



Terms and Conditions (V. 20210218)

I General terms and conditions

1. Introduction

These general terms and conditions (hereinafter referred to as "terms" or "the terms") apply to the sale to a customer (hereinafter the "Customer") of any delivery from eSmiley A/S, Company registration no. 31 15 89 07, Richard Mortensens Vej 61, 3., DK - 2300 København S (hereinafter referred to as "eSmiley"), including, but not limited to, sale or lease of electronic systems (hereinafter referred to as "IT solutions"), hardware, training courses and consultancy services, unless these terms have explicitly been derogated from or modified subject to separate written agreement, which has been signed by eSmiley and the Customer.

The Customer's specification or special or general conditions or requirements in tender documents, order, acceptance, conditions of sale, etc., will not constitute a derogation from these terms, unless eSmiley has explicitly accepted such derogations in writing.

2. General terms

2.1 Offer, acceptance and formation of contract

Any offer from eSmiley is valid for 8 days calculated from the date set out in eSmiley's offer, unless another deadline is set out in the offer. The offer is sent to the Customer by email with a link to the agreement and the attached terms (hereinafter collectively referred to as the "Agreement").

The Customer can accept the offer and thereby the Agreement by confirming the conclusion of the Agreement via a link in the forwarded email or by sending a signed printout of the Agreement to eSmiley.

Upon the Customer's acceptance of the offer and the Agreement, eSmiley will send an order confirmation to the Customer.

2.2 Technical information, guidelines etc.

Product information, illustrations, drawings and technical data information such as volume, load limit, efficiency, uptime, response time and the like in product descriptions, brochures, PowerPoint presentations, on eSmiley's website etc. are only recommended guidelines. eSmiley's information is only binding if a separate written guarantee has been provided for these as part of the Agreement.

2.3 Prices

All price quotations are ex VAT and other duties, and the prices on the website are only recommended prices.

Each calendar year eSmiley reserves the right to increase the prices without notice with up to a maximum of 5 % annually. In the event of further adjustment of prices eSmiley shall inform the Customer with 3 months' written notice. eSmiley is moreover entitled to increase the prices due to external circumstances which are beyond eSmiley's influence, including amended legislation, new official regulations and taxes/duties or the like.

2.4 Payment and terms of payment

eSmiley invoices the Customer for eSmiley's services, products and deliveries as set out in the Agreement.

Each invoice falls due 14 days from the date of invoice unless otherwise stated on the invoice. In case of late payment interest must be paid on the outstanding amount with an interest corresponding to 1.5 % for every month or part of a month until payment is made. Payment by recurring payment services for companies (Leverandørservice), by recurring payment services for consumers (Betalingservice) and by OIO format is free. An invoice fee is added to other means of payment in accordance with eSmiley's price list.

3. Contractual delivery and non-conformity

3.1 Agreed delivery

eSmiley shall deliver the agreed service, product or delivery in the condition, quality and quantity agreed upon and at the agreed time and place.

3.2 Delivery and time of delivery

Delivery and time of delivery is set out in the Agreement. In the event of delivery at the Customer's address, transport takes place for the Customer's own account and risk.

3.3 Non-conformity, complaints and compensation

Immediately upon receipt of a service, product or delivery the Customer must examine the service, product or delivery and check it for any potential defects or damages. If the Customer finds defects or damages, the Customer must immediately give notice of lack of conformity to eSmiley in writing with a specification of the defects that are invoked. If notice of lack of conformity is not given in due time, the right to invoke defects or damages will lapse.

The period within which notice must be given of any lack of conformity of services, products and deliveries is 6 months from the time of delivery for each service, product and delivery. Any claim for lack of conformity, regardless of the nature of such claim, must be submitted before the expiry of the period within which notice must be given. If not, the Customer is precluded from invoking lack of conformity.

3.4 Remedies for defective performance

If a delivery is defective, eSmiley is by its own choice and within a reasonable time entitled to either make a replacement delivery, rectification or grant the Customer a reasonable proportionate reduction determined by eSmiley.

The Customer cannot invoke any other remedies for defective performance. eSmiley is entitled to have remedial work or redelivery and rectification, respectively, carried out by subcontractors. If the Customer has claimed defects, and it turns out that there are no defects which eSmiley is liable to remedy, eSmiley is entitled to request a reasonable fee for the remedial work carried out.

3.5 Compensation and limitation of liability

If a delivery is defective or damaged, the Customer is entitled to damages for incurred loss in addition to the remedies for defective performance in clause 3.4. **However, eSmiley is in no event, irrespective of the basis or degree of negligence, liable for the Customer's indirect loss and consequential damage such as e.g. business interruption and loss of profits, loss of goodwill, loss of planned savings and the like, and eSmiley excludes any liability for loss of data, software or BIOS or expenses for restoration hereof.**

eSmiley's liability in damages for any loss or defect is in terms of value limited to 25 % of the price paid by the Customer for the defective delivery or an amount corresponding to 25 % of the Customer's current payments to eSmiley within the past 6 months before the loss was sustained. eSmiley's total liability in damages is in any circumstances limited to DKK 500,000 in terms of value.

