

Last Update: 15.07.2024

# Terms of Service

## 1 Scope

- 1.1 SaaS.group zenloop GmbH, Attilastraße 18, 12529 Schönefeld, (hereinafter referred to as “zenloop”) operates a business-to-business software-as-a-service platform which allows business customers to collect and evaluate feedback in order to measure and increase the loyalty of their customers.
- 1.2 These Terms of Service (hereinafter referred to as “Terms”) apply to all contracts concluded in the context of the business relationship between zenloop and its business customers in connection with the software-as-a-service solutions offered by zenloop.
- 1.3 These Terms shall apply exclusively. Differing, conflicting or additional terms and conditions on the part of the Customer shall only become part of the Contract to the extent to which zenloop has expressly agreed to their validity in writing. This requirement for agreement shall apply even if zenloop unreservedly begins providing the services despite being aware of the Customer’s own general terms and conditions.

## 2 Definitions

The capitalised terms used in these Terms shall have the meanings as defined in this Clause 2:

- 2.1 “Providers” are the providers of the online platforms on which online ratings are displayed, which are accessed through zenloop ORM retrieved by the Customer.
- 2.2 “Authorised Users” means the Customer’s employees who are authorised to access the SaaS Services within the scope of the rights of use acquired by the Customer.
- 2.3 “GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- 2.4 “Individual Contract” means the Purchase Order, the letter of agreement, the agreement on SaaS-based Services, the SaaS contract or other type of the agreement concluded between the Customer and zenloop for the provision of SaaS Services and/or Additional Services.
- 2.5 “Force Majeure” means events or circumstances that could not have been foreseen at the time of Contract conclusion despite reasonable care, are beyond zenloop’s sphere of influence, and could not have been avoided or overcome by reasonable measures on the part of zenloop. In particular, these include but are not limited to: a) war and other military conflicts, terrorist attacks, civil war, riots, insurrections; b) currency and trade restrictions, embargoes; c) explosions and fires not caused by zenloop; d) floods, earthquakes, typhoons and other natural disasters or extreme natural events; e) epidemics/pandemics and diseases; f) labour unrest not caused by zenloop, such as industrial action; g) actions, failures to act or measures of a government or official orders; h) faults or failure of operating facilities (or parts thereof) not caused by zenloop, which are necessary for the fulfilment of the Contract.
- 2.6 “Customer” means zenloop’s contractual partner named in the Individual Contract.

- 2.7 "Customer Data" means all profile information and data as well as other content and information that the Customer provides to zenloop in connection with the use of the SaaS Services, with the exception of Survey Recipient Data.
- 2.8 "Online Rating Data" means all information and data of online ratings retrieved by the Customer from online platforms of other Providers via the Platform using zenloop ORM.
- 2.9 "Platform" means the software-as-a-service platform operated by zenloop and accessible via the Website.
- 2.10 "SaaS Services" means the SaaS-based services provided by zenloop via the Platform by means of a software-as-a-service solution, including customer information and retention services.
- 2.11 "Survey Recipient" means any natural or legal person who is a customer, employee or business contact of the Customer whom the latter contacts using the SaaS Services.
- 2.12 "Survey Recipient Data" means all information and data of Survey Recipients, including the answers from the surveys, which the Customer collects from the Survey Recipients and/or processes by means of the SaaS Services.
- 2.13 "Contract" is the Individual Contract, these Terms and the Data Processing Agreement.
- 2.14 "Contractual Services" are the SaaS Services and/or Additional Services to be provided according to the Individual Contract.
- 2.15 "Confidential Information" means all information disclosed to one party by the other party, whether in writing, electronically or orally, digitally or in any other form, insofar as such information (a) involves the trade secrets protected under Sect. 2(1) of the German Trade Secrets Act (GeschGehG), and/or (b) relates to the business interests and affairs of the respective party or those of affiliated enterprises within the meaning of Sect. 15 of the German Stock Corporation Act (AktG) and is expressly marked as "confidential" or should be considered confidential due to the nature of the information or the circumstances of its disclosure. Confidential Information includes, but is not limited to, information relating to technologies, inventions, software and/or hardware, new products, intellectual property, know-how, marketing plans, financial situations, business strategies, business relationships, business plans, business calculations, pricing policy or personnel matters of one of the parties. Confidential Information also includes the content of the Individual Contract concluded between the Customer and zenloop.
- 2.16 "Website" means the website operated by zenloop, which is available at: [www.zenloop.com](http://www.zenloop.com).
- 2.17 "zenloop ORM" means the software-as-a-service solution for online reputation management offered by zenloop, which enables business Customers via an interface to retrieve ratings on online platforms, display them in an overview, etc.
- 2.18 "zenloop 2.0/zenSurveys" means the AI-functionalities offered by zenloop
- 2.19 "Additional Services" means the additional services, if any, to be provided by zenloop under the Individual Contract.

