOOM, unless otherwise extended by ZOOM in its discretion, (b) the start date of any paid Subscription Services ordered by Customer, or (c) the date on which ZOOM elects in its sole discretion to terminate Customer's access to Trial Services ("Trial Services Term"). Customer acknowledges and agrees that: (i) the features and functionality of the Subscription Services may be limited during the Trial Services Term, and (ii) if Customer exceeds any applicable eligibility requirements for Trial Services (for

example, limitations on number of projects, or use of enhanced or premium functionality), Customer may be required to pay fees for such excess usage as a condition to retaining Customer's eligibility to receive Trial Services. Except as specifically set forth in this Section 2, these Terms of Use shall apply to Customer's use of the Subscription Services during the Trial Services Term. Additional trial terms and conditions may appear on the registration web page for the Trial Services. Any such additional terms and conditions are incorporated into these Terms of Use by reference, are legally binding and will govern in the event of a conflict with these Terms of Use.

2.2. Customer Data for Trial Services. ANY CUSTOMER DATA ENTERED INTO THE SUBSCRIPTION SERVICES DURING THE TRIAL SERVICES TERM AND ANY CHANGES MADE TO THE CUSTOMER DATA BY OR FOR CUSTOMER DURING THE TRIAL SERVICES TERM MAY BE PERMANENTLY LOST UNLESS CUSTOMER: (A) PURCHASES A SUBSCRIPTION TO THE SAME SUBSCRIPTION SERVICES AS THOSE COVERED DURING THE TRIAL SERVICES TERM, (B) PURCHASES UPGRADED SERVICES, OR (C) EXPORTS ITS CUSTOMER DATA BEFORE THE END OF THE TRIAL SERVICES TERM.

2.3. TRIAL SERVICES DISCLAIMERS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OF USE, INCLUDING WITHOUT LIMITATION SECTIONS 4.1.3, 8.1, 9.1 AND 10, TRIAL SERVICES ARE PROVIDED "AS-IS," AND PROVIDERS DISCLAIMS ALL WARRANTIES, LIABILITY, SUPPORT AND INDEMNIFICATION OBLIGATIONS, AND SECURITY AND AVAILABILITY COMMITMENTS, OF ANY KIND WITH RESPECT TO THE TRIAL SERVICES.

2.4. Purchase of Ancillary Services During Trial. If Customer purchases any Ancillary Services during the Trial Services Term, such Ancillary Services will be governed by these Terms of Use, including without limitation, Section 3.2 below.

### 3. PURCHASED SERVICES

3.1. Provision of Purchased Subscription Services. ZOOM will make any purchased Subscription Services available to Customer pursuant to these Terms of Use and the relevant Order Form during the subscription term as set forth in the Order Form (the "Subscription Term"). Customer agrees that its purchase of Subscription Services are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Providers regarding future functionality or features. Customer's use of the Subscription Services includes the right to access all functionality available in the purchased Subscription Services as of the effective date of the Order Form. Subsequent enhancements to the Subscription Services made generally available to all subscribing customers will be made available to Customer at no additional charge. However, new features, functionality or enhancements to the Subscription Services may be marketed separately by ZOOM and may require the

payment of additional fees. ZOOM will determine, in its sole discretion, whether access to such new features, functionality or enhancements will require an additional fee. Unless otherwise set forth in an Order Form, these Terms of Use will apply to any updates, upgrades and new modules or offerings subsequently provided by ZOOM to Customer as part of any purchased Subscription Services.

3.2. Ancillary Services. ZOOM may provide Customer with Ancillary Services as set forth in mutually executed SOWs or Order Forms. Each SOW should include, at a minimum: (i) a description of the scope of Ancillary Services, (ii) any work product or other deliverables to be provided to Customer (each a "Deliverable"), (iii) the schedule for the provision of Ancillary Services, (iv) the applicable fees and payment terms for such Ancillary Services. All SOWs shall be deemed part of and subject to these Terms of Use. If either Customer or ZOOM requests a change to the scope of Ancillary Services described in a SOW, the party seeking the change shall propose such change by written notice. Promptly following the other party's receipt of the written notice, the parties shall discuss and agree upon the proposed changes. ZOOM will prepare a change order document describing the agreed changes to the SOW and any applicable change in fees and expenses (a "Change Order"). Change Orders are not binding unless and until executed by both parties. Executed Change Orders shall be deemed part of, and subject to, these Terms of Use.