Limitation of liability under this paragraph does not limit eSmiley's obligations or liability under Danish mandatory rules of law.

3.6 Force majeure

eSmiley is not liable for circumstances occurring after the conclusion of the Agreement and which prevent or postpone the performance of the Agreement (force majeure), including but not limited to: War and mobilisation, rebellion and commotion, riots, terrorism, natural disasters, strikes and lockouts, power failure or other interruption or breakdown in energy supplies, public computer processing units and communications systems, scarcity of goods, defects or delay in deliveries from or force majeure on the part of a subcontractor, fire, no availability of transportation or disruption of ordinary traffic, currency restrictions, import and export restrictions, death, illness or resignation of key persons, computer viruses, instructions from authorities or other circumstances, of which eSmiley is not in control or could not reasonably have foreseen. In such case eSmiley is entitled to postpone delivery until the impediment to enforcement has terminated or alternatively annul the Agreement in part or in whole without incurring any liability.

3.7 Product liability and third party claims

eSmiley is liable for personal injury and damage to consumer goods in accordance with the provisions of the Danish Product Liability Act. **Except for the foregoing statutory product liability, eSmiley excludes any product liability under the non-statutory product liability rules developed in Danish case law. In terms of value, the product liability cannot in any case exceed the coverage on eSmiley's product liability insurance**

The Customer shall without undue delay inform eSmiley in writing if a product liability damage has occurred or a claim from a third party has occurred, or there is a danger of such damage occurring. To the extent that eSmiley is held liable towards a third party, the Customer shall hold eSmiley harmless from any claim and costs beyond what the Customer is obligated to compensate eSmiley in accordance with the above limitation of liability.



4. Other conditions

4.1 Confidentiality

eSmiley shall not disclose confidential information received by eSmiley regarding the Customer's business. The Customer undertakes not to disclose confidential information regarding eSmiley. The duty of confidentiality of the parties will continue for a period of 3 years after termination of the Agreement.

4.2 Marketing

In its own marketing material eSmiley is entitled to use the Customer as reference. eSmiley is entitled to market all eSmiley's other products and deliveries to the Customer by email and addresses stated by the Customer to eSmiley. The Customer is at any time entitled to decline the receipt of marketing material.

4.3. Intellectual property rights

eSmiley holds all property rights to software, IT solutions, written material and documents, manuals, training course material etc., and eSmiley holds any other intellectual property right to the name "eSmiley", trademark rights and name rights, domain names etc., results from eSmiley's services, results, concepts, knowhow or methods etc.

4.4 Changes

eSmiley reserves the right to make changes to or replace products, services or deliveries provided that such change or replacement does not materially have an adverse effect on the functionality or quality of the product, service or delivery.

4.5. Assignment of the Agreement

eSmiley is entitled to assign the Agreement to third parties without the prior consent of the Customer. eSmiley is entitled to have third parties carry out its obligations, but this does not release eSmiley from complying with these terms.

4.6 Applicable law and jurisdiction

Any dispute between eSmiley and the Customer is to be settled under Danish law.

Disputes are settled by the Danish court which has jurisdiction over eSmiley. Irrespective hereof, eSmiley is entitled to choose that a dispute is to be settled by arbitration at the Danish Institute of Arbitration. The "Rules of Arbitration Procedure of the Danish Institute of Arbitration" in force from time to time will apply. The arbitral proceedings will take place in Copenhagen.

II Special terms for "IT solutions"

This paragraph II regarding eSmiley's IT solutions applies in addition to paragraph I, General terms and conditions. In case of discrepancies between the General terms and conditions and these special terms for IT solutions, these terms for IT solutions will prevail.

1. Subject-matter– IT modules

eSmiley's IT solutions comprise various IT modules handling a number of functions related to the daily work at the Customer as defined in detail in the product information and programme for the IT module in question. The Agreement comprises access to and use of IT modules in the relevant IT solution. eSmiley is entitled to carry out further development and changes of the modules on a regular basis, including changes in functionality, without consent from the Customer. The Customer is entitled to general updates of the functionality in IT modules. eSmiley is responsible for sales, installation, set-up and update of the IT modules based on the Customer's own information and data input.

Since the functions of the IT modules are performed and the results generated on the basis of the Customer's data, it is essential and of the utmost importance for the results to the Customer of its use of the IT modules – and the Customer's own responsibility – that the Customer's own information and data are correct and up-to-date at all times.

