

MYZEL Software as a Service (SaaS) General Terms & Conditions

(Version 2)

Table of Contents

Table of Contents	1
1. Term	2
2. Changes	2
3. Platform and Hosted Services	4
4. Scheduled maintenance	7
5. Support Services	8
6. Customer Data	8
7. Intellectual Property Rights	9
8. Charges and Trial Period	9
9. Payments	9
10. Confidentiality	10
11. Data protection	11
12. Warranties	12
13. Limitations and exclusions of liability	14
14. Force Majeure Event	15
15. Termination	16
16. Effects of termination	16
17. Notices	17
18. Subcontracting	17
19. General	17
20. Interpretation/Precedence	18

These terms and any addenda thereto (Agreement) apply to the access and use of the Hosted Services through the Platform and you (Customer) acknowledge and accept that these terms apply to your access and use of the Services when creating an account. You also acknowledge to have accepted any changes to these terms by continuing to use your account after those changes are made or notified to you. These terms also apply to any updates, upgrades, fixes, patches and other changes to the Platform and Hosted Services.

For Definitions of certain terms contained in this Agreement please refer to Definitions at Schedule 1.

1. Term

- 1.1. The Agreement applies upon the taking out of a subscription to the Platform by the Customer and will continue in force from then until termination in accordance with this Agreement or the Subscription.

2. Changes

- 2.1. Any amendment, revision, update, improvement, supplement or other change to the Agreement (collectively 'Change') must be made in writing and will be subject to the explicit prior mutual consent, including adequate electronic means that guarantee integrity and non-repudiation of the authorised representative(s) of both the Provider and the Customer, except if and to the extent as explicitly provided in Clause 2.2.
- 2.2. The Provider is only entitled to propose a unilateral Change to the Services, provided that:
 - A. such Change is clearly beneficial for the Customer, either (A) consists of material enhancement updates of the Platform or Hosted Services, and/or (B) is necessary for demonstrated security reasons, and/or (C) is required to comply with mandatory applicable law not already in force before the effective date of the Agreement, where items A and B (i) do not breach mandatory law applicable to Customer, and (ii) do not degrade (or other negatively impact the quality or service level of) the Services and the use thereof by Customer, and;
 - B. all the conditions set out in Clauses 2.3 through 2.5 below ('Permitted Unilateral Change') have been met.
- 2.3. No proposed Unilateral Change under Clause 2.2 may ever be used by the Provider to directly or indirectly enforce retroactive changes, or to change clauses in the Agreement pertaining to one or more of the following aspects regarding:
 - a. choice of law and choice of forum;
 - b. amendments or procedure for changing the Agreement;
 - c. term and termination;
 - d. liability;

- e. representations and warranties, including those set as or in service level(s);
- f. confidentiality;
- g. methods for the use of subcontracting and methods for the change of subcontractors;
- h. access and information rights;
- i. qualitative service level objectives;
- j. Pricing rules or other financial rules;
- k. the location where the data are processed, if the change would result in data processing or storage outside the EU;

2.4. In the event of a proposed Permitted Unilateral Change, the Provider must:

- A. notify the Customer as soon as possible (and in any case no later than 30 days) before any such proposed Permitted Unilateral Change takes effect for the Customer to allow sufficient time to assess such information and the internal impact and other potential feasibility and impact it will have or may have for the Customer and their stakeholders, systems and services;
- B. provide the Customer, in a complete, correct, and accurate manner, with sufficient and easy-to-understand information and related primary sources of such information, including:
 - i. the scope, details and timelines of the proposed Permitted Unilateral Change;
 - ii. why the proposed Permitted Unilateral Change is required;
 - iii. what the clear benefits are for both Customer and Provider;
 - iv. what the outcome of the Provider's impact assessment and explanation is of the impact between (a) the prevailing situation and (b) the situation proposed by the Provider after the proposed Permitted Unilateral Change. This must include, without limitation, the short-term, mid-term and long-term contractual, financial, organisational, operational, service-level and legal compliance-related consequences for the Customer, if any. It must also explain why such a Change is clearly beneficial to the Customer as per Clause 2.2.
 - v. the envisaged timeline for deployment and implementation, and the related effective date of the proposed Permitted Unilateral Change entering into force (the 'Permitted Unilateral Change Effective Date').
- C. confirm and demonstrate to the Customer that the proposed Permitted Unilateral Change is not in breach of Clauses 2.2, 2.3 and 2.4.
- D. The mandatory notifications and provisions of information set out under this Clause 2.4 must be made in writing and by adequate electronic means.

