

ELOOMI TERMS AND CONDITIONS

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1. ACCEPTANCE

- 1.1 By using the eloomi services, the customer is agreeing to be bound by these terms and conditions, unless the terms have been expressly deviated from or modified through another written agreement between both parties. A final agreement between the customer and eloomi is considered to have been finally concluded on these terms when the customer has accepted the terms electronically or otherwise accepted to eloomi in writing. None of the customer rights and entitlements in these terms and conditions shall however apply for free trial programs and pilots as the rights and entitlements are considered valid for purchasing subscriptions only.
- 1.2 eloomi reserves the right to update and modify these terms and in such case the customer may subscribe to the new terms or maintain their notice period corresponding to their subscription period, limited to 12 months after which the new terms apply.

2. ELOOMI SERVICES

- 2.1 eloomi provides on-line cloud services as described on the website of eloomi, enabling the customer to integrate its own content in the services.
- 2.2 Depending on the subscription, eloomi include one or more of the following, delivered as a software as a service application: eloomi LMS (learning management system) for handling, delivery and tracking of learning modules; eloomi PM (goals and coaching system) for handling, delivery, rating and tracking on goals, and giving opportunity for handling, delivery and tracking on conversation dialogues; eloomi PA (performance appraisals) for handling review, evaluation, dialogues and tracking on grids; eloomi TD (to-dos) for handling, delivery and tracking on checklists.
- 2.3 At any time eloomi reserves the right to develop and improve its services and product features, including their functionality in such a way as deemed appropriate or necessary by eloomi. eloomi may not suspend or discontinue the subscribed service cf. clause 2.2 without informing the customer with a notice corresponding to the balance of their subscription period, limited to 12 months, unless it's a matter of short-term maintenance, support and service communicated to the customer on helpdesk.eloomi.com. eloomi may, however, for necessary support or maintenance and/or ongoing innovation and development, limit, change, suspend or discontinue any product feature in relation to the services for any reason, at any time, including the availability of any product feature at its sole discretion without notice or liability. Any changes will be made public for the customer at eloomi's helpdesk.
- 2.4 eloomi assumes no responsibility for any failure in providing the services and eloomi reserves the right to change any information about eloomi's services and products or third party's services and products on the websites of eloomi and others, including partner's websites, in brochures and other materials. eloomi does not warrant the correctness of any images, descriptions of products and services and specification of data in eloomi's material on websites or elsewhere.

3. PRICING

- 3.1 The use of eloomi requires payment of a yearly license subscription based on agreed number of activated unique users within the subscription period. Activated unique users exceeding the agreed number will be measured per month and shall be paid based on the subscription's average user price for the month.
- 3.2 All prices are default in Danish kroner (DKK), but the customer can request billing in local currency. Any price in local currency will be calculated at eloomi's sole discretion from DKK on the date of the billing date and in accordance with the current market rates at the time of billing. All prices are exclusive of any taxes, VAT, fees, levies or duties imposed by tax authorities. eloomi reserves the right to change its prices but shall adapt notice to the remaining subscription period. Any price increase at subscription renewal cannot exceed 5 % yearly. All payments and billing are non-refundable but subject to clause 7.1. Customer purchased services other than the agreed license subscription, are aligned to the price and terms of the purchase. Any separate hours purchased outside of the eloomi default services will be invoiced at DKK 1500 per commenced hour.
- 3.3 Terms of subscription payment are net cash, yearly up front and in advance of the commencement of the subscription period, or if eloomi has granted credit, net 14 days from the date of the billing. Alternatively, customers may request a monthly subscription or payment period with an additional 17 % on the subscription price. If payment is made through credit card services or similar transaction services, fees will be billed to the customer.
- 3.4 In the event of late payment, eloomi may charge interest from the due date at a rate of 2.5 % per month. eloomi reserves the right to close the customer's access to eloomi without notice if payment has not been made in time, and after one reminder plus seven working days. If the access is closed, the customer is still under an obligation to pay until the customer could have terminated the agreement at the notice specified in clause 13. If the customer payment is received within the subscription period, and there are no other amounts outstanding, eloomi is obligated to re-open the access.