2. Right of use to IT solutions

When entering into the Agreement the Customer acquires a non-exclusive, non-assignable and timely limited right of use to the IT solution with appurtenant modules and written documentation material. The right of use is limited to the Customer's own internal use for the agreed number of users (user licence) and/or the agreed legal entity (site licence). The right of use cannot be transferred to third parties. The right of use is terminated immediately in the event of the Customer's breach of the Agreement, including but not limited to failure to effect payment when due.

3. Term and termination

The Agreement comes into force upon the Customer's signature or confirmation of the Agreement. Both parties are subsequently entitled to terminate the Agreement by 12 months' written notice (customer: www.esmiley.dk/opsigelse) to expire on the last day of any month. In case of material breach on the part of either party, the other party is entitled to terminate the Agreement unless the party in breach remedies such breach within 14 days after having received written notice of the breach. Any payment default is regarded as a material breach entitling eSmiley to terminate the Agreement, including to disconnect the Customer's access to the IT solutions with appurtenant IT modules immediately and without notice.

4. Prices and payment

Upon the Customer's acceptance of eSmiley's offer, the Customer is invoiced for the set-up/connection to the IT solution with appurtenant IT modules and shall pay for this because eSmiley commences the work of starting up the Customer at the time of the Customer's acceptance. The Customer hereafter pays a current subscription fee for using the IT solution with appurtenant IT modules, unless otherwise stipulated in the Agreement. Invoicing takes place in advance on a quarterly basis, for the first time when eSmiley gives notification to the Customer that the IT modules are ready.

If the Customer fails to attend scheduled meetings, eSmiley is, in addition to the agreed price, entitled to refund of costs and disbursements, including transport and time spent in connection with installation/training. Transport is invoiced in accordance with the rates of the Danish state, and time spent is invoiced in accordance with applicable hourly rates for every commenced hour.

If the Customer has signed up for and uses SMS services, eSmiley reserves its right to collect payment for costs and expenses payable to subcontractors.

5. Hosting, uptime and back-up etc.

eSmiley's IT solutions with appurtenant IT modules are hosted by eSmiley.

eSmiley endeavours to ensure that the IT solutions with appurtenant IT modules are available 24 hours a day, year round. However, eSmiley is entitled to disconnect the operation of an IT solution with appurtenant IT modules when required due to general maintenance or other technical circumstances. The aim is to schedule such maintenance for the period between 10.00 p.m. and 06.00 a.m. eSmiley guarantees an uptime of the software in IT solutions with appurtenant IT modules of 98 % calculated on a quarterly basis in arrears on every 1 January, 1 April, 1 July and 1 October. Uptime means all 24 hours of the day minus such time when the IT solutions with appurtenant IT modules or part of it cannot be used for error-free operational performance due to errors in equipment and/or software. Minor important errors, where e.g. less significant functions are temporarily out of operation, but where it is possible to maintain normal operation, or where the Customer chooses to postpone the error correction, are not deducted from the uptime. Correspondingly, operational changes for which the Customer is responsible and external service interruptions (including disconnection or interruptions of the Customer's internet connection, power failure and the like) are not deducted from the uptime. The availability percentage is found by deducting the downtime from the uptime, as defined above, in accordance with the following formula:

Availability percentage = (uptime - downtime) / uptime * 100

eSmiley performs back-up of data on a daily basis on the relevant servers appurtenant to the IT solution and thus also back-up of the Customer's data filed in the IT modules. Such back-up is stored to the extent necessary for restoration of the IT solution. The time spent by eSmiley on restoring data which has been lost due to the Customer's actions is invoiced at applicable hourly rates.

6. Support and releases

eSmiley assists the Customer with telephone support on working days during the period Monday – Friday 8.00 a.m. – 5.00 p.m. CET.

Remedial work takes place in accordance with clause 9.

Tasks or questions which can be characterized as consultancy services are invoiced individually at eSmiley's applicable hourly rates in accordance with paragraph VI regarding "Special terms for Consultancy services".

When eSmiley launches new versions and releases, the Customer is entitled to receive such versions and releases without supplementary payment. Any new versions and releases are automatically comprised by these terms.

The Customer is referred to request support to the extent that eSmiley's launch of new versions and releases does not sufficiently take due account of the Customer's needs.



7. The Customer's obligations and responsibility

It is solely the Customer's responsibility to comply with and fulfil applicable legislation, including requirements from food safety authorities and other authorities, to which the Customer is subject from time to time. eSmiley provides a number of tools in order to facilitate the Customer's work in this respect, but eSmiley undertakes no liability for whether the Customer is in compliance with current statutory requirements.