#### 4. USE OF SUBSCRIPTION SERVICES.

##### 4.1 ZOOM Obligations.

4.1.1. Availability. ZOOM will use commercially reasonable efforts to make the purchased Subscription Services available with minimal downtime 24 hours a day, 7 days a week; provided, however, that the following are excepted from availability commitments: (a) planned downtime (with regard to which ZOOM will endeavor to provide at least 48 hours advance notice, except for routine maintenance times currently scheduled for every Friday 11pm – Saturday 2am Pacific Time and as otherwise set forth at support.gooddata.com), or (b) any unavailability caused by circumstances beyond Providers' reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, Internet service provider failures or delays, or the unavailability or modification by third parties of Third Party Offerings.

4.1.2. Provisioning of the Subscription Services. Providers may update the functionality and user interface of the Subscription Services from time to time in their sole discretion as part of their ongoing improvement of the Subscription Services. The Subscription Services may be subject to certain limitations, such as, for example, limits on storage capacity for Customer Data. Any such limitations will be specified either in the Order Form or in the Documentation.

4.1.3. Support. ZOOM makes a variety of Subscription Services support offerings available to its customers and will provide Customer with the level of support to which Customer is entitled based on Customer's purchase.

4.2. Use and Protection of Customer Data. Subject to these Terms of Use, including the confidentiality obligations, Customer hereby grants Providers a limited, non-exclusive, royalty-free, worldwide license to use the Customer Data, and to perform all acts with respect to the Customer Data as may be necessary for Providers to provide the Services to Customer. To the extent that receipt of the Customer Data requires Providers to utilize any account information from a third party service provider, Customer shall be responsible for obtaining and providing relevant account information and passwords, and the Providers shall access and use the Customer Data solely for Customer's benefit and as set forth in these Terms of Use. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Providers will maintain reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Customer Data and will provide the Services in accordance with applicable laws and government regulations. GoodData's privacy and security policies governing the Subscription Services may be viewed at <http://www.gooddata.com/privacy-policy>. Providers reserve the right to modify their privacy and security policies in their discretion from time to time.

4.3. Customer's Responsibilities. Customer shall not allow access to or use of the Services by anyone other than Users. Customer is responsible for its Users' compliance with these Terms of Use, for its Users' use of the Services, and for ensuring that Users maintain the confidentiality of their passwords and user names. If Customer suspects any unauthorized use of its passwords or User accounts or any other possible security breach with respect to the Subscription Services, Customer must immediately notify ZOOM by sending an email to: [helpdesk@zoomint.com](mailto:helpdesk@zoomint.com). Customer agrees that it will not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit the Subscription Services or make the Subscription Services available to any third party, other than to Users or as otherwise contemplated by these Terms of Use; (b) use the Subscription Services to collect, transmit or process (i) any material that is infringing, obscene, threatening, libelous, or otherwise unlawful or tortious, including material that is harmful to children or violates third party privacy rights; or (ii) any data regarding an individual's financial or economic identity, sexual orientation, religious beliefs, medical or physical identity, including any information comprised of either "Protected Health Information" subject to and defined by the Health Insurance Portability and Accountability Act, or an individual's first name and last name, or first initial and last name, in combination with any one or more of the following data elements that relate to such individual: Social Security number, driver's license number or state-issued identification card number, financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's

financial account; (c) use the Subscription Services to send, store, publish, post, upload or otherwise transmit any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; (d) interfere with or disrupt the integrity or performance of the Subscription Services; (e) attempt to gain unauthorized access to the Subscription Services or its related systems or networks; (f) use or knowingly permit others to use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Subscription Services; (g) access the Subscription Services for the purpose of building a similar or competitive product; or (h) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Subscription Services or any part thereof or otherwise attempt to discover any source code or modify the Subscription Services.