### **3 Object of the contract, contract conclusion, amendments to the terms**

- 3.1 The object of the Contract is the provision of the SaaS Services commissioned by the Customer and agreed in the Individual Contract as well as the provision of further services, if and insofar as these are specified in the Individual Contract.
- 3.2 The Contract shall take effect when both parties sign the Individual Contract.

- 3.3 zenloop may change these Terms or any part of it at any time. Changes to the Terms shall be announced to the Customer by email to the indicated email address not later than 6 weeks before the changes take effect. The Customer's consent to the change of the Terms will be deemed granted if the Customer does not object to the amendment in textual form (e. g. letter or email) within 6 weeks after notification. If the Customer objects to a change within the meaning of this section in due form and due time, the contractual relationship will continue under the previous conditions. In this case, zenloop reserves the right to terminate the contractual relationship extraordinarily with a notice of one month. zenloop undertakes to separately indicate in the announcement of the amendment the possibility of objection, the deadline for an objection, the textual form requirement, and the meaning or consequences of omitting an objection. This clause 3.3 shall not apply to the price increase under the provisions of the clauses 12.2-12.3.
- 3.4 Should there be any inconsistency or conflict between the Individual Contract and these Terms, the Individual Contract shall prevail.

## 4 Scope of service, authority to change

- 4.1 zenloop shall make the contractual SaaS Services available to the Customer for temporary use by means of remote access via the internet. For this purpose, zenloop stores the Platform on a server which the Customer can access via an internet connection.
- 4.2 The concrete scope of services and functions of the SaaS Services as well as the scope of the other Contractual Services shall be specified in the Individual Contract.
- 4.3 This Contract covers neither the Customer's connection to the internet and maintenance of the network connection nor the procurement and provision of the hardware required for this on the part of the Customer. The Customer shall be obliged to create and maintain the technical prerequisites for access to the SaaS Services in its own area, at its own expense and risk (see Clause 9.2(a)).
- 4.4 zenloop shall take suitable precautions against data loss and to prevent unauthorised access by third parties to Customer and Survey Recipient Data, Online Rating Data, as far as this is possible with reasonable financial and technical effort. In particular, zenloop shall make regular backups and install state-of-the-art firewalls and regularly updated virus scanners on the zenloop servers in order to prevent unauthorised access to Customer and Survey Recipient Data and to prevent the transmission of malicious code (viruses, Trojans, diallers, etc.).
- 4.5 zenloop continuously develops and enhances the SaaS Services and the Platform. Updates to the core product shall always be provided to the Customer free of charge. However, in the event of extensive updates and extensions of the functional scope (e.g. the addition of modules) of the Platform or the SaaS Services, zenloop shall be entitled to classify these as a new product or upgrade and make them available to the Customer for an additional fee. Insofar as zenloop provides such upgrades and extensions free of charge, the Customer shall have no legal claim to their provision. zenloop shall inform the Customer about any discontinuation of the free services.
- 4.6 In the zenloop 2.0/zenSurveys module, zenloop uses artificial intelligence (AI) to analyze and process the data provided by the user. The results generated by AI are based on available data and algorithms and can vary in their accuracy and reliability without zenloop having any influence on them or assuming responsibility for them.
- 4.7 zenloop reserves the right to make changes in order to adapt the Platform and SaaS Services to the state of the art, changes for optimisation purposes (in particular to enhance user-friendliness), as well as changes to content, insofar as the latter are necessary to correct errors, for updating and completing content, for technically optimising programs or for licensing reasons. If such a change leads to a not only insignificant devaluation of the Contractual Services, the Customer shall be entitled to either demand a reduction of the remuneration in line with the devaluation or terminate the Contract

without notice. This right of termination may be exercised within a period of eight weeks from the occurrence of the change.

