



# 55degrees

## Appendix: Switching and Exit plan

This appendix constitutes a component of the provider-specific terms applicable to 55 Degrees' products purchased through the Atlassian Marketplace. For comprehensive documentation pertaining to our non-Atlassian offerings, please consult the official 55 Degrees website.

### 1. Background

- 1.1. The purpose of this appendix for switching and exit (the "Exit Plan") is to ensure that customers of data processing services (including cloud and edge computing services) can switch suppliers or transfer their data to their own on-premises ICT infrastructure in accordance with Regulation (EU) 2023/2854 on rules for fair access to and use of data (the "Data Act").
- 1.2. Terms used in this Exit Plan such as "data processing services" and "switching" shall primarily have the meaning set out in the Data Act, unless otherwise clearly indicated by the circumstances. Terms with initial capital letters used in this Exit Plan shall have the same meaning as in the Data Act, if such terms are defined therein, and otherwise in the Agreement, unless otherwise expressly stated or indicated by the circumstances.
- 1.3. This Exit Plan consists of this main document and the applicable exit documentation that contains specifications of exportable data, including digital assets and specifications for switching as well as other information regarding switching, such as but not limited to excluded categories of data (the "Exit Documentation"). When this Exit Plan refers to the term "exportable data", it shall also include the Customer's digital assets as applicable. The Exit Documentation and other information related to switching, including the Provider's online register, is available at <https://www.55degrees.se/legal/customer-agreements/atlassian-cloud-products/switching-exit-plan>. This Exit Plan, including the Exit Documentation, forms an integral part of the Agreement between the parties. Notwithstanding anything else stated in the Agreement, in the event of a conflict between the provisions of this Exit Plan and other parts of the Agreement, the provisions of this Exit Plan shall take precedence in relation to the areas covered by this Exit Plan.
- 1.4. This Exit Plan is only applicable to the Provider's own services that are covered by the Data Act and shall therefore not apply to, for example, non-production versions of data processing services provided solely for testing and evaluation purposes for a limited period of time.

## 2. Advance termination and change of supplier

### Switching Process

- 2.1. Notwithstanding anything else in the Agreement, the Customer has the right to initiate a switching process and thereby terminate applicable parts of the Agreement, by notifying the Provider in writing two (2) months in advance regarding the relevant Product(s) in accordance with the Data Act. For the avoidance of misunderstanding, this does not entitle the Customer to a refund of fees already paid or an exemption from payment for already ordered Products and/or consulting services. The Customer is therefore still responsible for payment of the remaining time of the current term of the Agreement.
- 2.2. The Customer has the right to, no later than thirty (30) days prior to the expiry of the notice period set out in Section 2.1 above, request:
  - a) switching from the Product to another service of the same service type, in which case the Customer shall provide Provider with prompt necessary information of the New Provider. "The same service type" means a service that shares the same primary objective, service model and main functionalities as the Product, provided by another supplier (the "New Provider").
  - b) porting all exportable data specified in the Exit Documentation to the Customer's on-premises ICT infrastructure; and/or
  - c) erasure of Customer's exportable data in the Product.

Such switching or porting according to a) and b) above (the "**Switching Process**") shall take place without undue delay and no later than within thirty (30) calendar days after the notice period in Section 2.1 has expired (the "**Transitional Period**"). The Agreement, including the parties' rights and obligations stated therein, remains valid during the Transitional Period and until the Agreement is terminated in accordance with this Section 2.

- 2.3. During the Transitional Period, the Provider shall:
  - a) provide the Customer, and third parties authorised by the Customer, with reasonable assistance in the Switching Process in accordance with this Agreement and mainly as regards: (i) making the exportable data available in accordance with this Exit Plan; (ii) providing documentation necessary to understand the structure and content of the exportable data; and (iii) providing clarification of such documentation upon reasonable request;
  - b) act with due care to maintain business continuity and continue to provide the Product under the Agreement;
  - c) provide clear information concerning known risks to continuity in the provision of the Product during the Switching Process; and

- d) maintain a high level of security throughout the Switching Process, including the security of the Customer's exportable data during the porting and data retrieval period referred to in Section 2.6 in accordance with applicable law.

2.4. Further, Provider shall support the relevant exit strategy for the Customer in relation to the Product, in particular by providing relevant information for the Switching Process.