The IT modules and programmes contained in eSmiley's IT solutions, including riskanalysis, checking programmes etc., are only based on the Customer's own information and data. It is the Customer's own duty and responsibility to ensure that the information and data provided by the Customer to eSmiley in connection with the set-up of IT modules are correct, including to ensure that the information is always kept up-to-date in the IT modules. eSmiley is thus not responsible for the Customer's inadequate, incorrect or not updated information.

8. Intellectual property rights, software rights and indemnity

Subject to third party rights, eSmiley holds all copyrights associated with eSmiley's IT solutions, and the Customer only acquires the right of use provided for under the Agreement for the term of the Agreement.

eSmiley holds the copyright and any other rights to the software and is entitled to sublicense this on behalf of third parties. The Customer must respect eSmiley's/third party rights and indemnify eSmiley without limitation in terms of value for any claim brought against eSmiley, or which eSmiley is ordered to pay to third parties, including interest and costs, which may arise due to the Customer's breach or violation of these rights, including unauthorised transfer or handing-over of the software to third parties.

The Customer is not entitled to break or change potential security codes, and the Customer is not entitled to change or remove specifications in the software or on the media on which the software is delivered regarding rights issues, trademarks etc. The Customer shall ensure that the software is stored so that third parties cannot get access to the software and that the software does not in any other way come into the possession of third parties.

9. Remedying of defects

If, due to circumstances for which eSmiley is responsible, IT modules cannot be used by the Customer, eSmiley will commence remedial work within the same working day, if the problem is reported by the Customer before 12.00 a.m. (noon) CET or no later than in the following working day. Working day means all weekdays except for Saturdays, Sundays and Danish public holidays and Constitution Day (5 June), 31 December and the day of Christmas Eve (24 December). Fault reporting and telephone support takes place Monday – Friday 08.30 a.m. – 04:00 p.m. CET. Remedial work takes place free of charge unless the error or defect is caused by circumstances for which the Customer is responsible. In such case eSmiley reserves the right to invoice its time spent in accordance with the normal rates.

In case of eSmiley's failure to comply with the guaranteed uptime, see clause 5, a proportionate reduction is offered in the payment in the relevant quarter of the year. The reduction is calculated in accordance with the following formula:

Reduction = quarterly price x (A % ÷ B %), where A % is the guaranteed uptime, as calculated in accordance with clause 5, and B % is the actual uptime percentage, see clause 5. Example: 12,500 x (98 % ÷ 90 %) = DKK 1,000.

The reduction in the payment cannot exceed 25 % of the amount paid by the Customer for the quarter in question.

III Special terms for "Personal data and Data Processing Agreement"

This paragraph III regarding Personal data and Data Processing Agreement applies in addition to paragraph I, General terms and conditions. In case of discrepancies between the General terms and conditions and these special terms for Personal Data and Data Processing Agreement these terms for Personal Data and Data Processing Agreement will prevail.

Personal data

eSmiley only processes personal data about the Customer which the Customer gives to eSmiley. eSmiley processes personal data about the Customer in accordance with eSmiley's Personal Data Policy, which you find at esmiley.dk. By entering into the Agreement the Customer also accepts eSmiley's Personal Data Policy.

Data Processing Agreement

In connection with eSmiley's delivery of IT solution(s) with appurtenant IT modules to the Customer, see paragraph II, and eSmiley's delivery of Training Courses and Consultancy services to the Customer, see paragraphs V and VI, eSmiley processes the personal data which the Customer enters into the IT modules, on behalf of the Customer. On this basis eSmiley and the Customer have entered into the below "Data Processing Agreement", and thus the Customer is the "Data Controller" and eSmiley is the "Data Processor".

The object of the Data Processing Agreement is to ensure that the parties comply with the personal data protection legislation in force from time to time, including in particular (i) the Danish Personal Data Act (Act 2000-05-31 no. 429 with subsequent amendments) and (ii) the Personal Data regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) and (iii) supplementary Danish Data Protection Acts when such acts come into force/take effect.

1. Scope and Instructions

The Data Processor is hereby authorised to process the personal data set out in clause 2 (hereinafter the "Personal Data") on behalf of the Data Controller on the terms and conditions set out below.

The Data Processor is only entitled to process Personal Data subject to instructions from the Data Controller (the "Instructions"). This Data Processing Agreement constitutes the Instructions unless otherwise explicitly agreed between the parties. The Data Processor is entitled to use all relevant media, including IT systems, unless otherwise separately agreed between the parties.

The Data Processor may process personal data outside the Instructions in cases where such processing is required by EU law or national legislation to which the Data Processor is subject. In such case, the Data Processor shall inform the Data Controller of the reason for such processing without undue delay. To the widest extent possible notification must take place before processing is carried out and must contain a reference to the legal requirements on which the processing is based. However, notification can be omitted if such notification is in contravention of EU law or national legislation.

