

Addendum to GTCs (EU Data Act)

(Version 1)

This Addendum to MYZEL Software as a Service General Terms & Conditions (GTCs) outlines Customer and Provider rights and responsibilities when switching from Hosted Services or the Platform, in line with the EU Data Act. It takes precedence over other contract terms unless expressly agreed between the Parties.

Definitions.

The terms defined in this Addendum are supplemental to the Agreement (including any other Annexes/Addenda) but will carry the following meanings for the purpose of this Addendum:

"Agreement" means the agreement between the Parties in respect of the provision of Hosted Services including any purchase order, subscription, the GTCs and any amendment thereof or supplement thereto, as well as all acts related to performance of the Agreement.

"Hosted Services" or "Platform" as defined in the Agreement.

"Customer" as defined in the Agreement

"Data" as defined in Article 2(1) Data Act as any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording.

"Data Act" means Regulation (EU) 2023/2854.

"Data Processing Service" is the Hosted Service

"Destination Provider" as mentioned in Article 2(34) Data Act, means the destination provider of data processing services, whereby the Customer changes from using the Data Processing Services from Provider to using another data processing service of the same service type, or other service, offered by such different provider of data processing services, or to an on-premises ICT infrastructure, including through extracting, transforming and uploading the data.

"Digital assets" as defined in Article 2(32) Data Act as: elements in digital form, including applications, for which the Customer has the right of use, independently from the contractual relationship with the Data Processing Service it intends to switch from.

"Exportable data" as defined in Article 2(38) Data Act as: the input and output data, including metadata, directly or indirectly generated, or cogenerated, by the Customer's use of the Data Processing Service, excluding any assets or data protected by intellectual property rights, or constituting a trade secret, of the Provider or third parties.

"Maximum Notice Period" as defined in Article 25(2)(d) Data Act, is two months.

"Minimum Period of Data Retrieval" as defined in Article 25(2)(g) Data Act, is 30 days.

"Order" as defined in the Agreement.

"Other Services" means all professional services of whatever nature to be provided by Provider to Customer under the Agreement as defined therein, that are not Data Processing Services.

"Personal Data" as defined in Article 4, point (1), of Regulation (EU) 2016/679 (General Data Protection Regulation ('GDPR')).

"Provider" means the Provider entity that provides the Data Processing Service as defined in the applicable Order and/or Subscription and/or Agreement.

"Subscription fee" means the fees due and owed by Customer to Provider for the provision of the Hosted Services as agreed by Parties under the Agreement.

"Switching" as defined in Article 2(34) Data Act. as: the process involving the Provider, a Customer of a data processing services and, where relevant, a destination provider of data processing services, whereby the customer of a data processing service changes from using one data processing service to using another data processing service of the same service type, or other service, offered by a different provider of data processing services, or to an on-premises ICT infrastructure, including through extracting, transforming and uploading the data. For the purposes of this Addendum the relevant provisions on Switching will also apply to the interoperability requirements for in-parallel use of the Data Processing Services as per Article 34 Data Act.

"Switching charges" as defined in Article 2(36) Data Act as: charges, other than standard subscription fees or early termination penalties, imposed by a provider of data processing services on a customer for the actions mandated by the Data Act for switching to the system of a different provider or to on-premises ICT infrastructure.

1. Pre-Switching Information

Prior to placing an Order for Data Processing Services, the Provider will furnish the Customer with comprehensive information including:

- 1.1. current standard subscription fees and, where applicable, early termination penalties;
- 1.2. the Switching Charges where applicable;
- 1.3. services for which it is impossible to switch without significant interference in the Data, Digital Assets or service architecture, where applicable;
- 1.4. specific services where the obligations on switching and exit do not apply, where applicable.

- 1.5. Customer acknowledges that switching from the Hosted Service may be considered as highly complex and costly.
- 1.6. All Categories of Data and Digital Assets that the Customer has uploaded to the Hosted Service including, at a minimum, all Exportable Data, can be ported during the switching process.
- 1.7. Provider will provide clear information concerning known risks to continuity in the provision of the Hosted Services.
- 1.8. Information required according to Article 26 (reference to online register): such as information on available procedures for switching and porting, including methods and formats as well as restrictions and limitations which are known will be made available.

2. Initiating the Switching Procedure

- 2.1. The Customer should give the Provider a switching notice that it initiates the switching, observing the Notice Period of two months. If the Customer wishes to switch only with regard to certain Services, Data or Digital Assets, it should specify that in the notice. The Notice Period of two months will commence at latest date in which Customer has provided all requested information in relation to your switching request.
- 2.2. In such switching notice the Customer may inform whether it intends:
 - 2.2.1. to switch to a different Provider of Data Processing Services. In this case the Customer should provide necessary details of the Destination Provider;
 - 2.2.2. to switch to an on-premises ICT infrastructure of the Customer; or
 - 2.2.3. not to switch but only erase their exportable Data and Digital Assets.