2.5. Notwithstanding Clause 2.6, if the Provider is able to demonstrate it has complied with Clause 2.4 and the Customer has not explicitly rejected the Permitted Unilateral Change in writing (including without limitation by

adequate electronic means) in a substantiated manner before the Permitted Unilateral Change Effective Date, the Customer will be deemed to have accepted the proposed Permitted Unilateral Change at said Permitted Unilateral Change Effective Date. In case the Customer rejects such Permitted Unilateral Change as set forth in the previous sentence, Parties will discuss and aim to settle the matter at hand in good faith, in line with Article 27 Data Act.

- 2.6. If the provider breaches Clauses 2.1 through 2.5, the Customer will have the right to either obtain from the Provider the Services' restoration to a state prior to the changes, unless duly justified technical unfeasibility by the Provider, or to terminate the Agreement, and at no additional cost. This does not affect the Customer's other rights and remedies, including without limitation the right to seek injunctive relief in any applicable competent court to order Provider to remain providing the Services as agreed, and the right to obtain compensation for the damage suffered (if any).

3. Platform and Hosted Services

- 3.1. Provider will enable access to the Customer through the Credentials necessary to allow the Customer and Users to access the Platform and use the Hosted Services.
- 3.2. Provider grants to the Customer a non-exclusive licence to use the Platform and Hosted Services in accordance with this Agreement during the Term.
- 3.3. The use of the Platform and Hosted Services granted by the Provider is subject to the following limitations:
- (a) the Platform and Hosted Services may be accessed and used through a Recommended Web Browser
 - (b) the Platform and Hosted Services may only be used by the Users in accordance with the details in the Customer Subscription
 - (c) Customer Data may be accessed by third parties at the request of Customer in accordance with the Data Act BUT CUSTOMER IS RESPONSIBLE FOR ANY DATA LOSS OR MISUSE BY THOSE THIRD PARTIES
- 3.4. Not within the scope of this Agreement or within the scope of access to the Platform or the use of the Hosted Services are:
- (a) Hardware, connected devices or systems which may connect to the Platform or from which data is inputted to the Hosted Services
 - (b) Any software or applications that are not the Hosted Services or are not provided by Provider to the Customer.
 - (c) Customer and its User's internet connection, and associated equipment, to the Platform and the Hosted Services.
- 3.5. Except to the extent expressly permitted in this Agreement (including the Customer Subscription) or required by law, the licence granted by the Provider to the Customer to use the Hosted Services is subject to the following prohibitions:

The Customer shall not:

- (a) assign, sub-license or otherwise transfer its right to access and use the Hosted Services
 - (b) permit any unauthorized or unlicensed User or application to access or use the Hosted Services
 - (c) make any alteration to the Platform or the Hosted Services
 - (d) conducts itself or directs a third party to carry out any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.
 - (e) use the platform, Hosted Services for purposes other than which they are intended for
- 3.6. The Customer shall implement and maintain sufficient security measures relating to the Credentials:
- (a) ensuring the secure storage of the Credentials to ensure that no unauthorised person can access them.
 - (b) ensure that it or its Users not to use Credentials in a false manner or to allow another person to use the Credentials that were not assigned to them.
- 3.7. Customer shall ensure that its Users and any other parties that access the Platform and/or use the Hosted Services are in compliance with Customer's responsibilities and obligations under this Agreement.
- 3.8. Provider reserves the right to change, suspend or restrict the Credentials if, in its sole discretion, it is required to do so because of security concerns or technical requirements.
- 3.9. The Provider shall use reasonable endeavours to maintain availability of the Hosted Services to the Customer but does not guarantee 100% availability at all times.
- 3.10. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;
 - (b) a fault or failure of the internet
 - (c) fault or failure or any public telecommunications network;
 - (d) a fault or failure of the Customer's computer hardware, systems or networks;
 - (e) any breach by the Customer of this Agreement; or
 - (f) scheduled maintenance carried out in accordance with this Agreement and/or Service Level.
- 3.11. The Customer must ensure that all Customer's users will comply with the Acceptable Use Policy , any instructions, guidelines and disclaimers referenced or attached at log-in to the Platform or when accessing or using the Hosted Services. On violation of the Acceptable Use Policy, without prejudice to any other remedies Provider may have, Provider may take appropriate action to protect the Platform, Hosted Services, stored data, Customer Data or third

party data and services. Such action may include removing or quarantining Customer and suspending use or access to the Platform.

- 3.12. Customer acknowledges and agrees that it is responsible for its User's actions, use, access and activities under its account or Subscription or any other party it has authorized or allowed access to the Platform or the Hosted Services and any liabilities, damages or consequences that result from their access or use of the Platform or Hosted Services.
- 3.13. The Customer will be responsible for, all persons under its account using the Hosted Services (User) comply with the Acceptable Use Policy. Customer indemnifies and holds harmless Provider for any claims the basis of which is due to the Customer's Users fault while accessing the Platform and/or using the Hosted Services.
- 3.14. The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or interfere with access to or availability of the Platform or Hosted Services.
- 3.15. Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources or the Hosted Services by the Customer for the purpose of assuring services availability and capacity to its all its customers generally.
- 3.16. Customer acknowledges that Provider may track usage of the Platform and Hosted Services by Users but in an anonymized manner for the purposes of improvement and development of the Platform and the Hosted Services and metrics for billing.
- 3.17. The Customer must not use the Hosted Services:
 - (a) illegally, fraudulently or will cause harm; or
 - (b) for any illegal, fraudulent or harmful purpose or activity.
- 3.18. Customer has no right to access the source code of the Platform or the Hosted Services unless this is necessary for switching or interoperability pursuant to its rights in the Data Act.
- 3.19. Customer shall not use or not cause the use of the Hosted Services or the Platform and any content therein by it or its Users to be exported to any embargoed or sanctioned countries or to persons sanctioned or placed on a list of sanctioned persons, companies or countries
- 3.20. Customer shall comply with all relevant sanctions, export, and re-export, import and re-import laws and regulations, including all such laws and regulations that apply to them.
- 3.21. Subject to any statutory obligations that Provider has as a Data Processor Customer is responsible for the legal use of the Hosted Services, Platform, including the upload and processing of Customer Data and Customer Personal Data and any other personal data, including sensitive personal data, at its own discretion which it inputs into the Platform or Hosted Services.
- 3.22. Subject to any statutory obligations that Provider has as a Data Processor Customer is responsible for the legal use or processing of personal data other than Customer Personal Data, including sensitive personal data, that at its own discretion, transfers between its subsidiaries, affiliates and third parties in different countries or jurisdictions.

- 3.23. Customer expressly acknowledges and states that it is not controlled or in common control with a company or legal entity or person which is on a list of sanctioned entities or persons.
- 3.24. Customer shall not use the Hosted Services in a way that supports, develops or otherwise assists, the production of chemical weapons, biological weapons, nuclear weapons or other weapons of mass destruction.
- 3.25. Customer shall facilitate, where possible, any requests from Provider with the provision of data, information or other requested material if Provider has been requested or otherwise requires such material by and for a national authority, regulatory body, court, enforcement agency or other legal authority.
- 3.26. Customer shall ensure that it installs the latest updates and keeps updated any software that is provided by Provider for access to the Platform or for use of the Hosted Services.
- 3.27. The Provider may suspend access to the Platform and/or the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.
- 3.28. Provider may from time to time change, modify, suspend or discontinue the Platform or Hosted Services for legal or security reasons or to improve the functionality or user experience or due to the changes required by any third parties, such as but not exclusively open source providers or the platform provider, without notice unless such changes materially affect the basic access, features and functioning of the Hosted Services.
- 3.29. Provider continuously monitors the Platform's performance to ensure that Hosted Services operate within expected parameters.