2. Personal data and purpose

The Data Processor processes Personal Data on behalf of the Data Controller in connection with the Data Processor's hosting of IT solution(s) with appurtenant IT modules on behalf of the Data Controller and in connection with the Data Processor's provision of support and consultancy services to the Data Controller in connection with the Data Controller's use of the IT solution(s) with appurtenant IT modules. The Data Processor only processes non-sensitive Personal Data, which the Data Controller has registered in the IT modules or has in any other way provided to the Data Processor in connection with the Data Controller's use of the IT solution with appurtenant IT modules or the Data Controller's provision of support and consultancy services.

The Personal Data, which the Data Processor processes on behalf of the Data Controller, comprise:

- First name and surname
- Email
- Telephone number
- Date of birth
- Information regarding passed/failed training courses

Categories of natural persons whose Personal Data are comprised by the Data Processing Agreement are customers.

The Data Controller must explicitly notify the Data Processor in writing if the Data Processor registers confidential or sensitive Personal Data in the IT modules, or in any other way transfers confidential or sensitive personal data to the Data Processor. In such case it is solely the responsibility of the Data Controller to ensure that the Instructions from time to time pursuant to this Data Processing Agreement, including the necessary technical and organisational measures, which the Data Processor must implement in order to ensure an adequate level of security, are adequate and necessary in order to comply with the requirements in applicable EU and national personal data protection legislation.

3. The obligations of the Data Processor

The Data Processor must implement necessary technical and organisational measures to ensure an appropriate level of security in order for the Data Processor's processing of the Personal Data to meet the requirements of the personal data protection legislation in force from time to time.



4. Employees

The Data Processor shall ensure that employees processing Personal Data on behalf of the Data Processor have undertaken a duty of confidentiality and that the employees in question are only processing the Personal Data in accordance with the Instructions. Access to the Personal Data must be limited to those employees for whom it is necessary to process the Personal Data in order to meet the obligations of the Data Processor towards the Data Controller.

5. Documentation for compliance with obligations

As regards the Personal Data the Data Processor shall upon written request document to the Data Controller that the Data Processor:

1. complies with its obligations under this Data Processing Agreement and the Instructions, and
2. complies with the provisions of the personal data protection legislation in force from time to time.

At the written request of the Data Controller the Data Processor shall contribute to and give access to audit.

Audit must be carried out within normal working hours and must be performed with as little inconvenience to the Data Processor as possible. The Data Controller must ensure that its employees and third parties, who are engaged by the Data Controller to carry out the audit, are subject to the same duty of confidentiality as is set out in clause 13. The Data Processor is entitled to payment in accordance with time spent and used on materials for its audit assistance.

6. Security breach

The Data Processor shall without undue delay inform the Data Controller of any breach of personal data security, if this may lead to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the Personal Data ("Security Breach").

The Data Processor shall, in so far as it is necessary and reasonable, assist the Data Controller in connection with the fulfilment of the Data Controller's obligations when processing the Personal Data, including in the event of:

1. Replies to data subjects when exercising their rights,
2. Security breaches,
3. Inquiries from supervisory authorities.

The Data Processor is entitled to payment in accordance with time spent and used materials for such assistance.

7. The obligations of the Data Controller

It is the responsibility of the Data Controller that the Instructions are lawful in relation to the personal data protection legislation in force from time to time, and that the Instructions are appropriate in relation to this Data Processing Agreement and the services and deliveries to be delivered by the Data Controller under the Agreement.

8. Sub-data processors

The Data Controller hereby gives its prior general approval that the Data Processor is entitled to use third parties for the processing of the Personal Data ("Sub-data Processors"). At the time of entering into the Data Processing Agreement the Data Processor uses the Sub-data Processor(s) stated on the Data Processor's website. The Data Processor must inform the Data Controller of any alterations herein.

The Data Processor and the Sub-data Processor must enter into a written agreement which imposes the same data protection obligations on the Sub-data Processor as are incumbent on the Data Processor under this Data Processing Agreement. The Sub-data Processor solely processes the Personal Data subject to instructions from the Data Controller.

The Data Processor is directly responsible for the Sub-data Processor's processing of the Personal Data in the same way as if such processing had been carried out by the Data Processor itself under this Data Processing Agreement.

9. Transfer to third countries

The Data Controller hereby gives the Data Processor permission to transfer the Personal Data to countries outside the EU or EEC (a "Third Country"), or to an international organisation, if the EU Commission has recognised that such Third Countries or international organisation have an adequate level of protection, or that the necessary basis for transfer exists, including appropriate safeguards, pursuant to the EU personal data protection legislation in force from time to time.

