

Service Terms for Zentral Pro Services GmbH

Version 1.0

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1 Preamble

Zentral Pro Services GmbH, Eggerstedtstr. 28, 22765 Hamburg (“**Provider**”) is a provider of digital solutions to help businesses manage their fleet of devices (“**Service**”). The Provider provides its solutions to the customer (“**Customer**”). The Provider has developed the software “Zentral” (“**Software**”) as part of the Service. Zentral monitors and manages endpoints in enterprise environments with a primary focus on macOS devices. Zentral helps IT and Security departments meet their automation, reporting and security goals. These Service Terms (“**Terms**”) provide the terms and conditions that govern the Service and are to be included into a respective agreement between Provider and Customer (“**Individual Agreement**”; the Individual Agreement and these Terms altogether referred to as “**Agreement**”).

2 Scope of Terms

- 2.1 Provider will provide the Service as agreed between the parties. The Provider also offers a free trial period for the Service. The free trial period may be subject to limited features and can be terminated by any party at any time. In case of a free trial, Customer may not use the Service with production data but only with anonymized test data. Furthermore, the provided data will be deleted after the free trial period unless explicitly agreed otherwise.
- 2.2 The use of additional features (including the Modules) is subject to specific agreements.
- 2.3 Provider offers different versions and editions of the Service. For clarity, each version and edition of the Service may be limited to certain features, a certain number of users or seats (seat-based system), a certain subscription term, or a combination of the foregoing parameters.
- 2.4 The parties may agree on further features on an individual basis. This may also include additional services such as programming, support, or similar services.
- 2.5 The parties conclude the data processing agreement according to Art. 28 GDPR attached as **Schedule 1**.
- 2.6 The Customer’s general terms and conditions shall only become part of a contract between the parties if this has been expressly agreed in text form (email being sufficient).

3 Grant of Rights

- 3.1 In general, Customer will not get access to any software. Customer will rather use a web-interface and an API in order to use the Service which is based on the Software. However, in case Customer gets access to any software, e.g. in the course of customer-specific developments, the following applies.
- 3.2 Provider hereby grants to Customer a non-exclusive, non-transferable, non-perpetual, and non-sublicensable right to use the Software during the term of the Agreement, subject to the provisions of such agreement and these Terms. Customer is not entitled to use the Software after the term of the respective agreement.
- 3.3 The Software will be made available to Customer in source code form and any other form, if agreed between the parties. For the provision of source code, the parties agree that the provision of a link to a public or non-public repository is sufficient.

- 3.4 In the event of the Software or parts of it being provided in another form than source code, any reverse engineering and decompiling of the Software is prohibited, unless permitted under mandatory law.
- 3.5 Customer is not entitled to modify the Software, unless allowed by statutory law or explicitly allowed by Provider.
- 3.6 Furthermore, in case Customer is entitled to modify the Software, Customer grants Provider non-exclusive, sub-licensable, transferable, irrevocable rights of use, unlimited in time and space, to all modifications of the Software, if any, and will provide Provider upon request with the source code modified in the course of creating the modifications.
- 3.7 Copyright notices and other features aimed at product identification may not be removed, altered or suppressed under any circumstances.
- 3.8 Customer may not produce copies of the Software, unless
- a) required for the contractual use as per Provider's instructions,
 - b) explicitly allowed by Provider or
 - c) required for backup copies that shall ensure future use by Customer.
- 3.9 Customer is not entitled to make the Software available to third parties without prior explicit approval by the Provider. This includes any sale, lease, letting, indirect use of the Software and its provision as a service.

4 Scope of Services

- 4.1 Unless agreed otherwise and depending on the subscription plan chosen by Customer, Provider will provide the services set out in these Terms.
- 4.2 The Service will be made available to Customer via a web interface and API.
- 4.3 Provider will make the Service available to the Customer via the Internet as software as a service during the term of the subscription contract.
- 4.4 The Provider's responsibility for the performance of the Service ends at the WAN port of the router in the data center used by the Provider ("Point of Presence"). It is the Customer's sole duty to ensure that he can receive the Provider's Service offered at the Point of Presence.
- 4.5 The Provider is entitled, but under no obligation, to extend and further develop new features and functionalities of the Service. The Provider reserves the right to offer Customer such new features and improvements against payment of an additional fee only. In the event of Customer being provided with new features and improvements for a fee by means of a corresponding contractual agreement in addition to an existing contract, the provisions of such contract shall apply accordingly. In the event of Customer being provided with new features and improvements free of charge, these new features and further improvements shall be deemed to be a voluntary service of the Provider.