4. Scheduled maintenance

- 4.1. The Provider may need, when required, to suspend access to the Platform and/or the Hosted Services for the purposes of scheduled maintenance to the Platform or Hosted Services, providing that such scheduled maintenance must be carried out in accordance with this Clause.
- 4.2. The Provider shall where practicable and reasonable give to the Customer appropriate notice of scheduled/planned maintenance that will, or is likely to, affect the availability of the Hosted Services or have a material negative impact upon the Hosted Services.
- 4.3. Scheduled maintenance will be carried out during Business Hours (Central European Time).
- 4.4. In the event of an unscheduled suspension of access to the Platform or to the Hosted Services, Provider will endeavour to restore access and functionality as soon as is possible but will not be responsible for causes of disruption outside its control.

5. Support Services

- 5.1. The Provider shall provide the Support Services to the Customer during the Term in setting up access to the Platform.
- 5.2. The Provider shall provide the Support Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry
- 5.3. The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.
- 5.4. The Provider does not provide support for previous versions of the Hosted Services.
- 5.5. Where any issues with the availability or functionality of the Platform and/or the Hosted Services are due to third parties such as cloud provider, utilities, communications or internet service providers then Provider will endeavour to resolve as soon as possible but will not be responsible for delays or downtime due to third-party issues outside of Provider's control.
- 5.6. Support Services will be provided where Provider has a local subsidiary.
- 5.7. Provider will endeavour to respond to Support queries as soon as possible within the available support line hours.

6. Customer Data

- 6.1. The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to any third party service providers related to access to the Platform and/or the provision of the Hosted Services, subject to any express restrictions elsewhere in this Agreement.
- 6.2. The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person or third party, and will not breach the provisions of any law, statute or regulation in any jurisdiction and under any applicable law.
- 6.3. Customer must ensure and is responsible for backing-up any data inputted by Customer in the Hosted Services and for any output data resulting in the use of the Hosted Services. Provider shall have no liability for loss of Customer back up data.
- 6.4. Provider and Customer will comply with Regulation (EU) 2023/2854 (EU Data Act) in relation to data access, switching and inter-operability as specifically outlined in EU Data Act Addendum, hereby incorporated by reference.

7. Intellectual Property Rights

- 7.1. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.
- 7.2. Provider grants to Customer limited, non-transferable, non-exclusive licence to use the Hosted Services for the Customer's legitimate business and the purpose for which they are intended only.
- 7.3. Customer cannot download or attempt to download the Platform or Hosted Services software or data held therein other than its own data or data generated by its own authorized use of the Hosted Services.
- 7.4. Customer undertakes not to engage in any reverse engineering or decompilation of any software in the Platform or Hosted Services for the purposes of acquiring the operating, business or trade secrets embodied therein; nor to access the source code; nor to develop derivative software or works.

8. Charges and Trial Period

- 8.1. The Customer shall pay the Charges to the Provider in accordance with this Agreement and as set out in its account or Subscription
- 8.2. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 8.3. The Provider may change the Charges by giving to the Customer not less than 30 days written notice of the variation.
- 8.4. Customer may avail of an initial trial period of 30 calendar days (Trial Period) whereby Users will have access to the Platform and the level of Hosted Services indicated in their account free of charge for 30 calendar days. This trial will only be available to a customer for the first time they create an account or for the first time they intend to access the Platform or use the Hosted Services. The trial period commences at the date indicated in their account. Customer will be informed of the end of the trial five (5) days before the end of the Trial Period. If Customer does not cancel the trial within the Trial Period the Charges may apply at the end of the Trial Period.