10. Payment and costs

The Data Processor is entitled to separate payment in accordance with the time spent and materials for assistance and support to the Data Controller to the extent set out in this Data Processing Agreement.

11. Amendment of the Instructions

Each party is entitled to amend the Instructions if required under current legislation. In such case the parties shall, as far as possible, discuss and if possible agree on the implementation of such amendment including the period of implementation and the costs. However, the Data Processor is entitled to commence implementation of amendments of the Instructions and to ensure that such amendments are implemented if this is necessary in order to comply with current legislation. The Data Processor is entitled to payment of all costs directly connected with amendments of the Instructions, including implementation costs and increased costs for delivery of the Data Processor's other services and deliveries under the Agreement regarding the IT solution.

The Data Processor is exempt from liability for non-delivery of deliveries and services under the Agreement regarding the IT solution to the extent (including in terms of time) that delivery hereof is contrary to the amended Instructions, or delivery in accordance with the amended Instructions is impossible.

12. Responsibility and limitation of liability

The Data Processor excludes any liability for indirect loss and consequential damage, incl. business interruption, loss of goodwill, loss of planned savings and profits, incl. costs for recovering lost profits, loss of interests and data loss.

The Data Processor is further not liable for circumstances which are caused by the Data Controller's non-compliance with this Data Processing Agreement or the EU or national legislation in force from time to time.

The Data Processor's liability for all consolidated claims under the Data Processing Agreement is limited to the total payments due for payment regarding the IT solution for the past 12-month period preceding the wrongful act. If the Data Processing Agreement has not been in force for 12 months, the amount is calculated as the agreed payment for the period during which the Data Processing Agreement has been in force, divided by the number of months, and then multiplied by 12. The following is not covered by the limitation of liability in this clause 11:

1. Loss caused by the Data Processor's gross negligence or wilful acts.
2. Costs and use of resources in connection with fulfilment of the Data Processor's obligations towards a supervisory authority or the data subjects and fines imposed on the Data Processor by a supervisory authority or a court of law, to the extent that such are caused by the Data Processor's breach.
3. Loss suffered by the Data Processor due to the Data Controller's non-compliance with the Data Processing Agreement or the EU or national legislation in force from time to time.

13. Term and termination

The Data Processing Agreement is to be in force until either (i) the Agreement regarding the IT solution terminates, or (ii) the Data Processing Agreement is terminated or annulled in accordance with the below provisions.

The Data Processing Agreement can only be terminated or annulled in accordance with the provisions on termination and annulment in the Agreement regarding the IT solution, see Special terms regarding IT solutions, paragraph II, clause 3. Termination or annulment of this Data Processing Agreement can only take place by – and entitles to – simultaneous termination and annulment of the Agreement regarding the IT solution, to the extent that this regards the processing of Personal Data under the Data Processing Agreement.

14. Confidentiality

Information regarding the content of this Data Processing Agreement, the underlying IT solutions, the business of the other party, which has been categorised as confidential information when being handed over to the receiving party, or which due to its nature or otherwise is clearly to be regarded as confidential, must be processed confidentially and with at least the same care and discretion as the party's own confidential information.

Data, including Personal Data, always constitute confidential information. However, the duty of confidentiality does not apply to information which is or becomes publicly available, without this being caused by a party's breach of its duty of confidentiality, or information which is already in the possession of the receiving party without an equivalent duty of confidentiality or information which has been independently developed by the receiving party.



15. Effects of the termination of the Data Processing Agreement

The Data Processor's authorisation to process the Personal Data on behalf of the Data Controller will lapse upon termination of the Data Processing Agreement whatever the cause.

However, the Data Processor is entitled to continue processing of the Personal Data for a maximum of 24 months after the termination of the Data Processing Agreement, to the extent that this is necessary in order to take necessary statutory measures or if this follows from current legislation. During the same period the Data Processor is entitled to let the Personal Data form part of the Data Processor's normal back-up procedures. During the said period the Data Processor's processing is still to be regarded as taking place in compliance with the Instructions.

The Data Processor and its Sub-data Processor must return all Personal Data which the Data Processor has processed under this Data Processing Agreement to the Data Controller at the termination of the Data Processing Agreement, to the extent that the Data Controller is not already in possession of the Personal Data. The Data Processor shall subsequently erase and delete all personal data on behalf of the Data Controller. The Data Controller is entitled to request adequate documentation for such erasure/deletion having been effected.

IV Special terms for "Hardware."

This paragraph IV regarding eSmiley's sale and delivery of all kinds of equipment/hardware/products ("Hardware") applies in addition to paragraph I, General terms and conditions. In case of discrepancies between the General terms and conditions and these special terms for Hardware these terms for Hardware will prevail.