## **5 Online Reputation Management**

- 5.1 If under an Individual contract the Customer uses the zenloop Online Reputation Management service (zenloop ORM), the present section 5 shall apply.
- 5.2 The services within the SaaS service zenloop ORM are initiated by the Customer, i.e. the Customer decides which publicly accessible online rating data is retrieved by zenloop ORM on the Providers' online platforms and displayed in zenloop ORM.
- 5.3 Insofar as the Providers of the online platforms provide their own general terms and conditions and/or other guidelines ("Third Party T&Cs") for the retrieval of online rating data and the subsequent reaction of the Customer, if any, these must be additionally confirmed and observed by the Customer for the use of zenloop ORM. The respective Provider is solely responsible for the content of such Third Party T&Cs, zenloop has no influence on this. zenloop will not have any liability with regards to the Providers and any actions resulting from the Customer's use of the Providers' online platforms or interactions with the Provider.
- 5.4 It is the Customer's obligation to ensure that all responses on the Providers' online platforms are consistent with applicable laws, regulations, and proper industry conduct.

## **6 User account, access data**

- 6.1 The Customer's access to the SaaS Services shall be password-protected via the Platform, using the access data assigned to the Customer by zenloop. zenloop shall provide the Customer with access data for the number of users agreed upon in the Individual Contract. For technical reasons, access data for a personal login will only be sent by email with an encrypted link. For this reason, the Customer must inform zenloop of the corresponding email addresses of the Authorised Users. The access data is individualised and may only be used by the Customer concerned or the Authorised Users. The Customer shall instruct the Authorised Users to choose a sufficiently secure password and to keep their access data, including the password, secret and to protect this information against unauthorised access by third parties. For security reasons and to prevent misuse, zenloop recommends that Customers change their passwords at regular intervals.
- 6.2 The sharing of access data and otherwise permitting or enabling the use of user accounts or the SaaS Services by third parties is strictly prohibited.
- 6.3 The Customer shall be obliged to inform zenloop without undue delay if it is aware of or suspects misuse of access data or passwords. In the event of misuse or suspected misuse, zenloop shall be entitled to block access to the Platform until the circumstances have been clarified and the misuse has ceased. zenloop also reserves the right to change the Customer's access data for security reasons; in such cases, zenloop shall inform the Customer without undue delay. This shall not affect the assertion of further rights and claims by zenloop, in particular claims for damages.

## **7 Availability of the SaaS Services (Service-Level Agreement – SLA)**

7.1 During the Contract period, the provider shall provide the Customer with the SaaS Services with an availability of 99.5% (per calendar year). This means the availability of the SaaS Services at the handover point where the system interfaces with the internet.

7.2 Availability shall be calculated according to the following formula:  
$$\text{Availability} = (\text{total time} - \text{total downtime}) / (\text{total time} * 100 \%)$$

The following times shall not be considered when calculating the total downtime:

- a) Periods of unavailability due to scheduled maintenance work on the Platform, which is regularly carried out between 6pm and 10pm (CET), with a maximum downtime of 1.5 hours per week.
- b) Periods of unavailability due to maintenance work carried out weekly on Tuesday and Thursday between 10am and 10.20am (CET).
- c) Periods of unavailability due to planned activities to enhance, expand or renew the SaaS Services that are performed over the weekend.
- d) Periods of unavailability due to essential unscheduled maintenance work required to eliminate faults; if possible, zenloop shall inform the Customer of this by means of a notice on the Website.
- e) Periods of unavailability that are due to internet faults or other circumstances beyond zenloop's control, in particular Force Majeure.
- f) Periods of unavailability that are due to the fact that the technical prerequisites on the part of the Customer for accessing the SaaS Services are not available or are temporarily unavailable, for example in the event of faults with the Customer's own hardware.