4. FAIR USE POLICY

- 4.1 The use of eloomi is unlimited within the agreed subscription, unless customer is using the services in an unusual way outside the purpose of the services. In such case eloomi retains the right to limit or halt service to a customer and the customer may be contacted by eloomi with a tailored commercial proposal. eloomi acknowledges, that an unusual way outside the purpose of the services might not be intentional and eloomi is obligated to invoke the fair use policy to the customer if an instance occurs, with one-week notice, to find a mutually agreeable solution, as well as eloomi must document the point of over usage. In the case that there will be no agreeable solution or plan arranged, eloomi can limit or halt services until the situation is resolved.

5. SUPPORT

- 5.1 The customer will have access to online support through helpdesk.eloomi.com. Requests shall include a detailed description of the issue. eloomi creates a support case with feedback directly to the sender. eloomi support undertakes to respond and initiate a corrective action process within a reasonable time and no later than the next business day, defined as Monday to Friday Danish time zone excluding Danish public holidays.
- 5.2 Ongoing roadmap, product launches and change logs can be found on helpdesk.eloomi.com.
- 5.3 The services are hosted at Microsoft Azure who is audited and certified to ISAE3402II, ISO-IEC-27001 or similar. eloomi performs 24/7/365 monitoring of services and platforms. eloomi is audited and certified to ISAE3000 and is GDPR compliant. Audits are done yearly by external international auditing companies. All employees at eloomi are 100% compliant to the IT-Security-Policy and bound by confidentiality clauses in the employee agreements. Customer can achieve documentation of certifications by contacting eloomi.

6. DATA PROTECTION

- 6.1 The customer is the Data Controller and has the sole responsibility for the data when using the eloomi services, including to observe the acts on the processing of personal data, and that the actual use of services does not infringe the rights of a third party, including the employees of the customer and other data subjects. eloomi is the Data Processor. The subject matter and the purpose of the processing by eloomi is delivery of the service. The personal data processed by eloomi comprises names, contact data, job titles, job functions, information on measurements regarding professional performance, etc. Types of data subjects include customer's employees and partners. The processing operations/activities include transmission of data from/to customer from/to eloomi, storage of data calculation and measurement of performance based on the data and the formation of results and analyses.
- 6.2 eloomi has implemented appropriate technical and organizational measures in such a manner that its processing of personal data will comply with applicable data protection law, in particular Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 (GDPR) and ensure the protection of the rights of the data subjects. eloomi undertakes only to process personal data in accordance with documented instructions communicated by the customer as Data Controller, unless required to do so pursuant to the applicable law. In such case eloomi shall, to the extent permitted by law, inform the customer of that legal requirement before such processing takes place. eloomi shall inform the customer if eloomi does not have an instruction for how to process personal data in a particular situation or if any instruction infringes the applicable data protection law.
- 6.3 eloomi shall, taking into account the nature of the processing, assist the customer with the fulfillment of the customer's obligation to respond to requests for exercising the data subject's rights, through appropriate technical and organizational measures, as possible. The data subject's rights include hereunder the rights to request information and for personal data to be corrected, blocked or erased at their request. eloomi shall assist the customer in fulfilling specific obligations under applicable data protection laws, taking into account the nature of the processing and the information available to eloomi. Specific obligations are hereunder pursuant to GDPR art. 32 regarding security of the processing, art. 33 – 34 regarding notification of data breaches and art. 35 – 36 regarding data protection impact assessments and prior consultations.
- 6.4 eloomi undertakes to make available to the customer all information and all assistance necessary to demonstrate compliance with its obligations according to this clause 6 and allow for and contribute to audits, including on-site inspections, conducted by customer or another auditor mandated by the customer. eloomi has the obligation to report a personal data breach immediately to the customer within no later than 48 hours from the breach.
- 6.5 eloomi shall maintain adequate security for the personal data hereunder in accordance with article 32 of the GDPR, and protect the personal data against destruction, modification, unlawful dissemination, or unlawful access. The personal data shall also be protected against all other forms of unlawful processing. eloomi shall prepare and keep an updated description of its technical, organizational and physical measures and maintain compliance with the applicable data protection law. eloomi ensures that any persons involved in the processing of personal data have committed themselves to confidentiality or are under proper statutory obligation of confidentiality.
- 6.6 Customer approves that eloomi has retained Microsoft and can retain Amazon as sub processors to host the services provided by eloomi to the customer. eloomi hosting partners will always store customer data inside EU.
- 6.7 Transfer of personal data to a country which is not a member state of either the EU or the EEA requires the prior written consent of the customer and shall only occur if the specific conditions in applicable data protection law hereunder of articles 44 - 50 of the GDPR have been fulfilled.