9. Payments

Subject to any payment details indicated in Customer's account and Subscription:

- 9.1. The Provider shall issue invoices for the Charges to the Customer in advance of the period to which they relate or in accordance with the agreed invoicing terms for the Customers account or Subscription.
- 9.2. If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:

- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the European Central Bank base rate from time to time which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month or as otherwise indicated in the Customer account or Subscription.

10. Confidentiality

- 10.1. Both parties must:
 - (a) keep the discloser's Confidential Information strictly confidential;
 - (b) not disclose the discloser's Confidential Information to any person without the discloser's prior written consent and then only under conditions of confidentiality no less onerous than those contained in this Agreement;
 - (c) use the same degree of care to protect the confidentiality of the discloser's Confidential Information as the discloser uses to protect the discloser's own confidential information of a similar nature, being at least a reasonable degree of care;
 - (d) act in good faith at all times in relation to the discloser's Confidential Information
- 10.2. The recipient may disclose the discloser's Confidential Information to the recipient's officers, employees, professional advisers, insurers, agents, subcontractors and third party suppliers/provider who have a need to access the discloser's Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the discloser's Confidential Information.
- 10.3. This Clause imposes no obligations upon the recipient with respect to discloser's Confidential Information that:
 - (a) is known to the recipient before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default of the recipient; or
 - (c) is obtained by the recipient from a third party in circumstances where the recipient has no reason to believe that there has been a breach of an obligation of confidentiality.
- 10.4. The restrictions in this Clause do not apply to the extent that any discloser's Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request.
- 10.5. The provisions of this Clause shall continue in force for a period of 5 years following the termination of this Agreement or the Customer's account whichever is sooner.

11. Data protection

- 11.1. Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 11.2. The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.
- 11.3. The Customer shall only supply to the Provider, and the Provider shall only process Personal Data necessary for access and use of the Hosted Services subject to the [Provider Privacy Notice](#).
- 11.4. The Provider shall only process the Customer Personal Data during the Term and for not more than necessary following the end of the Term, subject to the other provisions of this Clause.
- 11.5. The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:
 - (a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities in providing that such transfers must be protected by appropriate safeguards;
 - (b) the Provider may transfer the Customer Personal Data to its third party processors (Data processing information) and may permit its third party processors to make such transfers, providing that such transfers must be protected by any appropriate safeguards identified therein; and
- 11.6. The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 11.7. Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by GDPR or any applicable Data Protection law.
- 11.8. The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality.
- 11.9. The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 11.10. As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data as is necessary for the fulfilment of provision of cloud infrastructure and access to the Platform and use of the Hosted Services,.
- 11.11. The Customer shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Provider with the fulfilment of the Provider's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

- 11.12. The Provider will notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay after the Provider becomes aware of the breach.
- 11.13. The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause.
- 11.14. The Provider shall, at the written request of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law or the requirements of the Platform, Hosted Services requires storage of the relevant Personal Data.
- 11.15. If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.
- 11.16. Provider will notify Customer with reasonable advance notice of any legally authorized or binding request from a law enforcement authority to disclose Personal Data. Where legally permissible Provider may refuse such request which is not legally binding. Provider may not issue notice if such legal request is on the basis of a strictly confidential investigative purpose.
- 11.17. This clause is subject to the Pilz Data Protection Notice.

12. Warranties

- 12.1. The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
 - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
 - (d) the Platform and Hosted Services will conform in all material respects with the Subscription that the Customer has selected and has paid for;
 - (e) the Hosted Services will be free from Hosted Services Defects, subject to Section 12.12 below;
 - (f) the Platform will incorporate security features reflecting the requirements of good industry practice.

