

END USE LICENSE AGREEMENT (EULA)

AGILE ANALYTICS

Introduction

This End User License Agreement ("**EULA**") applies to any agreement concerning the use by a customer ("**Client**") of software developed or provided by ZEN Software or its affiliates, more specifically the use of the SaaS-solution Agile Analytics.

Please read this EULA carefully. The terms of the EULA govern the Clients use of the software and any future upgrades or addenda thereto, unless otherwise stated and agreed in writing with ZEN Software at the time.

IMPORTANT! BY DOWNLOADING, INSTALLING, ACCESSING OR USING THE SOFTWARE ACCOMPANYING THIS EULA, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT AGREE TO THE STATED TERMS AND CONDITIONS, YOU MAY NOT DOWNLOAD, INSTALL, ACCESS, USE OR RETAIN ANY COPY OF THE SOFTWARE.

Article 1: Licensing

- 1.1 The Client receives a non-exclusive right to use Agile Analytics, the SaaS-service developed and provided by ZEN Software.
- 1.2 The Client receives one copy of an executable object code of Agile Analytics.
- 1.3 Except with express permission, the Client is not allowed to:
 - distribute, sell or lease Agile Analytics itself or any documentation to a third party; or
 - Sublicense, outsource, rent or otherwise provide Agile Analytics services to any third party.
- 1.4 Except as expressly permitted herein or as expressly authorized by mandatory legal provisions of applicable law, the Client is not allowed to:
 - Copy Agile Analytics in whole or in part, other than for backup purposes; or
 - reverse engineer or otherwise derive product source code from the licensed executable.
- 1.5 In the case of third party software, which is not built into Agile Analytics, the Client's rights and obligations in respect of such third party software are subject to the relevant third party's license terms.

Article 2: Documentation, use and editing

- 2.1 The Client may copy the accompanying documentation and standard training materials, if any, but only for internal purposes.
- 2.2 Documentation and standard training materials from ZEN Software may not be edited unless written permission has been granted. This also applies to documentation developed specifically for the Client.

Article 3: Intellectual property rights

- 3.1 The Client acknowledges that Agile Analytics and all intellectual property rights, including copyrights, are owned by (or licensed by third parties to) ZEN Software and that nothing in this EULA is intended to transfer ownership of Agile Analytics and its intellectual property rights to the Client. The Client is only granted a limited license to use Agile Analytics as set out in this EULA.

Article 4: Faults

- 4.1 The Client acknowledges that software in general is not error-free or flawless and agrees that the existence of such errors or defects in Agile Analytics or any other software provided to the Client shall not constitute a breach of this EULA.
- 4.2 ZEN Software warrants that Agile Analytics will not infringe any third party rights, including copyrights. This warranty is subject to the condition that ZEN Software shall be notified promptly of any such claim of infringement made against the Customer; ZEN Software shall have the right to defend and settle any such claim as it sees fit and the Customer shall provide such assistance as ZEN Software may reasonably require to settle or oppose such claim.
- 4.3 ZEN Software disclaims all warranties, express or implied, with respect to Agile Analytics, including, but not limited to, warranties of merchantability or fitness for a particular purpose.
- 4.4 ZEN Software may at its sole discretion choose to 1) correct or replace the part of Agile Analytics that is defective or infringes any third party rights, or 2) terminate the Client's Agile Analytics right of use with immediate effect. ZEN Software shall not be obliged to remedy the following under any circumstances:
- altered, damaged or modified software;
 - software which is not from the current or previous consecutive release;
 - software problems due to the Client's negligence, hardware failure or other causes beyond ZEN Software's control;
 - flawed data;
 - problems caused by an incorrect interface with other software or data sources; or
 - software installed in an operating environment that is not supported by Agile Analytics.
- 4.5 Third party software, if any, is provided "as is" without warranties of any kind; however, the original manufacturers of third party software or third party providers of such software may provide their own warranties.