4.6 The Provider may change the functional scope of the services at any time to an extent that is reasonable for the Customer. Such change shall be deemed reasonable, in particular, if the services the parties expressly agreed on and the Provider's main contractual performance obligations remain substantially unchanged and if that change is necessary for an important reason. Such reasons are, without limitation, disruptions in the provision of services by subcontractors and safety reasons. If the changes do not exclusively concern new features and improvements or if the changes do not only concern insignificant components of the services to be provided by the Provider, the Provider shall notify the Customer of the change by email at least four weeks before it comes into effect.

4.7 The Provider is entitled to suspend the Customer's access to the Service if

- a) there are indications that the Customer's credentials for accessing the Service have been or are being misused or that these credentials have been or are being provided to an unauthorised third party, or that credentials are being used by more than one person;
- b) in case of excessive use of machine events. Unless agreed otherwise, an average of 10.000 events per machine per day over 30 days is considered excessive;
- c) there are indications that third parties have otherwise gained access to the Service provided to Customer;
- d) the blocking is necessary for technical reasons;
- e) the Provider is under a legal obligation (e.g. by law, court order, or administrative order) to suspend Customer's access;
- f) the Customer's payment of agreed fees is more than one month late;
- g) the Customer has provided Provider with incorrect or invalid contact data, and Provider is no longer able to contact Customer;
- h) in the event of payment by direct debit, the Customer has provided incorrect bank account details and does not effect the respective payment by other means.

4.8 The Provider shall announce the suspension of the Customer's credentials within the meaning of section 7.10 to the Customer in text or written form at least one working day before the suspension comes into effect, insofar as, considering the interests of both parties, such announcement is reasonable does not affect the purpose of the suspension.

5 Term and Termination

5.1 A subscription shall become effective upon its activation by Provider and shall remain valid unless terminated.

5.2 A subscription has a minimum term of one year and will automatically renew for additional one-year terms unless terminated by the parties in accordance with these Terms.

- 5.3 Either party may terminate the subscription at least 60 days prior to its expiration.
- 5.4 The termination shall be made in writing or in text form (e.g. via email to support@zentral.com).
- 5.5 Either party may terminate a subscription immediately by giving written notice to the other party if (i) the other party commits a material breach of the respective agreement or these Terms; and (ii) where such breach is capable of remedy, the other party fails to remedy such breach within 30 days of the date of written notice from the non-defaulting party.
- 5.6 Any statutory rights to extraordinary termination remain untouched.

6 License Fees

- 6.1 Customer shall pay to Provider the agreed remuneration.
- 6.2 License fees are payable and will be invoiced in advance, unless agreed otherwise. Provider will send invoices reasonably in advance of the time frame to which they apply, and invoices are due 30 days after receipt. In the event of default, statutory interest may be charged. Provider has the right to suspend any provision of support and other services in case a fee is not paid when due.
- 6.3 All remuneration is subject to statutory value added tax and all other applicable duties if any.

7 Obligations of Customer

- 7.1 Customer shall fulfill all obligations stipulated in these Terms or as agreed between the parties within a reasonable period of time and free of charge.
- 7.2 Customer confirms to be aware of the essential functional features of the Service and solely bears the risk that it fits with Customer's wishes and needs. In case Customer might have had doubt before concluding an agreement with Provider, Customer should consult with Provider or specialized third parties on the usability of the Service for its business purposes.
- 7.3 Prior to any productive use of the Service as part of the respective contractual use, Customer shall test the Service thoroughly to ensure that it is free of defects and that it is operable in the existing hardware and software environment of Customer.
- 7.4 Customer shall take adequate precautions for the event that the Service does not work properly as a whole or partially. This includes, without limitation, Customer being responsible for generating sufficient backups of all data processed and regular checking of the data processing results.
- 7.5 If Customer fails to fulfill its duties to collaborate within the agreed periods of time or within reasonable time upon Provider's request, all deadlines agreed upon are deemed prolonged by the time Customer needs to fulfill the respective duty, and Provider is then granted reasonable time to fulfill its obligations.
- 7.6 Customer solely bears any disadvantages and any additional costs incurred due to any culpable non-observance of its duties.