- 12.2. The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement will not breach any applicable laws, statutes or regulations.
- 12.3. The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 12.4. If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 12.5. While Provider ensures that any open source software is of standard industry standard it does not warrant that any open-source software used in the Hosted Services is fully free from defects, suitable for purpose, or free from title defects. Customer must adhere to any licence terms of the open source software that have been notified to it by the Provider.
- 12.6. The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 12.7. The Customer warrants to the Provider that the information, documentation or imagery or any material it provides or the use of any information, documentation or imagery or any other material for the Hosted Services will not infringe the Intellectual Property Rights of any person or entity in any jurisdiction and under and applicable law.
- 12.8. The Customer warrants to the Provider that it will ensure that all its Users are aware of the relevant obligations of this Agreement and will access the Platform and use the Hosted Services in accordance with the Acceptable Use Policy.
- 12.9. The Customer warrants to the Provider that it or its Users:
- a) will not provide any data to the Hosted Services or on the Platform that includes a virus, malware, spyware or otherwise compromises or damages the security and functioning of the Platform or the Hosted Services.
 - b) Will not use the Platform or the Hosted Services for purposes other than what they are strictly intended for.
 - c) that it or its Users are not located in a country subject to international sanctions or embargoes
 - d) that the Hosted Services or the Platform will not be used for any purpose or aim prohibited by law in relation to the design, development or production of nuclear, chemical or biological weapons
 - e) are not subject to sanctions or listed as a prohibited or restricted company, including but not limited to the lists maintained by the United Nations Security

Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, the United Kingdom or other applicable government authority.

- 12.10. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.
- 12.11. The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly and completely free from defects, errors and bugs.
- 12.12. The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Platform or Hosted Services will be entirely secure.
- 12.13. The Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 12.14. The Hosted Services, including any workflows and outputs, are provided 'as is' and the Provider does not represent or warrant that they will produce any specific result, outcome, or performance level. Customer acknowledges and accepts that the Hosted Services are intended solely as a tool to assist with certain functions and processes and all decisions, actions, results and outcomes based on the use of the Hosted Services are at the sole responsibility of the Customer.

13. Limitations and exclusions of liability

- 13.1. Nothing in this Agreement will:
 - (a) limit or exclude any liability for death or personal injury resulting from negligence;
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
 - (c) limit any liabilities in any way that is not permitted under applicable law; or
 - (d) exclude any liabilities that may not be excluded under applicable law.
- 13.2. The limitations and exclusions of liability set out in this Clause and elsewhere in this Agreement:
 - (a) are subject to this Clause; and
 - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 13.3. The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

- 13.4. The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.
- 13.5. The Provider shall not be liable to the Customer in respect of any loss of revenue or income.
- 13.6. The Provider shall not be liable to the Customer in respect of any loss of use or production.
- 13.7. The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 13.8. The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software
- 13.9. The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 13.10. The Provider shall not be liable for and all warranties shall be voided if the Platform and/or Hosted Services are incorrectly or inappropriately used on the Customer's or User's hardware or software. The Provider shall bear no responsibility for any defective functioning of the Hosted Services due to incorrect hardware or software, or hardware or software not in conformity with any system requirements, being used by Customer or User
- 13.11. The Provider shall not be liable for and all warranties shall be voided if the Hosted Services are used by unqualified or inexperienced Users in the field or area of the Services, such as, for example, machinery or automation safety.
- 13.12. The Provider shall not be liable for interference, loss of connection, loss or damage to data due to the malfunction, defect or misuse of equipment, interfaces, components or devices which are not provided or supplied by the Provider to the Customer
- 13.13. . To the extent permitted by law, and excluding liability for intentional acts or gross negligence, the total and aggregate liability of the Provider to the Customer under this Agreement shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement. This limitation shall not apply to restrictions arising under the Data Act, where such limitation would be deemed unfair or unenforceable

14. Force Majeure Event

- 14.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 14.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.