For the avoidance of doubt, such assistance as set out in the Sections above shall not include data transformation, system integration, additional migration services, or any obligation to adapt the exportable data to the specific requirements of a New Provider or any other third party. Any assistance beyond the scope set out above shall be subject to separate agreement and applicable fees.

2.5. The Customer, including any third party appointed by the Customer, such as the New Provider, shall:

- a) take all reasonable measures to achieve an effective Switching Process, such as but not limited to, preparing the Switching Process internally and ensuring sufficient and appropriate resources for a successful Switching Process, monitoring the Switching Process, enter into appropriate contractual arrangements with the New Provider, and acting in good faith to implement any guidance and instructions related to the Switching Process provided by Provider;
- b) provide Provider with all information necessary in order for Provider to perform its obligations under the Data Act;
- c) be responsible for importing and implementing the Customer's exportable data into the Customer's local infrastructure or into the New Provider's system/environment;
- d) without prejudice to Article 30.6 of the Data Act, undertake to fully respect the intellectual property rights to any material provided by the Provider or its third parties in connection with the Switching Process as well as the Provider's or such third parties' trade secrets;
- e) undertake to provide access to and, where necessary, enable the use of such materials referred to in d) above to third parties, however only to the extent necessary to complete the Switching Process and only upon the Provider's explicit authorisation. Such authorized access to and use of the Provider's materials which are protected by intellectual property rights and/or constitute trade secrets shall automatically terminate no later than at the end of the agreed Transitional Period, and shall be in full compliance with the confidentiality obligations and the intellectual property rights granted by the Provider or the Provider's third parties (if any); and
- f) if problems are identified relating to the Switching Process, in good faith analyse the causes together with Provider.

The Customer is liable for any third party appointed by the Customer, including the New Provider's, compliance with the above Sections as if it was the Customer's own compliance. The Customer undertakes to provide instructions to any third parties contracted by the Customer about the Switching Process and to ensure that the Agreement is fully respected.

- 2.6. The Customer is entitled to a data retrieval period for the Customer's exportable data of thirty (30) calendar days after the expiry of the Transitional Period. After the expiry of the data retrieval period, the Provider shall erase the Customer's exportable data, provided that the Switching Process has been successfully completed and except for any Customer's exportable data which the Provider is obliged to store under applicable law.
- 2.7. If the Transitional Period is technically unfeasible, the Provider shall notify the Customer within fourteen (14) working days after receiving the Customer's request of switching, of an alternative Transitional Period, which may not exceed seven (7) months from the date of the Customer's switching notice. The Provider shall also give the Customer a proper justification as to why the Transitional Period is technically unfeasible. If the Customer does not object to such extended Transitional Period within ten (10) working days from the Provider's notification, the extended Transitional Period notified by the Provider shall apply.
- 2.8. The Customer has the right to extend the Transitional Period one (1) time by a period that the Customer reasonably considers appropriate for its own purposes, provided that such extension shall not exceed three (3) months (unless mandatory legal requirements require a longer period of time). The Customer shall notify the Provider of such extension in writing as soon as possible, but no later than before the end of the Transitional Period. The Provider may object to such extension only where it is not reasonably necessary to complete the Switching Process. If the Provider does not object to such extended Transitional Period within ten (10) working days, the extended Transitional Period shall apply.

### **In-parallel Use**

- 2.9. The Provider shall, where applicable according to the Data Act, enable the Customer to simultaneously use multiple data processing services from different suppliers ("**In-parallel Use**").
- 2.10. In the event of In-parallel Use, the Provider's obligations under Sections 2.3 b) and d) above shall apply.
- 2.11. The Customer is responsible for ensuring that the New Provider takes measures in accordance with the Data Act to enable In-parallel Use. The Customer's obligations under Section 2.5 above also apply to the extent they are relevant for enabling In-parallel Use.

### **Fees and charges**

- 2.12. The Customer is responsible for all costs for the IT services or tools required to import and implement the solution, including the Customer's data, in the New Provider's environment or in the Customer's on-premises ICT infrastructure. The Provider has the right to charge fees, corresponding to the Provider's costs, for the provision of tools required to import and implement the solution, including the Customer's data, in the New Provider's environment or the Customer's on-premises ICT infrastructure in accordance with this Section 2.12.
- 2.13. For the avoidance of doubt, the Provider has the right to charge fees as described in the Sections above even if the Agreement terminates due to the expiry of any fixed term and the Switching Process has not yet been successfully completed according to Section 2.16 below.