4.4. Temporary Suspension. Providers monitor all use of the Subscription Services for security and operational purposes. Providers may temporarily suspend Customer's or its Users' access to the Subscription Services in the event that either Customer or its User is engaged in, or Providers in good faith suspect Customer or its User is engaged in, any unauthorized conduct (including any violation of these Terms of Use, any applicable law or third party right, including the terms of any Third Party Offering on which Customer's use of the Subscription Services relies). Customer agrees to (i) notify ZOOM immediately of any unauthorized use of any password or account or any other known or suspected breach of security related to the Subscription Services; (ii) report to ZOOM immediately, and use reasonable efforts to immediately stop, any copying or distribution of Customer Data that is known or suspected by Customer or its User as being unlawful or unauthorized; and (iii) not impersonate another User or provide false information to gain access to or use the Subscription Services. A suspension may take effect for Customer's entire account and Customer understands that such suspension would therefore include Affiliate and/or User sub-accounts. Customer agrees that Providers will not be liable to Customer or to any Affiliate or User or any other third party if Providers exercises its suspension rights as permitted by this Section.

4.5. Third-Party Web Sites, Products and Services. The Subscription Services may rely on or require that Customer access Third Party Offerings. If Customer elects to use the Subscription Services with Third Party Offerings, Customer agrees that: (i) its use of Third Party Offerings must at all times comply with the terms of service governing such offerings, and (ii) Providers have the right to export and import Customer Data to and from such Third Party Offerings for purposes of delivering the Subscription Services purchased by Customer. Customer's or its User's use of third party websites must at all times comply with the terms of service governing such websites. Customer understands and agrees that the availability of the Subscription Services, or certain features and functions thereof, is dependent on the corresponding availability of Third Party Offerings or specific features and functions of Third Party Offerings. Providers will not be liable to

Customer or any third party in the event that changes in Third Party Offerings cause the unavailability of the Subscription Services or any feature or function thereof. ZOOM may also refer Customer to third party service providers that offer Third Party Offerings. Providers do not make any representations or warranties regarding any such Third Party Offerings, whether or not such Third Party Offerings or services are designated as "certified," "approved," "recommended" or otherwise, or the services are provided by a third party that is a member of a Provider partner program. To the extent that Providers require that Customer grant Providers authorizations, passwords or other user credentials to a Third Party Offering ("Provider Access Codes") to retrieve Customer Data or to enable interoperability with the Subscription Services, Customer shall promptly provide such Provider Access Codes. Providers shall not share, reassign, divulge or disclose any Provider Access Codes except to Provider employees or authorized contractors specifically engaged in the performance of the Services. Provider Access Codes shall constitute Customer's Confidential Information under these Terms of Use.

4.6. Accuracy of Customer's Contact Information; Email Notices. Customer agrees to provide accurate, current and complete information as necessary for ZOOM to communicate with Customer from time to time regarding the Services, issue invoices or accept payment, or contact Customer for other account-related purposes. Customer agrees to keep any online account information current and inform ZOOM of any changes in Customer's legal business name, address, email address and phone number. Customer agrees to accept emails from ZOOM at the e-mail address specified by its Users for login purposes. In addition, Customer agrees that Providers may rely and act on all information and instructions provided to ZOOM by Users from the above-specified e-mail address.

4.7. Federal Government End User Provisions. If Customer or any User is the US Federal Government, ZOOM provides the Services, including related software and technology, solely in accordance with the term of this Section 4.7. Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in these Terms of Use. This customary license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with ZOOM to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable agreements.

## 5. FEES AND PAYMENT TERMS

5.1. Fees. Customer agrees to pay all fees specified in all Order Forms and SOWs via a payment method approved by ZOOM. Except as otherwise specified in these Terms of Use or in an Order Form, (i) fees are based on Services purchased, regardless of usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the Services purchased cannot be decreased during the relevant Subscription Term on the Order Form. All amounts payable under these Terms of Use will be made without setoff or counterclaim, and without any deduction or withholding.