- 7.7 Customer is solely responsible for setting up a working hardware and software environment and a sufficient network capacity and access appropriate for the Service, also considering any additional load which may be caused to Customer's IT environment by the Software, unless agreed otherwise.
- 7.8 Customer shall follow the operating instructions provided by Provider. Customer is responsible for establishing the interfaces between the Service and further IT-environment of Customer, unless agreed otherwise.
- 7.9 To the extent required for any services and support provided by Provider, Customer will grant access to log files and troubleshooting data.
- 7.10 Customer must keep any credentials confidential and must ensure that the access to the Service is limited to authorized personnel only.
- 7.11 In connection with using or accessing the Service Customer agrees to comply with these Terms. The following behaviour is not permitted when using the Service:
- a) use of the Service for other purposes than those contractually intended, including in particular misuse of the Service as data storage service or operation or provision of competing services by the Customer based on the Service;
 - b) offering or disseminating content that violates the rights of third parties, in particular personal rights, copyright, data protection or criminal law, or is otherwise unlawful, as well as disseminating links to such content or using legally protected content without being authorised to do so;
 - c) dissemination of advertising for own or third-party services as well as other commercial content, spam or chain letters and petitions;
 - d) unauthorised publication of personal data of third parties or other information relating to third parties;
 - e) removal or obliteration of copyright notices and/or notices relating to trademarks or other property rights of the Provider, companies affiliated with the Provider or third parties;
 - f) disseminating incitements to violence, criminal or other behaviour that is likely to disrupt public order and security, in particular offering or disseminating content that is defamatory, insulting, libellous, discriminatory, inhuman, racist, anti-constitutional, sexist, glorifies violence or pornographic, as well as disseminating links to such content;
 - g) making available or passing on to third parties the access data used for authentication and identification, circumventing access control systems or taking other measures to enable unauthorised use of the services;
 - h) distributing malware, viruses or other content that is directed against the security of IT systems and links to platforms that offer malware, viruses or corresponding content.

7.12 The Customer is responsible for all information, drafts, work results and other data that is made available in the context of using the Service.

8 Warranty and Updates

8.1 Provider warrants (“gewährleistet”) that the Service has the agreed features.

8.2 Provider shall maintain the Service in a satisfactory working condition suitable that enables Customer to use the Service in accordance with these Terms and the respective agreement. However, Provider reserves the right to remedy defects exclusively by providing an update, an upgrade or a new version of the Service. Such new version may contain new or slightly modified features which, however, do not qualify as a significant deviation from the features Provider and Customer agreed on.

8.3 The responsibility of Provider is excluded to the extent of defects resulting from Customer not complying with operating conditions for the Service or instructions from Provider or modifications Customer made to the Service himself. Any work provided by Provider with that regard may be subject to additional remuneration depending on scope and amount of additional efforts required.

8.4 Provider may provide Customer with updates related to the Service from time to time. However, Provider is not obliged to do so.

8.5 Any modifications of the Service required due to regulatory or other legal changes shall be agreed on separately, if applicable, and shall be remunerated separately.

9 Deficiency in Title

9.1 A deficiency in title is deemed to exist only in the event that Customer cannot effectively be granted the rights required for the use of the Service in accordance with these Terms.

9.2 If any third-party claims are asserted against Customer for the infringement of any proprietary rights to the Service, Customer shall immediately notify Provider accordingly in writing and leave the defense against such claims to Provider to the extent possible. Customer shall render all reasonable support to Provider in defending such claims.

9.3 If any third-party rights are infringed, Provider may at its own choice and in its sole discretion provide subsequent performance by

a) acquiring to Customer’s benefit a right of use sufficient for the purposes of these Terms;
or

b) modifying the Service infringing upon the proprietary right without any or with only such impacts on the functions of the Service that are deemed to be reasonable for Customer;
or

c) supplying a new version of the Service the contractual use of which will not infringe upon any such third-party rights.

9.4 If Customer should modify the Service or have it modified by third parties, Customer is not entitled to any claims because of deficiency in title, unless such defects were not caused by such modification.

10 Third-party Components

10.1 The following applies to the extent Software is distributed to the Customer or to the extent the following obligations have to be complied with for other reasons:

10.2 The Software contains third-party components, including open source software (“Third-Party Components”). Parts of such Third-Party Components are subject to deviating license terms (“Third-Party License Terms”). A list of such Third-Party Components and its respective Third-Party License Terms are available within the Software.

10.3 Furthermore, such information is available on the Internet at www.zentral.com. No stipulation in these Terms is intended to impose further restrictions on Customer’s use of such Third-Party Components licensed under Third-Party License Terms.

10.4 Provider reserves the right to introduce deviating or additional Third-Party License Terms in the course of modifications of the Software and in case of updates for the Software to the extent necessary due to additional Third-Party Components or due to changed Third-Party License Terms.

11 Liability

11.1 Unless stated otherwise in this agreement, Provider is liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

11.2 To the extent any Service or functionality is provided free of charge, Provider is liable only for intent and gross negligence (in accordance with statutory law).