- 2.14. Furthermore, the Provider has the right to, as regards In-parallel Use, charge fees in accordance with the Provider's at the time applicable price list for the porting of exportable data from the Provider to a New Provider or to the Customer's on-premises ICT infrastructure (data egress charges), corresponding to the Provider's costs.

### **Successful switching and termination of the Agreement**

- 2.15. The Agreement shall be deemed to have terminated in the parts affected by the Switching Process, and the Customer shall be deemed to have been notified thereof as applicable (i) after the successful completion of the Switching Process according to Section 2.16 below; or (ii) upon expiry of the notice period in Section 2.1 if the Customer chooses erasure of the Customer's exportable data instead of switching. Termination of the Agreement according to this Exit Plan shall not affect any other rights or remedies available to a party towards the other party under the Agreement.
- 2.16. The Switching Process shall be considered successfully completed when the exportable data, as defined in the Exit Documentation, has been transferred to the Customer or the New Provider, which the Customer shall do within the time frames stipulated in Section 2 and be deemed to have occurred at the latest:
- a) when the Customer has notified the Provider in writing that the switching is successfully completed (such notification shall be made without undue delay); or
  - b) if the Customer has not notified the Provider that the switching has been successfully completed, or the Provider has not received such notification without undue delay, while the Provider has reasonable grounds to believe that the exportable data has been transferred to the Customer or New Provider in accordance with this Exit Plan, when the Provider notifies the Customer that the Agreement is terminated.

For the avoidance of doubt, the Provider's responsibility in the Switching Process is limited to providing the exportable data in accordance with this Exit Plan, and the Provider is not responsible for, and does not warrant or guarantee, that the Customer's or any third party's ability to import, use, or achieve any particular outcome from such data in any other system or environment.

If the Customer does not wish to switch but rather have the Customer's exportable data erased, the Provider shall, at the time specified in Section 2.15 (ii) above, notify the Customer that the Agreement has been terminated, and upon the Customer's request confirm that the Customer's exportable data has been erased.

- 2.17. If the Switching Process is not deemed completed, the Agreement shall continue to apply in applicable parts until the Switching Process is successful according to Section 2.16 above, unless the parties have agreed otherwise in writing. All parties involved, including the New Provider, must act in good faith to identify the reasons for unsuccessful switching and agree on the appropriate measures to successfully complete the Switching Process. The Provider has the right to reasonable compensation for the Provider's provision of additional services if the reasons identified to the unsuccessful switch is due to the Customer, the New Provider or any other third party engaged by the Customer, or due to any other circumstance outside the Provider's environment or switching processes. Such compensation shall not be considered as "switching charges" under the Data Act.

- 2.18. If the Agreement has been concluded for a fixed term and the expiry date of the Agreement is reached before the Switching Process has been successfully completed, and the Customer has not solely requested the erasure of the Customer's exportable data, the parties shall cooperate to achieve a successful switch as soon as possible, whereby the Agreement shall continue to apply in applicable parts until the parties have achieved a successful switch. For the avoidance of doubt, the Provider is never obliged to provide the Products after the expiry of the Agreement, even if the Switching Process is still ongoing, as far as it does not affect the Customer's mandatory rights under the Data Act. If the Customer wants the Provider to provide the Products even after the expiry of the Agreement during the Switching Process, or other services, such as but not limited to an extended period for data retrieval, the parties may agree upon this in writing.

### **3. Amendments**

- 3.1. The Provider has the right to continuously make amendments to this Exit Plan, including the Exit Documentation, to, for example, comply with mandatory legal requirements or governmental recommendations or to adapt to changes in the surrounding environment. However, such amendments may not conflict with any applicable legislation. Furthermore, the Provider shall update the Exit Documentation to reflect current exportable data as well as other updated information about switching during the term of the Agreement. Such updates shall be carried out continuously by the Provider, unless otherwise agreed in writing by the parties.
- 3.2. The updated version of the Exit Documentation is available at [www.55degrees.se](http://www.55degrees.se) at any given time.