5.2. Invoices and Payment. All Subscription Services fees will be invoiced in advance and in accordance with the applicable Order Form. Fees for Ancillary Services will be invoiced as set forth in an applicable SOW and/or Order Form. Except as otherwise set forth in the applicable Order Form or SOW, Customer agrees to pay all invoiced amounts within thirty (30) calendar days of the invoice date.

5.3. Overdue Charges. If ZOOM does not receive fees by the due date, then at ZOOM's discretion, (i) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid; and (ii) ZOOM may condition future Services purchases and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoices and Payment).

5.4. Suspension of Service. If any amounts owed by Customer for the Services are thirty (30) or more days overdue, ZOOM may, without limiting ZOOM's other rights and remedies, suspend Customer's and its Users' access to the Services until such amounts are paid in full.

5.5. Payment Disputes. ZOOM agrees that it will not exercise its rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.

5.6. Taxes. Customer is solely responsible for the payment of all taxes, assessments, tariffs, duties or other fees imposed, assessed or collected by or under the authority of any governmental body (collectively, "Taxes") arising from the Services hereunder, except any taxes assessed on ZOOM's net income. If ZOOM is required to directly pay Taxes related to Customer's use of the Subscription Services or receipt of any Ancillary Services hereunder, Customer agrees to promptly reimburse ZOOM for any amounts paid by ZOOM.

## 6. PROPRIETARY RIGHTS

6.1. Subscription Services. Providers, their licensors and service providers (together the "Provider Parties") own all right, title and interest in and to the Subscription Services,

including all related intellectual property rights. Providers reserve all rights not expressly granted to Customer under these Terms of Use. Neither Customer nor any Users will delete or in any manner alter the copyright, trademark, and other proprietary notices of Providers appearing on the Subscription Services or any portion thereof. Additionally, Providers shall exclusively own all right, title and interest in and to any and all suggestions, enhancement requests, recommendations or other feedback provided by Customer and its Users relating to the Subscription Services ("Feedback"), and Customer hereby assigns to Providers all of its right, title, and interest in and to the Feedback, including all intellectual property rights therein or relating thereto. At Providers' reasonable request and expense, Customer will execute necessary documents and take such further acts as Providers may reasonably request to assist Providers to acquire, perfect and maintain such Intellectual Property Rights in the Feedback.

6.2. Customer Data. As between Providers and Customer, Customer exclusively owns all right, title and interest in and to all Customer Data. Customer Data is deemed Confidential Information under these Terms of Use.

6.3. Deliverables. As between Providers and Customer, Customer shall exclusively own all right, title and interest in and to any Deliverables that constitute Customer Data or a modification, translation, abridgment, adaptation or other derivative work of Customer Data ("Customer Deliverables"), and ZOOM shall assign and transfer to Customer any right, title and interest that ZOOM may acquire in or to any Customer Deliverables upon receipt of payment in full from Customer. Except for Customer Deliverables, ZOOM shall exclusively own all right, title and interest in and to all other Deliverables and related intellectual property rights. Subject to these Terms of Use, ZOOM hereby grants Customer a limited, non-exclusive, non-transferable license during the Subscription Term to use the Deliverables solely in connection with Customer's authorized use of the Subscription Services. Notwithstanding any other provision of these Terms of Use: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, source code samples, templates, libraries, know-how, techniques and expertise ("Tools") used by Providers to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Provider owned Deliverables; and (ii) neither the term "Deliverables" nor "Customer Deliverable" shall include the Tools.

6.4. Statistical Information. Providers may monitor Customer's use of the Services and use data related to Customer's use in an aggregate and anonymous manner, including to compile statistical and performance information related to the provision and operation of the Services. Customer agrees that Providers may make such information publicly available, provided that such information does not incorporate any Customer Data and/or identify Customer or its Confidential Information. Providers retain all intellectual property rights in such statistical and performance information.