11.3 To the extent the Service (including access to the Software by means of Software as a Service) are provided for a fee, Provider’s statutory liability is unlimited for intent and gross negligence as well as for injuries to life, limb or health. The same applies to claims related to provided guarantees (“Garantien”), applicable product liability laws or other legally mandatory grounds for liability.

11.4 Other than in the cases described in Sec. 11.3, Provider is liable for slight negligence only in case of breach of a key contractual obligation (so called “cardinal obligation”), and limited to what was reasonably foreseeable in light of the given contractual setting in that case. A cardinal obligation in the sense of this section is an obligation whose fulfilment enables the execution of the Terms themselves and upon whose fulfilment Customer may therefore generally rely.

11.5 In the case of Sec. 11.4, Provider is not liable for insufficient economic success, loss of earnings and indirect loss.

11.6 Furthermore, liability in case of Sec. 11.4 is limited to the remuneration payable by Customer under these Terms projected for a twelve-month period.

11.7 The limitation of liability also applies respectively in favour of employees, agents, legal representatives, and assistants of Provider.

11.8 Provider is not liable to the extent that damages are caused by usage of the Service not in accordance with these Terms or modifications made by Customer.

12 Confidentiality

12.1 The parties agree and undertake to protect, keep confidential and not to disclose to third parties any kind of written or verbal confidential information which come to their knowledge. Confidential information includes all information declared or reasonably recognizable as confidential by the parties, the agreed remuneration and any kind of confidential information regarding general commercial activities (including sales costs, profit, pricing methods, organization and list of personnel, internal processes, structures, ideas, concepts and strategies), without being limited to those specified above.

12.2 The parties may disclose confidential information to related persons and institutions upon a request made or order given by any court or authorized governmental body or if required by law or if required to enforce rights under an agreement that has been concluded between the parties. Disclosure under said circumstances does not constitute a breach of these Terms.

12.3 The obligation of confidentiality will not apply to any part of the confidential information to the extent it

- a) is at the time of disclosure already publicly known;
- b) becomes at a later date publicly known through no breach of the provisions of these Terms or by a wrongful act of the related party;
- c) was in the receiving party's possession before the receipt of confidential information;
- d) was disclosed to the receiving party without restriction on disclosure by a third party who has lawful right to disclose such information or
- e) is disclosed to a court or competent arbitrating body.

12.4 Subject to confirmation by Customer, Provider may use Customer's name and trademarks for marketing purposes by naming Customer as a reference customer (including within marketing materials and on its website). Customer shall not unreasonably withhold the confirmation.

12.5 Any documentation provided with the Service may not be made publicly accessible by Customer, unless agreed otherwise.

13 Miscellaneous

13.1 The Provider shall be entitled to engage subcontractors for the performance of services (e.g. in form of subproviders for hosting services) at his own discretion.

13.2 Provider reserves the right to amend these Terms in his sole discretion, which may include amendments due to the further development of the Service or because new functionalities will be implemented. Provider will notify Customer in text form (email being sufficient) about the modified terms before the modifications will enter into force and Provider will inform Customer about the new provisions, the planned date for the new terms to enter into effect, Customer's

termination right, the applicable termination period and the significance of remaining silent, and Provider will then grant an adequate, at least six-week period to Customer to terminate the agreements that are based on these Terms if Customer does not agree with the modified Terms. If Customer does not terminate the agreements based on these Terms within the aforementioned period, the modified Terms shall apply upon expiration of the period. The termination by Customer must be submitted in text form (email being sufficient).

- 13.3 Any provision of the Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions hereof. The parties shall replace any invalid or unenforceable provision by a valid or enforceable provision which most accurately reflects the initial purpose of the parties.
- 13.4 Unless expressly provided otherwise in the Agreement, all notices hereunder shall be made in text form (email being sufficient).
- 13.5 The parties shall only be entitled to offset contractual claims if the corresponding counterclaim is ultimately confirmed by court or unchallenged by the respective other party.
- 13.6 The Agreement shall be governed by and construed in accordance with the laws of Germany, excluding its conflict of law provisions. Any dispute or controversy arising under or in connection with the Agreement shall be subject to the exclusive jurisdiction of the courts of Hamburg, Germany.
- 13.7 Any individual and deviating agreement between the parties prevails over these Terms.

14 Order of Precedence

In case of any conflict between clauses or information contained in the Schedules referred to in these Terms, the following order of precedence regarding the contractual documents shall apply, whereas the document with the lower number prevails over the ones with higher numbers:

1. Schedule 1 - Data Processing Agreement
2. Individual agreements
3. These Terms