## **8 Support**

8.1 zenloop shall provide the Customer with free customer support at various service levels in order to deal with faults with the SaaS Services. Depending on the Customer's choice, customer support shall be provided by the Customer Success Manager assigned to the Customer (by phone or email), by zenloop's general email support (which is available at: support@zenloop.com), or by live chat via the Website. The Customer's dedicated Customer Success Manager shall be informed about each support case and assist in finding a solution. Depending on the Customer's requirements, customer support shall be available in German or English. zenloop's support services shall be available from Monday to Friday from 9am until 6pm (CET). This shall not apply on days that are public holidays in Berlin or on 24 and 31 December of each year. Requests received outside of these support hours shall be deemed to have been received during the next working day. During business hours, the initial response to all support requests shall occur within no more than 24 hours. All support requests shall be processed as quickly as possible and prioritised according to the following disruption severity levels:

- a) First severity level: Critical software fault leading to a total failure of the SaaS Services.
- b) Second severity level: The use of the SaaS Services is considerably limited, as the main features of the SaaS Services are not available.
- c) Third severity level: Minor faults affecting non-essential features of the SaaS Services.

- 8.2 The free support shall not include: general transfer of know-how, customizing, integration, consulting and training or adaptation of the Platform and/or SaaS Services.

## **9 Duties of cooperation on the part of the Customer**

- 9.1 The Customer shall support the execution of the Contract by actively cooperating in an appropriate manner. In particular, the Customer shall be responsible for ensuring, at no charge, all prerequisites within its sphere of operation that are necessary for the proper provision of zenloop's services. This shall include, in particular, the conditions set out in the Individual Contract as well as those specified in the following Clauses 9.2 to 9.4.
- 9.2 The Customer shall be required
- a) to create and maintain the technical prerequisites for access to the SaaS Services in its own area, particularly with regard to the hardware and operating system software used, connection to the internet and ensuring that its browser software is up to date;
  - b) to take the necessary precautions to secure its systems during the entire Contract period, in particular to use the standard browser security settings and to employ up-to-date protection mechanisms to guard against malware;
  - c) to ensure that the data stored in its user account is always up to date. In the event of changes or inaccuracies in the stored data, the Customer must update or correct this information without undue delay and without being asked.
  - d) and in the case of using zenloop 2.0/zenSurveys, to carry out their own validation and assessment of the results obtained and use the results in compliance with all applicable laws and regulations and to refrain from any misuse.
- 9.3 Notwithstanding zenloop's obligation to back up data according to Clause 4.4, the Customer shall be responsible for maintaining and protecting the Customer and Survey Recipient Data and undertakes to back these up regularly. Every data backup by the Customer must be carried out in such a way that the recovery of Customer and Survey Recipient Data is possible at any time.
- 9.4 The Customer shall be required to inform zenloop in text form about any service disruptions (service defects, lack of availability) without undue delay after becoming aware of them, at the latest on the following working day, as well as to provide zenloop with clear and detailed information about the service disruptions, stating all information that could be useful for identifying and analysing the service disruptions. In particular, the Customer must specify the work steps which led to the occurrence of the defect as well as the appearance and effects of the defect. In the event of service disruptions, the Customer shall support zenloop to an appropriate extent in identifying and eliminating errors.

## **10 Further obligations on the part of the Customer, prohibited activities, indemnification**

- 10.1 The Customer shall be required to use the SaaS Services provided by zenloop only to the contractually agreed extent and for the contractually intended purpose and within the framework of the applicable legal provisions, and to refrain from all actions that could endanger or disrupt the functioning of the SaaS Services.
- 10.2 In particular, the Customer shall be obliged