## 7. CONFIDENTIALITY

7.1. "Confidential Information" means all confidential or proprietary information of a party ("Disclosing Party") disclosed to the other party ("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. Without limiting the coverage of these confidentiality obligations, the parties acknowledge and agree that: (a) Customer Confidential Information shall include the Customer Data; (b) ZOOM's Confidential Information shall include the Subscription Services; and (c) Confidential Information of each party shall include, the terms and conditions of these Terms of Use, pricing and other terms set forth in all Order Forms and SOWs hereunder, as well as marketing plans, budgets, financial information, technology, technical information, methods, processes, techniques, designs, computer programs and other business information disclosed by such party.

7.2. Treatment of Confidential Information. The Receiving Party shall: (a) use the same degree of care to protect the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own Confidential Information (but in no event less than reasonable care); and (b) not use or disclose any Confidential Information of the Disclosing party for any purpose outside the scope of these Terms of Use, except with the Disclosing Party's permission.

7.3. Exceptions. Confidential Information shall not include information that: (i) is or becomes publicly available without a breach of any obligation owed to the Disclosing Party; (ii) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party; (iii) following its disclosure to the Receiving Party, is received by the Receiving Party from a third party without breach of any obligation owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information.

7.4 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by applicable law, regulation or legal process. The Receiving Party must, however: (i) provide the Disclosing Party with prompt written notice of the requirement to disclose, (ii) provide the Disclosing Party with reasonable assistance in the event the Disclosing Party wishes to oppose or contest such disclosure, and (iii) limit its disclosure to that strictly required by law, regulation or legal process.

7.5. Injunctive Relief. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any

other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

## 8. WARRANTIES; DISCLAIMERS

8.1. Warranties. Each party warrants that it has the legal authority to enter into these Terms of Use. ZOOM warrants to Customer that the Subscription Services will materially conform with the relevant Documentation, and that Ancillary Services will be performed in a competent and workmanlike manner in accordance with generally accepted industry standards.

8.2. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1, THE PROVIDER PARTIES MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN CONNECTION WITH THESE TERMS OF USE OR THE SERVICES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PROVIDER PARTIES EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PROVIDER PARTIES DO NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY INFORMATION OR OTHER MATERIAL OBTAINED BY CUSTOMER THROUGH THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (E) THE SERVICES WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (F) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. THE PROVIDER PARTIES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

8.3. GoodData Labs Disclaimer. SERVICES IDENTIFIED AS "ZOOM PREVIEW", "PREVIEW", "LABS" OR BY A SIMILAR DESIGNATION ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY WHATSOEVER, AND ARE EXCLUDED FROM ANY SUPPORT, UPDATE, AVAILABILITY OR UPTIME OBLIGATIONS, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SECTIONS 3.1, 4.1 AND 8.1.

## 9. INDEMNIFICATION

Customer, at its expense, will defend and pay any settlement amounts or damages awarded by a court of final jurisdiction arising out of any third party claim, suit or proceeding (i) arising out of Customer's use of the Subscription Services or Ancillary Services; or (ii) alleging that the Customer Data infringes any trade secret, trademark, copyright, or patent issued as of the Effective Date.

## 10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. IN NO EVENT SHALL PROVIDERS' LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OF USE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT TERMS).

10.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL PROVIDERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES AND/OR THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF PROVIDERS AND/OR THEIR LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE REASONABLY FORESEEN THEM.

## 11. TERM AND TERMINATION

11.1. Term of Subscriptions to Subscription Services. Customer's subscription to use the Subscription Services begins on the start date specified in the Order Form and continues for the period set forth therein (each a "Subscription Term").

11.2. Termination. These Terms of Use and applicable Order Forms and SOWs may be terminated by either party for cause as follows: (i) upon thirty (30) days written notice if the other party breaches or defaults under any material provision of these Terms of Use and does not cure such breach prior to the end of such thirty (30) day period, (ii) effective immediately and without notice if the other party ceases to do business, or otherwise terminates its business operations, except as a result of an assignment permitted hereunder. ZOOM may temporarily cease performance of its obligations during any cure period. In addition, ZOOM may terminate these Terms of Use and

applicable Order Forms and SOWs upon thirty (30) days written notice if ZOOM's agreement with GoodData for the Subscription Services expires or is terminated.