- 14.3. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

15. Termination

- 15.1. Provider may, at its discretion, terminate this Agreement if Customer has not paid all Charges or any outstanding payments for the Hosted Services for more than 30 days from when they become due
- 15.2. Provider may terminate this Agreement without cause by giving the Customer at least 30 days' written notice of termination.
- 15.3. Provider may terminate this Agreement whereby a Customer's User is in breach of the Acceptable Use Policy.
- 15.4. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 15.5. Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or

16. Effects of termination

- 16.1. Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 16.2. Within 30 days following the termination of this Agreement for any reason:
- (a) the Customer must pay to the Provider any Charges and outstanding charges or interest in respect of Services provided to the Customer before the termination of this Agreement;
- 16.3. Subject to any legal requirements in respect of data retention Provider may delete all Customer Data 60 days after termination of this Agreement.

17. Notices

- 17.1. Any notice from one party to the other party under this Agreement must be given by means of email or any agreed means of communication using the relevant contact details provided by the Customer

18. Subcontracting

- 18.1. Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.
- 18.2. The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 18.3. Notwithstanding the provisions of this Clause but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

19. General

- 19.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 19.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 19.3. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 19.4. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 19.5. This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 19.6. This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede

all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

- 19.7. This Agreement shall be governed by and construed in accordance with Law of the country in which the Customer has an account or Subscription with or, at Provider's sole discretion, German law.
- 19.8. The courts of the country in which the Customer has an account or subscription with, or, at Provider's sole discretion, the courts of Germany shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.
- 19.9. The Convention on the International Sales of Goods (CISG) is hereby agreed to be excluded.

20. Interpretation/Precedence

- 20.1. This Agreement shall be interpreted in accordance with the English language.
- 20.2. In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 20.3. The Clause headings do not affect the interpretation of this Agreement.
- 20.4. Unless otherwise agreed these Terms and Conditions take precedence over any Customer terms and conditions attached or contained within a Purchase Order or any other contract document issued by Customer at any time.

Schedule 1 - Definitions

Definitions

In this Agreement, except to the extent expressly provided otherwise, the following terms are defined:

"Agreement" means this agreement including any amendments to this Agreement from time to time;

"Business Day" means any weekday other than a bank or public holiday in the country in which the Provider entity is based where the Customer has taken out its Subscription;

"Business Hours" means the hours of 09:00 to 17:00;

"Charges" means the following amounts:

- (a) the amounts specified in the Subscription; or
- (b) such amounts as may be agreed in writing by the parties from time to time; and

"Customer" means the legal person or entity accepting and agreeing to this Agreement and as the context requires includes its employees as Users

"Confidential Information" means:

- (a) any information disclosed at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked as "confidential"; or
 - (ii) should have been reasonably understood by the recipient to be confidential; and

"Customer Data" means all data, information, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement.

"Customer Subscription" means the level of access, modules or workflows which the Customer has purchased and indicated on the Customer's account.

"Credentials" means the usernames, passwords and other credentials enabling access to the Hosted Services;

"Data Act" means Regulation (EU) 2923/2854

"Data Protection Laws" means the EU GDPR, UK GDPR and all other applicable laws relating to the processing of Personal Data;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means the date of acceptance of this Agreement;

"EU GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Service(s)" means the cloud based service, workflow or platform modules which will be made available by the Provider to the Customer as a service on the Platform via the internet/cloud in accordance with the Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform or Hosted Services having an adverse effect OR a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in (Customer Subscription);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Personal Data" means personal data under any of the Data Protection Laws;

"Platform" means the MYZEL Lifecycle Platform managed by the Provider and used by the Provider to provide the Hosted Services, including the database software for the Hosted Services and the system used to provide the Hosted Services;

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Subscription" means the level of Hosted Services that Customer pays Provider subscription fees for to access the Platform and use of those Hosted Services

"Support Services" means support in relation to the use of, and the identification and resolution of errors in the Platform and the Hosted Services,

"Recommended Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox and Google Chrome, or any other web browser that the Provider agrees in writing shall be supported;

"Term" means the term of this Agreement,

"User Interface" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

"User" means employees, contractors to, agents or others authorized by, the Customer to access the Hosted Services through the Credentials.

This document is based on a Docular template