

EU Data Act Addendum

Last updated 20 March 2026

This EU Data Act Addendum supplements either (i) the Terms of Services available at <https://upsun.com/trust-center/legal/tos/> or (ii) the written agreement entered into between Customer and Upsun, if any, collectively the “Agreement”. It applies to Upsun and Eligible Customers as defined below.

Capitalized terms not defined in this EU Data Act Addendum have the meaning given to them in the Agreement.

1. Definitions

“**Deletion Request**” means the process whereby Customer requests the deletion of its Content.

“**Destination Provider**” means any other PaaS or IaaS provider chosen by Customer to replace Upsun as provider of PaaS or hosting services.

“**Eligible Customer**” (or “**Customer**” as used in this Data Act Addendum) refers to a customer with a registered address in the European Union or any customer to whom the EU Data Act is otherwise applicable. It does not include customers with a registered address in the UK, Norway or Switzerland.

“**EU Data Act**” means Regulation (EU) 2023/2854 of the European Parliament and the European Council dated December 13, 2023 regarding harmonized requirements for fair data access and fair data usage and to amend Regulation (EU) 2017/2394 and Directive (EU) 2020/1828.

“**Exportable Data**” means Customer Content and other exportable digital assets.

“**Switching**” means the process whereby Customer switches from using the Upsun Platform to the services of another provider or to an on-premises hosting infrastructure.

2. Applicability and Scope

2.1. This EU Data Act Addendum governs Switching or Deletion Requests made by Customer pursuant to the EU Data Act.

2.2. In the event of any conflict between the terms of this EU Data Act Addendum and the Agreement, the terms of this EU Data Act Addendum will prevail solely with respect to the subject matter herein.

3. Switching or Deletion process

3.1. **Switching or Deletion Request notice.** Customer shall have the right to request either the switching or the complete deletion of their Exportable Data at any time, upon 2 months’ written notice to Upsun. Such requests must be formally submitted by completing the Switching or Deletion Request Form, located at <https://upsun.com/trust-center/legal/eu-data-act-switching-request/>, and transmitting the completed form to Upsun’s support team.

3.2. **Transitional Period.** Customer shall retrieve Exportable Data and migrate Exportable Data on another provider’s service within thirty (30) days from expiry of the notice period set forth above. Except that Customer may request, by written request to Upsun no less than eight (8) days prior to the beginning of the

Transitional Period, the extension of the Transitional Period as Customer considers appropriate, provided that any such extension must be proportionate to the complexity of and amount of Exportable Data to be retrieved. There shall be no Transitional Period for a Deletion Request.

- 3.3. **Data Retrieval Period.** Customer will retain access to the Upsun Platform for data retrieval purposes for the longest of 30 days after expiry of the Transitional Period or until Customer notifies Upsun in writing of successful completion of switching. There shall be no Data Retrieval Period for a Deletion Request.

4. **Continuity of Services during the Switching or Deletion process**

- 4.1. Throughout any Switching or Deletion process initiated by Customer pursuant to this Addendum, Upsun will act with due care and use commercially reasonable efforts to:
- 4.1.1. make all Exportable Data available to Customer in commonly-used, machine-readable, and interoperable formats, and shall provide access via standard export tools, APIs, or interfaces as further set forth in the data register available under <https://developer.upsun.com/docs/registry>;
 - 4.1.2. provide clear information to Customer regarding export methods and known risk to business continuity during the switching process under <https://developer.upsun.com/docs/core-concepts/common-tasks/exporting>
 - 4.1.3. maintain full operation of the Platform and uninterrupted access to the Platform and Customer Content, subject to the terms of the Agreement;
 - 4.1.4. maintain the uptime commitments and support levels set forth in the applicable Service Specific Terms or as otherwise agreed in the Agreement; and
 - 4.1.5. maintain its then-current technical and organizational security measures, controls and standards.

5. **Assistance during Switching**

- 5.1. Upsun shall support the Customer's exit strategy by providing commercially reasonable assistance to the Customer or to a third party designated by the Customer, and shall cooperate in good faith to facilitate the effective migration and export of Customer Data to a Destination Provider or to an on-premises infrastructure.
- 5.2. Such assistance shall primarily consist of guidance from Upsun Support teams enabling Customer or the third party mandated by Customer to perform self-service migration and data export using the tools, APIs, and documentation made available by Upsun. For the avoidance of doubt, Customer shall be solely responsible for exporting and verifying the completeness, accuracy, integrity, and successful migration of all Exportable Data it intends to switch to a third-party provider and for the import and implementation of Exportable Data in its own systems or in the systems of the Destination Provider.
- 5.3. Unless otherwise expressly agreed in writing between the Parties, migration execution services (including direct data transfer to a third-party provider, or reconfiguration of environments) are not included within the standard assistance obligations under this Addendum. However, Upsun may provide advanced migration assistance or professional services, subject to separate agreement and applicable additional fees.

6. Termination of the Agreement and consequences of Termination

- 6.1. Services and the corresponding Agreement shall be considered to be terminated and Upsun will notify Customer of the termination upon (i) expiry of the Data Deletion Request, or, in the event of a Switching Request (ii) when Customer notifies Upsun in writing of the successful completion of switching or, if later, 30 days after expiry of the Transitional Period, (in each case the “**Effective Date of Termination**”).
- 6.2. Where a Switching or Deletion Request applies only to a portion of the Projects governed by an existing Agreement, the Parties shall negotiate in good faith and execute a written amendment or addendum to the Agreement to reflect the reduced scope of Services and applicable fees.

7. Data Deletion.

- 7.1. Upon the Effective Date of Termination, Upsun will delete Exportable Data subject to the Deletion or Switching Request, except for any Exportable Data which Upsun is obligated to store under EU or national laws.

8. Fees

8.1. Continuity of Service Fees

- 8.1.1. Customer shall remain responsible for payment of all recurring fees, usage-based charges, spend commitment and any other applicable amounts under the Agreement until the Effective Date of Termination as set forth in 6.1 above.

8.2. Early Termination penalty

- 8.2.1. Customer shall, upon the Effective Date of Termination, be released from payment of recurring service fees or minimum spend commitments that would otherwise have become due for the remaining portion of the Agreement.
- 8.2.2. Notwithstanding the foregoing, Customer shall be required to pay an early termination penalty fee, consisting of the following components:
 - (i) **Total Discounted Amount:** The sum of all discounts applied under the Agreement, if any, from the Agreement’s inception up to the Early Termination Date.
 - (ii) **Base Fee:** 30% of the undiscounted contract amount from the Early Termination Date until the end of the original term of the Agreement.
 - (iii) **Customisation Fee** (if applicable): The full, undiscounted contractually-agreed fee for bespoke development, configuration, integration, or other technical or functional tailoring of the services specifically for the Customer.
- 8.2.3. The early termination penalty shall become due and payable upon the Effective Date of Termination.