3. Transitional Period

If Provider cannot achieve switching within the 30 days transition period due to it not being technically feasible, Provider will:

- 3.1. notify in writing including by adequate electronic means, the Customer within 14 working days after receiving the notice for switching;
 - 3.1.1. give proper justification for the technical unfeasibility.
 - 3.1.2. Indicate an alternative Transitional Period, which shall not exceed seven months from the date of the Notice.
- 3.2. The Customer may extend the Transitional Period once, for a period they consider more appropriate for their own purpose, for no longer than seven (7) months, from the date of the Customer's switching notice. In that case, the Customer must notify the Provider in writing, including by adequate electronic means, of their intention until the end of the original Transitional Period and indicate the alternative Transitional Period.

4. Switching and Exit Strategy

- 4.1. Upon the Customer's request the Parties will agree on a switching and exit plan (the "Plan"), that will include:
 - 4.1.1. details regarding switching and exit assistance, including the porting methods and formats, and steps required to carry out the switching process;
 - 4.1.2. the contact designated respectively by the Customer and the Provider to carry out the Plan;
 - 4.1.3. an estimate of the time needed to export and transfer the Data and Digital Assets out of the source Provider's environment;
 - 4.1.4. restrictions and technical limitations, including those arising from storage of Data outside of EU, if applicable;
 - 4.1.5. a description of the sequence of operations proposed by the Provider; and
 - 4.1.6. If required by the Customer, the Provider may provide information explaining relevant procedures to the Customer's designated personnel (or such other third parties as the Customer may authorise).
- 4.2. The Provider and the Customer undertake to update the Plan whenever necessary and at least to check, at the Customer's request, if changes are required.

5. Provider's Responsibilities During Switching

During Switching Provider will:

- 5.1. provide adequate information (including documentation necessary to complete switching) and technical support. If problems are detected, the Provider and the Customer will in good faith analyse the causes and agree on solutions.
- 5.2. Act with due care to maintain business continuity and continue to provide the functions or services under the Agreement.
- 5.3. Maintain a high level of security throughout the switching process consistent with the security levels agreed in the Agreement, in particular for the security of the data during their transfer.

6. Customer's Responsibilities During Switching

During Switching the Customer or third parties authorized by them (including the Destination Provider) will:

- 6.1. take all reasonable measures to achieve effective switching. The Customer will be responsible for the import and implementation of Data and Digital Assets in their own systems or in the systems of the Destination Provider.
- 6.2. not infringe the intellectual property rights of any materials provided in the switching process by the Provider, as well as Provider's trade secrets. The Customer undertakes to provide access to and if necessary to sublicense the use of

these materials to third parties or to the Destination Provider only insofar as necessary to complete the switching process until the end of the agreed Transitional Period, including the alternative Transitional Period, respecting at the same time the confidentiality commitments, as well as the intellectual property rights of the Provider.

7. Data Retrieval and Erasure

- 7.1. The Customer can retrieve or erase their data during the agreed Period of Data Retrieval, which is 30 days unless otherwise agreed.
- 7.2. At the end of this retrieval period, and if the switching process has been completed successfully, the Provider will erase all Exportable Data and Digital Assets generated by the Customer or related to the Customer directly and confirm this to the Customer.
- 7.3. For avoidance of doubt, the Period of Data Retrieval will be subject to the same fees as the fees agreed for the Hosted Service.

8. Charges Related to Switching

- 8.1. Any charges to be paid by the Customer for switching will be confirmed by Provider at the time when the Customer has initiated the switching process (subject to the withdrawal of Switching charges in accordance with Article 29 of the Data Act). Switching charges only include fees for services that are required to enable the Customer to switch away from the Hosted Services.
- 8.2. Provider may also offer professional services which can assist customers in extracting and transferring data from the Platform or Hosted Services.

9. Termination and Penalties

- 9.1. As soon as the Customer notifies the Provider that the switching process is successfully completed, the Provider will notify the Customer immediately of the termination of the Agreement. The Agreement will be deemed terminated upon the Customer's receipt of such notification. If the Customer does not notify the Provider about successful switching or the lack thereof, it is deemed that the switching was not successful, and the Agreement will not be terminated and will continue on its existing terms.
- 9.2. If the Customer does not want to switch but to erase their Exportable Data and Digital Assets, at the end of the agreed notice period the Provider will notify the Customer of the termination of the Agreement. The Agreement will be deemed terminated upon the Customer's receipt of such notification.
- 9.3. Termination penalties: upon termination of the Agreement according to paragraphs 9.1 and 9.2 the termination penalties to be paid by the Customer to the Provider will be due immediately. The termination penalty is the amount of the

unpaid fees for the remaining term from the date of termination until end of the agreed Hosted Service Term set out in the Agreement.

10. International governmental access and transfer

- 10.1. In accordance with Article 32 (1) Provider will implement and maintain appropriate technical, organisational, and legal measures to prevent international and third-country governmental authority from accessing non-personal data stored or processed within the European Union in a manner that would conflict with European Union or national Member State law.
- 10.2. Provider will not disclose or transfer non-personal data to any third-country authority unless such disclosure is based on an international agreement, such as a mutual legal assistance treaty, in force between the third country and the European Union or a Member State.
In the absence of such an agreement, Provider will comply with a third-country order in accordance with Articles 32(3) and(4).
- 10.3. Where legally permissible Provider shall promptly notify the Customer of any such third-country request before complying with the request.