1. Delivery and place of delivery

Delivery takes place to the company address stated by the Customer, unless otherwise agreed in writing. If delivery cannot be carried out due to circumstances on the part of the Customer, the goods will be deposited for the Customer's account and risk at eSmiley's warehouse.

2. Warranty

The warranty provisions which may be given by eSmiley's sub-contractor/manufacturer will apply to the Hardware.

3. Alterations carried out by the Customer and disclaimer of liability

The Customer shall be liable and eSmiley shall not in any case be liable for any defects in the Hardware caused by i.a. alterations in construction, execution or the like carried out by the Customer, repairs carried out by the Customer or others than eSmiley or eSmiley's authorised service partners.

eSmiley is not liable for errors in software or software-related errors on the Hardware, loss of data and lack of back-up (including in connection with repairs, remedial work and service etc.), incorrect installation/handling, wear and tear, violence, water damage, fire, instable power supply, incorrect mains power supply (incl. lack of use of three-legged plug where such plug has been included in the delivery), non-conforming or inadequate ventilation or consequential errors due to application of other connected equipment such as e.g. printers.

4. Return

The Customer cannot return the Hardware or cancel the purchase. If it is specifically agreed that the Hardware may be taken back, the returned consignment must be in an unopened and intact original packing. eSmiley reserves the right to make a deduction of a 15 % return fee and an amount corresponding to the reduction in value of the Hardware by crediting such amount.

V Special terms for "Training Courses"

This paragraph V for eSmiley's sale of training courses applies in addition to paragraph I, General terms and conditions. In case of discrepancies between the General terms and conditions and these special terms for Training Courses these terms for Training Courses will prevail.

1. Group training courses

eSmiley conducts group training courses at eSmiley, Richard Mortensens Vej 61, 3., 2300 København S, unless otherwise stated in the training course material.

Invoice for group training course falls due upon receipt, if there is less than 8 days until the training course is held.

2. Delivery of online training courses

eSmiley's online training courses are delivered via the internet. The Customer buys and pays for the training courses online, after which point in time the Customer has access to the online training courses until the training course has been passed. However, the access to failed training courses is deleted 12 months after ordering the training course. The Customer's attention is further drawn to the rules of the Danish Veterinary and Food Administration for due education of staff handling foodstuffs.

3. Sold-out or cancelled training courses

If a training course has been sold out, eSmiley will immediately contact the Customer after having received the registration. The Customer is offered to be put on a waiting list. eSmiley aims at offering the Customer a place on a subsequent training course.

eSmiley reserves the right to cancel training courses if necessary. In case of cancelled training courses the Customer is informed and any paid registration fees are refunded.

4. Customer's cancellation of the training courses

Online training courses cannot be cancelled by the Customer, because the Customer is given immediate access to the training course when ordering it. All training courses require a named course participant in order for the Customer to document to the authorities that the training course has been commenced in due time. Consequently, it is not possible to replace the registered person by another person.

Group training courses can be cancelled against full refund of already paid training course fee, if any, if the Customer cancels the training course no later than 2 days after ordering. In case of cancellation no later than 10 days before the training course is held, eSmiley will refund the amount paid with a deduction of a fee corresponding to 10 % of the training course price. In case of cancellation less than 10 days before the training course is held, eSmiley will refund 50 % of the invoiced/paid amount.

In case of cancellation no later than 4 days before the training course is held, the Customer must pay for the training course in full. However, the Customer may always transfer the place to a third party, if eSmiley is informed of such transfer before commencement of the course.

VI Special terms for "Consultancy Services"

This paragraph VI regarding eSmiley's sale and delivery of all kinds of services (including e.g. support, maintenance, project management, operational assistance, programme development, modifications, education, preliminary studies, counselling or implementation in connection with delivery of hardware/software etc. hereinafter collectively referred to as the "Consultancy Services") applies in addition to paragraph I, General terms and conditions. In case of discrepancies between the General terms and conditions and these special terms for Consultancy Services, these terms for Consultancy Services will prevail.



1. The service and its scope

The Consultancy Services to be delivered by eSmiley are described in separate written agreement with the Customer. If the content and scope of the Consultancy Service has not been adequately defined, eSmiley's perception of what has been offered and/or agreed to by the parties will prevail.

eSmiley is not responsible for whether the results expected by the Customer are achieved.

The Consultancy Services are invoiced on the basis of time spent and the involved costs. Unless otherwise agreed in writing, the Consultancy Services are carried out within normal working hours, which constitute working days (as defined in clause 9 in paragraph II regarding particular terms for IT solutions) between 8.00 a.m. and 5.00 p.m.

2. Replacement of the consultant

If the consultancy services are carried out by employees in eSmiley, the Customer is entitled to request eSmiley to replace this employee, if the Customer is able to give a reasonable cause for such replacement. eSmiley will then to the extent practicable replace the employee in question. Under such circumstances eSmiley is not responsible for any delays in connection with the replacement.