- 6.8 Customer approves that eloomi retains Vimeo as a sub processor regarding uploading and streaming of video content provided by the customer. Insofar as Vimeo transfers uploaded content to the U.S., eloomi ensures that Vimeo is bound by and complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. Use of Vimeo as a sub processor is dependent on the customer's decision to transfer personal data into Vimeo.
- 6.9 Additionally, Customer has given eloomi a general consent for the engagement of additional sub processors. However, eloomi shall inform the customer of any intended changes concerning the addition or replacement of sub processors, with a right for the customer to object within 4 days of receiving such information. Customer shall only object to changes/additions to sub processors if customer has specific and fair reasons.
- 6.10 eloomi ensures that all sub processors are bound by written agreements that require them to comply with corresponding data processing obligations to those contained in this section, in particular providing sufficient guarantees to implement appropriate technical and organizational measures which meet the requirements of the GDPR. eloomi remains fully liable to the customer for the performance of the sub processor's obligations regarding data protection. The customer may request that eloomi audits the sub processor or provides confirmation that such an audit has occurred, or, where available, obtains or assists the customer in obtaining a third-party audit report concerning sub processor's operations to ensure compliance with applicable data protection laws.
- 6.11 eloomi platform technology gives the possibility for the customer to link and play content and data from third-party sub-contractors in the eloomi solution. If the customer decides to make use of this, eloomi is not liable for the actions or omissions of such third-party sub-contractors, as such contractors act directly as independent data processors on behalf of the customer.
- 6.12 This clause 6 shall apply during such time eloomi processes personal data on behalf of the customer. Upon customer's request, termination or expiry of the service, eloomi shall cease its processing activities, and, at the choice of the customer, delete or return all the personal data to the customer and delete existing copies of such data, unless otherwise required under the applicable data protection law.

7 DEFECTS AND DELAYS

- 7.1 In the event of defects and/or delays, the customer must immediately complain in writing. If eloomi cannot remedy the defects/delays within one month after the customer's written complaint, the customer is entitled for a period of seven days thereafter to cancel the agreement with effect from the date of the complaint and will in such case not be obliged to pay eloomi for the period after the date of the complaint, and any prepayment shall be refunded for the period after the date of the complaint.
- 7.2 Except for the right to cancel the agreement as described in clause 7.1, the customer has no other legal remedies or remedies for breach of contract in the event of defects or delays. eloomi thus waives liability for any direct or indirect loss, including e.g. business interruption or loss of time, loss of data etc., and the customer has thus no right to e.g. buy against the seller or the like. The customer understands and agrees that the services may contain minor software bugs, suffer disruptions and not operate as intended or designated, as the services are in ongoing development mode.

8 THIRD PARTY SERVICES

- 8.1 Certain services delivered by eloomi render it possible for the customer to elect to use third-party deliveries and services. This is solely upon the choice of the customer. If this is the case, the customer is under an obligation to comply with the third-party's terms of use, including the third-party's licence terms for use. The entity providing the services has the sole and exclusive responsibility for availability, maintenance, bug fixing, support and proper functioning of the respective services. eloomi can in no way be made liable towards such third-parties for the customer failure to pay for such services or the customer failure to obtain required permissions from the third-party, and eloomi has no responsibility or liability with regard to any third-party services used by the customer on or through eloomi services. The customer acknowledges that the technical ability to link to such services is provided only as part of the services but is not deemed as to create any liability or responsibility on behalf of eloomi. Such third-party entities are not sub processors to eloomi and the customer has the full liability with regard to necessary data protection and any data processing performed by such third-parties on behalf of the customer.
- 8.2 eloomi offers access to integration services, e.g. API, SMS Gateway, SSO and similar services, so that eloomi can integrate with external customer solutions. The customer acknowledges that the technical ability to link to such services is provided only as part of the services but is not deemed as to create any liability or responsibility on behalf of eloomi.
- 8.3 eloomi offers access to content providers and content subscriptions. Any content subscription purchase through eloomi is regulated to this terms and conditions. However, the customer acknowledges that the purchase and access to the content, quality, features, and any microsites, blogs and discussion groups that are a part of the content or content provider, are subject to the content provider terms, conditions and notices. By purchase and accessing the content you accept and agree to be bound by the terms, conditions and notices set forth by the content provider, including the Privacy Policy. eloomi has no responsibility or liability with regard to the content and the content providers and the customer acknowledges that the use of the content is not deemed as to create any liability or responsibility on behalf of eloomi. Such content providers are not sub processors to eloomi and the customer has the full liability with regard to necessary data protection and any data processing performed by such content providers.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The customer acknowledges and accepts that eloomi is the owner of all rights to the eloomi software and the service used and other intellectual property rights, and that this agreement does not entail an assignment of such rights, but only entails that the customer can use such rights in compliance with the assumed use in the contract terms and if the customer pays therefore.