- a) not to use the SaaS Services to create, store or send any content that is pornographic, glorifies violence, is discriminatory, prohibited by law, harmful to young people, in violation of moral standards or harmful to public order and safety;
  - b) when using the SaaS services, not to collect, store, send or otherwise process any data relating to racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, or genetic data, biometric data, health data or data relating to sex life or sexual orientation (cf. Art. 9 (1) GDPR);
  - c) not to violate any copyright (e.g. for photos, graphics), trademarks (e.g. logos) and other property rights or other legally protected goods of zenloop or third parties (e.g. personal rights) when using the SaaS Services;
  - d) when using the SaaS Services, to observe and comply with all existing statutory information obligations (e.g. the obligation to provide a provider identification in accordance with Sect. 5 of the German Telemedia Act (TMG));
  - e) not to use the SaaS Services to send unsolicited messages that could be considered spam;
  - f) to access the SaaS Services exclusively via the interfaces provided by zenloop;
  - g) to ensure that its information and data transmitted via the SaaS Services are not infected with viruses, worms or Trojans;
  - h) not to use any devices, products or other means that serve to circumvent or overcome technical measures used by zenloop for the prevention of unauthorised use;
  - i) not to use any web crawlers, robots, spiders, site search/retrieval applications or other automated means or comparable technologies to access the SaaS Services or to retrieve or evaluate content.
  - j) In the case of the use of AI when using zenloop 2.0/zenSurveys, it is generally known that the use of AI can produce risks such as errors, biases or unintended results.
- 10.3 The Customer shall be obliged to inform the Authorised Users of the above provisions and to ensure compliance with them.
- 10.4 The Customer shall indemnify zenloop against all claims asserted by third parties against zenloop due to violation of their rights or due to rights infringements caused by content created or transmitted by the Customer using the SaaS Services. The Customer shall also bear the necessary costs of zenloop's legal defence in this regard, including court and lawyer fees. This indemnification shall not apply if the Customer is not responsible for the rights infringement. This shall not affect the assertion of further rights and claims by zenloop, in particular the right of extraordinary termination for good cause and claims for damages.

## 11 Intellectual property, rights of use, naming of references

- 11.1 The Platform and the SaaS Services, including the homepage layout, the graphics and images used, the content as a whole as well as individual pieces of content including the system presentation texts, as well as the software code on which the SaaS Services and the Platform are based, are protected in whole or in part by copyright or other intellectual property rights. All rights are exclusively reserved by zenloop or zenloop's licensors. In particular, zenloop's SaaS services shall not serve as white label services. This shall not include Customer and Survey Recipient Data.
- 11.2 In particular, the Customer shall be prohibited from



- a) reproducing, modifying, adapting, translating, decompiling, disassembling or deriving the Platform or the SaaS Services, performing reverse engineering, or otherwise attempting to derive the source code underlying the SaaS Services or the Platform,
- b) using, evaluating or displaying the Platform or the SaaS Services in order to construct, modify or otherwise create a network environment, a program, an infrastructure or parts thereof with features comparable to those of the SaaS Services or the Platform,
- c) removing the zenloop logo from the surveys.

This shall not affect the mandatory legal regulations on permissible use pursuant to Section 69d para. 2 and 3 and Section 69e of the German Copyright Act.

- 11.3 In accordance with the Individual Contract and the following provisions, the Customer shall be granted the simple, non-exclusive, non-transferable right, limited to the duration of the Individual Contract, to access the SaaS Services using a browser and an internet connection and to use them for its own business purposes. This right of use shall be limited to the number of Authorised Users specified in the Individual Contract. zenloop shall be entitled to take technical measures to prevent use beyond the permissible scope, in particular to install access barriers.
- 11.4 In its relationship with zenloop, the Customer shall be entitled to all rights to the Customer and Survey Recipient Data provided by the Customer. However, the Customer shall grant zenloop the irrevocable right, free of charge, to anonymize, aggregate and use the Customer and Survey Recipient Data in accordance with the zenloop Privacy Policy and the Data Processing Agreement.
- 11.5 zenloop shall be entitled to include the Customer in zenloop's reference list and to name the Customer in a suitable manner as a reference on the Website and in printed and digital marketing and advertising materials. For this purpose, the Customer shall grant zenloop free of charge a non-exclusive, worldwide, non-transferable right to use the Customer's company name and logo. If using the company name and/or logo is subject to particular requirements, the Customer shall inform zenloop of these without request. The Customer shall be entitled to withdraw the granted right of use at any time, with effect for the future, by submitting a notification to that effect in text form.

## 12 Remuneration and payment, payment terms

- 12.1 The remuneration owed by the Customer for the Contractual Services shall be specified in the Individual Contract.
- 12.2 zenloop is entitled to change the prices specified in the Individual Contract at zenloop's reasonable discretion to compensate personnel costs or to manage other cost increases. The prices may be changed 12 months after the contract's start date or the last price increase. The price adjustments shall not apply to the periods the Customer has already paid for.
- 12.3 zenloop will inform the Customer in text form (e.g., via e-mail) about the changes and the reasons for the changes within at least 6 weeks before the changes take effect. If the price increase is more than 5% of the previous price, the Customer may object to the price increase within 6 weeks from notification. If the Customer does not provide notification of rejecting the changes, the Customer's consent will be deemed to have been given. If the Customer objects to a change within the meaning of this section in due form and due time, the contractual relationship will continue under the previous conditions. In this case, zenloop reserves the right to terminate the contractual relationship extraordinarily with a notice of one month. In its notice of the change, zenloop shall point out the Customer's right of objection to the Customer if the price increase is more than 5% of the previous price and of the aforementioned legal consequences of not responding.