Article 5: Limitation of liability

- 5.1 ZEN Software shall not be liable to the Client for any loss or damage, regardless of cause, caused directly or indirectly in connection with this EULA, Agile Analytics or any other software, its use or otherwise, except to the extent it is unlawful to exclude such liability under applicable law.
- 5.2 Notwithstanding the generality of the above, ZEN Software expressly excludes liability for any indirect, special, incidental or consequential damages that may arise in connection with Agile Analytics, its use or in connection with equipment or property, or for loss of profits, business, revenue, goodwill, data or anticipated savings.
- 5.3 In the event that any exclusion contained in this EULA is invalidated for any reason, and ZEN Software becomes liable for loss or damage that can be legitimately mitigated, such liability

shall be limited to the annual or one-time license fee paid by the Client and shall not exceed [EUR 500].

Article 6: Confidentiality

- 6.1 All information, including - but not limited to - data, drawings, specifications, documentation, software lists, object or source code, prices that the Client may have received in relation to Agile Analytics (except for the ideas and principles underlying the software) is protected and confidential. The Client agrees that it will only use such information in accordance with the provisions of this EULA and that during or after the expiration or termination of this EULA, it will not - directly or indirectly - disclose the information to any third party without the prior written consent of ZEN Software.
- 6.2 The above shall not prevent the use or disclosure by the Client of any information which, whether now or hereafter, becomes public knowledge through no fault of the Client or to the extent permitted by law.

Article 7: Audit

- 7.1 ZEN Software reserves the right, at ZEN Software's expense, to audit the Client's implementation and use of Agile Analytics for compliance with this EULA at any mutually agreeable time during normal business hours at the Client's premises.
- 7.2 The Client shall reasonably verify that the rights of use of the software granted in this EULA are not violated.

Article 8: Termination

- 8.1 Each party shall be entitled to terminate the EULA on account of an attributable shortcoming in the implementation of the EULA if the other party fails attributable in the fulfilment of essential obligations under the EULA. Termination shall only be possible following an as detailed notice of default as possible, containing a reasonable term within which the shortcoming can be corrected. Payment obligations of the Client and all other obligations to cooperate on the part of the Client or a third party engaged by the Client shall always be considered essential obligations under the EULA.
- 8.2 If the Client has already been rendered performance in the implementation of the EULA at the moment of the termination referred to in article 8.1, that performance and the corresponding payment obligations can never be subject of undoing, unless the Client is able to prove that ZEN Software is in default in respect of an essential part of that performance. Amounts already invoiced by ZEN Software prior to termination in connection with what it has already performed or delivered in the implementation of the EULA, shall, with due regard for the provisions of the previous sentence, remain payable and fall due immediately as at the moment of termination.
- 8.3 If the EULA, which due its nature and substance does not end by completion, is effected for an unspecified period of time, then each of the parties may cancel the EULA subject to mutual consultation and a statement of reasons. If no notice period has been agreed between the parties, then a reasonable period for termination of the agreement shall be allowed. The parties shall never be liable for any form of compensation on account of termination.

- 8.4 The Client shall not be entitled to early termination of the EULA which has been effected for a specified period of time.
- 8.5 Each of the parties shall be entitled to immediately fully or partially terminate the EULA without prior notice if the other party, whether or not provisionally, is granted a moratorium, if a petition is filed for the bankruptcy of the other party, if the other party is declared bankrupt, or if the business of the other party is liquidated or discontinued other than for the purpose of reconstructing or merging companies. ZEN Software shall never be bound to the reimbursement of already received payments, nor to any compensation for damages as a result of termination. The right of the Client to use Agile Analytics and the like made available to him by ZEN Software shall expire by operation of law in the event of bankruptcy of the Client.

Article 9: Miscellaneous

- 9.1 All negotiations, offers, quotations, agreements and other (legal) acts between ZEN Software and the Client will be governed by the laws of the Netherlands, irrespective of the place where the agreement is performed.
- 9.2 Any disputes between ZEN Software and the Client as a result of, or in relation to, negotiations, offers, quotations, agreements and other (legal) acts will be submitted to the exclusive jurisdiction of the competent judge with the District Court for North Holland, the Netherlands, including its preliminary relief judge.