10 LIMITED LIABILITY

- 10.1 Irrespective of the basis on which a claim is advanced, hereunder defects, delay, product liability etc. and irrespective the degree of negligence, eloomi and its management and employees are not liable for the customer's direct or indirect losses or consequential losses such as, but not limited to, business interruption, loss of profits, loss of data, software, costs in connection with re-establishment and/or updating thereof, loss of goodwill, distortion of messages, loss of expected savings etc. eloomi's liability for any loss or damage is limited to the amount paid by the customer for the eloomi services or lack of same, on which the claim is based, however, no more than the sum of six months' subscription payments from the customer to eloomi.
- 10.2 eloomi and its management and employees are under no circumstances liable to the customer when the following events occur after the conclusion of the agreement and which prevent or postpone the performance of the agreement: Force majeure, such as war and mobilisation, revolution and unrest, acts of terrorism, natural disasters, strikes and lockouts, or other circumstances beyond eloomi's direct control. In such case, eloomi is entitled to postpone delivery until the performance impediment has ceased or alternatively cancel the agreement without liability/without having to pay damages.

11 ASSIGNMENT OF RIGHTS

- 11.1 eloomi is entitled to assign all rights and obligations under these terms and any concluded agreement with a customer to a new contractor, in such case the assigned contractor acquires the majority of eloomi and fulfils the agreement with the customer. The customer is not entitled to assign its rights and obligations under the parties' agreement to a third-party without eloomi's prior acceptance.

12 LANGUAGE

- 12.1 All communication with eloomi must be in English.

13 TERMINATION

- 13.1 Either party may terminate the agreement at one month's written notice before the end of the subscription period. Payments already made by the customer, including prepayments or billing, are not reimbursed in the event of termination unless regulated by clause 7.1. If the subscription is not terminated with one month's written notice before the end of the subscription period, customer accepts that eloomi continues to charge the subscription regardless whether the services are used or not, and automatically renews the subscription if not terminated timely.
- 13.2 On expiry of the agreement, irrespective of the cause, customer has the right to export own data from eloomi within one month after the expiry of the agreement. eloomi can assist against an agreed payment cf. clause 3.2. After expiry of the said month, eloomi has the right to delete the customer data.

14 NON-DISCLOSURE

- 14.1 The parties undertake for an indefinite period of time to otherwise keep all circumstances secret vis-a-vis any unauthorised third party to which a party has obtained knowledge about the other party or its activities as a result of the cooperation.
- 14.2 eloomi is entitled to publish customer logos and confirm to other parties that the customer is a customer of eloomi, if the customer relationship remains in force.
- 14.3 Administrators and admin-roles in eloomi may receive emails with information and can always choose preferences and unsubscribe.

15 CHOICE OF LAW AND VENUE

- 15.1 Any dispute must be determined in accordance with Danish Law. Each party submits to the jurisdiction of the District Court of Copenhagen, Denmark. Any dispute will be carried out in Danish and/or the English language.

16 INVALIDITY

- 16.1 If any part of these terms is deemed to be unlawful and invalid and thus unenforceable, this will not affect the validity and the enforcement of the remaining parts of these terms.