- 12.4 The customer may purchase upgrades, additional product modules, and other additional services at any time during the contract period under the conditions in effect on the purchase date. Any additional services shall be subject to a separate agreement.
- 12.5 The remuneration for the Contractual Services shall be payable annually in advance unless another prepayment period is specified in the Individual Contract.
- 12.6 Unless otherwise expressly agreed in the Individual Contract, invoices issued by zenloop shall be due for payment in full within 7 days after receipt by the Customer. zenloop shall be entitled to send invoices to the Customer by email or make them available to the Customer online.
- 12.7 If the parties agree to use SEPA Direct Debit as a payment method, the Customer will give zenloop an SEPA direct debit mandate. zenloop will inform the Customer about the date of the account debit (so-called prenotification). By submitting the SEPA Direct Debit Mandate, we request our bank to initiate the payment transaction. The payment transaction will be performed automatically, and the Customer's account will be debited.
- 12.8 Any set-off of claims by the Customer against claims of zenloop shall only be possible to the extent to which the Customer's claims are legally established or not disputed.
- 12.9 All prices are in euros and – unless they are expressly referred to as gross prices – do not include the statutory turnover tax applicable at the relevant time. Unless expressly stated otherwise, the Customer shall be responsible for all other taxes and duties that apply to the sale and use of the SaaS Services and Additional Services. The Customer shall pay zenloop for the SaaS Services and Additional Services without any deductions for such taxes and duties. If zenloop is obligated to levy or pay such taxes and duties, zenloop shall invoice the Customer for these taxes and duties, unless the Customer submits to zenloop a valid exemption certificate issued by the competent tax office which states that no tax needs to be levied.

## 13 Restriction/blocking of the user account

- 13.1 zenloop reserves the right to temporarily or permanently restrict the Customer's use of the SaaS Services or to temporarily or permanently block the Customer's access to the SaaS Services if
  - a) there is concrete evidence that the Customer has allowed or in any other way deliberately enabled an unauthorised third party to use the user account or the access data;
  - b) there is concrete evidence that a breach of one of the obligations under Clauses 10.1 and 10.2 has occurred;
  - c) there is concrete evidence of misuse, unauthorised or fraudulent use of the user account or such use is to be feared on the basis of concrete evidence;
  - d) the Customer fails to pay the remuneration owed within 30 days of the due date, despite a reminder;
  - e) the Customer repeatedly violates other provisions of these Terms despite a warning;
  - f) other circumstances exist that would entitle zenloop to terminate the Contract for good cause.
- 13.2 When selecting measures according to Clause 13.1, zenloop shall take into account its own operational requirements and liability risks as well as the legitimate interests of any claimants and the Customer (e.g. fault, weight of the breach of duty, risks, statement by the Customer) in an appropriate manner.
- 13.3 zenloop shall inform the Customer without undue delay of any temporary or permanent restriction or blocking of its user account, stating the reasons.

## **14 Third-party applications and websites**

The Website or the SaaS Services may contain hyperlinks to external applications and websites, over whose content zenloop has no influence. Such hyperlinks are provided to the Customer for reference purposes only. zenloop assumes no liability for external content. If zenloop becomes aware that linked content is illegal, zenloop shall remove the corresponding hyperlink without undue delay.