11.3. Retrieval of Customer Data. In the event of termination or expiration of the Subscription Term under an Order Form, ZOOM shall make Customer Data available for download by Customer in the format in which it is stored in the Subscription Services, provided Customer requests such return of Customer Data and pays all outstanding charges hereunder in full within 30 days after the termination or expiration effective date. After such 30-day period, ZOOM shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

11.4. Survival. Except to the extent expressly provided to the contrary herein, Sections 5 through 12 shall survive the termination of these Terms of Use.

## 12. GENERAL

12.1. Relationship. ZOOM and Customer are independent contractors, and these Terms of Use do not create a partnership, joint venture, employment or agency relationship between the parties. This is a non-exclusive arrangement.

12.2. Entire Understanding; Modifications. These Terms of Use, including all Order Forms and SOWs hereto, constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, proposals or representations, oral or written, regarding the subject matter covered by these Terms of Use. Except as set forth in these Terms of Use, no modifications, amendments or waivers shall be effective unless mutually agreed by the parties in writing. To the extent of any conflict or inconsistency between the provisions of these Terms of Use and any Order Form or SOW, the terms of such Order Form or SOW shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or in any other ordering documentation shall be incorporated into or form any part of these Terms of Use, and all such terms or conditions shall be null and void.

12.3. Waiver. No waiver of any breach of these Terms of Use, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of these Terms of Use.

12.4. Severability. If any provision of these Terms of Use is held by a court of competent jurisdiction to be invalid or unenforceable, the provision shall be modified and interpreted by the court so as best to accomplish the intent of the original provision to the fullest extent possible. The invalidity or unenforceability of any provision shall not affect any of the other provisions of these Terms of Use.

12.5. Governing Law and Venue. These Terms of Use shall be governed by and construed under the laws of the United States and the State of Washington excluding its conflict of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms of Use. The state and federal courts located in Seattle, Washington will have exclusive jurisdiction to adjudicate any dispute relating to these Terms of Use. Each party hereby irrevocably consents to the exclusive jurisdiction of such courts.

12.6. Publicity. Providers may reference and use Customer's name and trademarks and may disclose the nature of the Services provided hereunder in Providers business development and marketing efforts, including without limitation its web site.

12.7. Assignment. Customer may not assign these Terms of Use, Order Forms or SOWs to any third party without the prior written consent of ZOOM, such consent not to be unreasonably withheld. Any purported assignment in violation of this Section shall be void. These Terms of Use shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8. Third Party Beneficiary. The Subscription Services are provided to ZOOM by GoodData Corporation, a Delaware corporation with its principal place of business at 111 Sutter Street, 4th Floor, San Francisco, CA 94104. ("GoodData"). GoodData is a third party beneficiary of these Terms of Use and may enforce them directly against customers. All rights of "Providers" and obligations to "Providers" hereunder are for the benefit of ZOOM and GoodData jointly and severally.

12.9 Notices. ZOOM may give notice to Customer by means of a general notice through the Subscription Services interface, electronic mail to Customer's e-mail address on record in ZOOM's account information, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Customer's address on record in ZOOM's account information. Customer may give notice to ZOOM via e-mail to legal@zoomint.com. Notice shall be deemed to have been given upon receipt or, if earlier, two (2) business days after mailing, as applicable. All communications and notices to be made or given pursuant to these Terms of Use shall be in the English language.

12.10. Export. The Services utilize software and technology that may be subject to United States and foreign export controls. Customer acknowledges and agrees that the Subscription Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of

Embargoed Countries and Designated Nationals are subject to change without notice. By using the Subscription Service, Customer represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Subscription Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. Customer agrees to comply strictly with all applicable export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Providers and their licensors make no representation that the Services are appropriate or available for use in other locations. Each party shall be solely responsible for its required compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Customer Data contrary to law is prohibited. None of the Customer Data, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects.

12.11. Force Majeure. Except for performance of a payment obligation, neither Customer or Providers shall be liable under these Terms of Use for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. If the force majeure event continues for more than thirty (30) calendar days, then either Customer or ZOOM may terminate the Agreement for convenience upon written notice to the other party.