## **15 Limitations of Liability**

- 15.1 zenloop shall only be liable without limitation for damages in case of intent and gross negligence on the part of zenloop, its vicarious agents and/or legal representatives. With regard to damages caused by slight negligence, zenloop shall only be liable in case of a breach of an essential contractual obligation. Essential contractual obligations are those obligations whose fulfilment make possible the correct execution of the Contract in the first place and on whose compliance the Customer may regularly rely. In the event of a breach of such an essential contractual obligation, the liability of zenloop shall be limited to the damages typical for this type of contract which zenloop could have foreseen at the time when the Contract was concluded based on the circumstances known at that time.
- 15.2 zenloop shall be liable for the loss of data in accordance with the preceding paragraph only if and insofar as such a loss could not have been avoided by the Customer through appropriate data backup measures.
- 15.3 In the case of the use of zenloop 2.0/zenSurveys, zenloop assumes no liability for the correctness, accuracy or completeness of the results generated by the AI. zenloop does not guarantee the suitability of the results for a specific purpose. The use of the results is at the customer's own risk based on their own assessments and considerations.
- 15.4 The aforementioned limitations of liability as well as all other limitations of liability contained in these Terms shall not apply in the event of the assumption of express guarantees, in the event of claims due to a lack of warranted characteristics, or to damages resulting from injury to life, limb or health. In these cases, zenloop shall also be liable without limitation for slight negligence. The liability of zenloop under the German Product Liability Act also remains unaffected.

## **16 Force Majeure**

- 16.1 If zenloop is completely or partially prevented from fulfilling the Contractual Services due to Force Majeure, zenloop shall be released from these obligations for the period and to the extent that Force Majeure prevents its performance.
- 16.2 As soon as zenloop becomes aware of a situation involving Force Majeure that completely or partially prevents zenloop from fulfilling the Contractual Services, zenloop shall be required to notify the Customer without undue delay ("notification") and, as far as reasonably possible, to provide the Customer with an estimate of the extent and the expected duration of its inability to perform within 10 working days. If the notification is not issued without undue delay, zenloop shall only be released from its obligation to perform from the point in time when the notification is issued.
- 16.3 If zenloop invokes Force Majeure, zenloop shall make every economically reasonable effort to minimise the extent of the consequences caused by the Force Majeure for the Contractual Services. zenloop shall regularly inform the Customer in an appropriate manner about the current status as well as the extent and the expected duration of the impediment to performance.

- 16.4 The Customer shall be released from its payment obligation to the extent that and for as long as zenloop is prevented from fulfilling the Contractual Services due to Force Majeure. zenloop shall refund the Customer any relevant amounts already paid.
- 16.5 As soon as it becomes clear that the Contractual Services cannot be fulfilled, or cannot be fulfilled in full, for more than 3 months due to Force Majeure, each party shall be entitled to terminate the Contract with immediate effect.

## 17 Confidentiality

- 17.1 With regard to Confidential Information of the other party, each party shall be obliged to
- a) keep such information strictly confidential and only use it in connection with the contractual purposes;
  - b) take appropriate confidentiality measures to secure such information against unauthorised access by third parties. This also includes technical security measures that take into account the state of the art (Art. 32 GDPR);
  - c) only disclose or pass on such information to those employees and bodies as well as commissioned service providers who or which need to know this information for the execution of the Contract, and who or which are subject to an obligation to maintain confidentiality that guarantees at least the same level of protection as this agreement;
  - d) not disclose or pass on such information to third parties, unless the third party is a consultant or potential investor of the receiving party and the respective consultant or investor is subject to an obligation to maintain confidentiality that guarantees at least the same level of protection as this agreement or is already professionally bound to secrecy.
- 17.2 The confidentiality obligations under Clause 17.1 shall not apply to Confidential Information that can be proven to
- a) have been known or generally accessible to the public before its communication or transfer or becomes known or generally accessible to the public at a later date, as long as there is no breach of a confidentiality obligation;
  - b) have been already known to the receiving party prior to disclosure by the disclosing party, as long as there is no breach of a confidentiality obligation;
  - c) have been developed independently by the receiving party without using or referring to the Confidential Information of the disclosing party;
  - d) have been handed over or made available to the receiving party by an authorised third party, as long as there is no breach of a confidentiality obligation; or
  - e) be required to be disclosed due to mandatory legal provisions or a decision of a court and/or an authority.
- 17.3 The confidentiality obligations under this Clause 17 shall remain in force for a period of 2 years after termination of the Contract.

## 18 Non-solicitation

- 18.1 For a period of two years after termination of the Contract, the Customer shall not solicit for employment any of the current employees of zenloop, provided, however, that this covenant shall not

apply with respect to any person who (i) has been given notice of termination of his or her employment by zenloop, (ii) has given notice of termination of, or agreed to terminate, his or her employment prior to the commencement of employment discussions with the Customer or (iii) seeks employment with the Customer as a result of general advertising and without any inducement by the Customer.

## 19 Data protection

- 19.1 zenloop shall process personal data in accordance with the zenloop Privacy Policy. The zenloop Privacy Policy is available at: <https://www.zenloop.com/de/legal/privacy>.
- 19.2 zenloop shall process Survey Recipient Data and Online Rating Data only in accordance with the documented instructions of the Customer and only for the contractually agreed purposes in accordance with Art. 28(3) GDPR and in accordance with the Data Processing Agreement concluded between the parties.
- 19.3 zenloop shall not be obliged to provide the services under the Contract before the conclusion of the Data Processing Agreement.
- 19.4 The Customer, as the controller in the sense of Art. 4(7) GDPR, shall be responsible for the legality of the collection, processing and use of Survey Recipient Data and Online Rating Data and for safeguarding the rights of the Survey Recipients. In particular, the Customer shall be responsible for
- a) obtaining from all Survey Recipients the consent required pursuant to the relevant legal regulations, in particular the GDPR, prior to the collection, processing and transmission of Survey Recipient Data to zenloop, unless it can prove that the processing is based on another legal basis;
  - b) ensuring that the processing of Survey Recipient Data by the Customer (including in connection with marketing or advertising) does not violate any laws or the rights of third parties, including but not limited to intellectual property rights, data protection or publication rights, and does not conflict with the terms of the Customer's privacy policy.

## 20 Contract term, consequences of termination

- 20.1 The Contract concluded between the customer and zenloop shall begin upon the day the Individual Contract is signed by both parties or on the other date indicated in the Individual Contract and shall last for a period specified in the Individual Contract (hereinafter referred to as "**Minimum Contract Period**").
- 20.2 At the end of the Minimum Contract Period or at the end of the Subsequent Term, the Contract shall be automatically extended for period equal to the Minimum Contract Period (hereinafter referred to as the "**Subsequent Term**"), unless it is terminated by one of the parties with three months' notice to the end of the Minimum Contract Period or to the end of the respective Subsequent Term. Notice of termination must be given in text form in order to be effective. This shall not affect the right of extraordinary termination.
- 20.3 zenloop shall block the Customer's access to the Platform immediately after termination of the contractual relationship and permanently erase all of the Customer's data and other content no later than one month after termination of the Contract. This shall not affect any statutory retention periods. Once erased, the content cannot be restored. It shall be the responsibility of the Customer to ensure that it has backed up or copied all data it requires, in particular Survey Recipient Data, before termination of the contractual relationship.

## **21 Transfer of rights and obligations**

- 21.1 With the exception of the provisions in Clause 21.2, neither party may transfer its rights and obligations arising from the Contract to a third party without the consent of the other party.
- 21.2 zenloop shall be entitled to transfer the Contract in its entirety to an enterprise affiliated with zenloop within the meaning of Sect. 15 of the German Stock Corporation Act (AktG) as well as to any other third party, provided that this other third party acquires zenloop's entire business or a substantial part thereof. zenloop shall notify the Customer of a planned transfer at least four weeks in advance in text form. In the event of such notice of transfer, the Customer shall have an extraordinary right of termination at the time when the planned transfer takes effect. In the notice of transfer, zenloop shall point out this right separately to the Customer. Notice of termination must be received by zenloop in text form within 14 days after the Customer receives the notice of transfer.

## **22 Other provisions**

- 22.1 If any provision of the Contract is found to be invalid, ineffective, or unenforceable, this shall not affect the validity, effectiveness and enforceability of the other provisions of the Contract. The parties undertake to replace the ineffective provision with a legally permissible provision that comes as close as possible to the purpose of the ineffective provision.
- 22.2 Changes and additions to the Contract must be made in writing. This also applies to a waiver of this formal requirement.

## **23 Applicable law and place of jurisdiction**

- 23.1 The Contract shall be subject to German law.
- 23.2 The courts in Berlin shall have exclusive jurisdiction for all disputes arising from or in connection with this Contract.