3. Participation and breach on the part of the Customer

The Customer shall give sufficient and necessary information to eSmiley in order for the Consultancy Services to be delivered, and the Customer must provide the necessary work places. If circumstances for which the Customer is responsible entail that the Consultancy Services cannot be delivered, or that they are delayed, eSmiley is entitled to request payment for the consultants who were allocated for the delivery of the Consultancy Service and the extraordinary resources which eSmiley has had to use due to the delay with a deduction of the invoicing elsewhere which eSmiley has carried out.

If, moreover, the Customer is in breach of the agreement regarding Consultancy Services, eSmiley is entitled to request payment of the full price for the Consultancy Service, regardless of whether the scope of the Consultancy Service is only subject to an assessment or an estimate given by eSmiley. If no payment or time consumption, respectively, has been assessed or estimated, eSmiley is entitled to a payment corresponding to the time which would normally be spent on a task of the nature in question with a deduction of invoicing elsewhere which eSmiley has carried out.

4. Payment, costs and disbursements

eSmiley will invoice the Customer based on time and materials spent and the involved costs, including for travelling time, on the basis of eSmiley's hourly rates for the employees who provide the Consultancy Services. Any work outside the above-mentioned normal working hours will take place against an additional payment in accordance with eSmiley's applicable rates at the time in question.

If no other written agreement has been made in this respect, any disbursements, including costs for transport, accommodation and food, and eSmiley's payments are invoiced monthly in arrears for the time spent during the month in question.

5. Time schedule

The Consultancy Services are carried out from the agreed date of commencement. If a time schedule has been agreed, this is merely an expression of an estimate on the present basis and not an expression of an absolute delivery deadline.

When carrying out the Consultancy Services, eSmiley is, by choice, entitled to use its own employees, sub-contractors appointed by eSmiley or others which in the opinion of eSmiley have the necessary competencies to carry out the Consultancy Services.

VII Special terms for lease of equipment

This paragraph VII regarding lease of equipment (hereinafter the "Equipment") applies where the Customer as an integral part of an IT solution leases equipment from eSmiley. These special terms for Equipment apply in addition to eSmiley's General terms and conditions and eSmiley's Special terms for IT solutions. In case of discrepancies between the General terms and conditions and these special terms for lease of Equipment, these terms for Equipment will prevail.

1. Payment for lease of equipment

Configuration of the Equipment in the Customer's IT solution and the set-up of Equipment and installation at the Customer's address are invoiced at the time of signing the Agreement.

The monthly lease payment covers the right of use to the Equipment and normal support. The lease payment is payable 3 months in advance, and the first lease period falls due for payment on the 1st of the month following the signature of the Agreement.

The lease payment does not cover change of batteries on the Equipment. In Equipment with changeable batteries, the Customer is responsible for the change of batteries. eSmiley normally charges DKK 950 + VAT for check and change of batteries, transport, etc.

The monthly lease payment does not cover replacement of Equipment if the error is caused by the Customer.

2. Lease period, non-terminability and notice of termination etc.

The agreement on lease of Equipment is non-terminable for a period of 12 months to expire by the end of any month calculated from signature of the Agreement. The Agreement may subsequently be terminated in writing (by email) by 3 months' notice to expire by the end of any month. If termination has not taken place before this point in time, the lease period is automatically renewed with a new 12-month period. **For FREE rental of the equipment, the agreement in its entirety is non-cancellable for 36 months from the first subscription invoice. After the end of the 36-month period, the agreement continues on the same terms but can be terminated by either eSmiley or the customer with 3 months' notice.**

Upon the expiry of the lease period the Equipment must be returned to eSmiley in its original condition except for the deterioration due to normal use, wear and tear and any alterations which may have taken place during the lease period subject to agreement with eSmiley.

The Customer is responsible for the Equipment and for costs involved when returning the Equipment to eSmiley. If the Customer does not return the Equipment intact and in accordance with eSmiley's instructions, eSmiley is entitled to claim damages from the Customer for the loss thus suffered.

3. Liability in damages

eSmiley's liability for the leased Equipment is limited as set out in the General terms, paragraph I, clause 3.5, with the modification that eSmiley's total liability in terms of value in connection with the leased Equipment is limited to an amount corresponding to 12 months' lease payment.

4. eSmiley's title to the Equipment

The Equipment is the property of eSmiley, and the Customer acquires no title to the Equipment. eSmiley is entitled to mark the Equipment to be able to identify the equipment of the Customer as eSmiley's property. If the Equipment is removed from the Customer's address or any marking of the Equipment is removed, this will be regarded as a material breach of the agreement after which eSmiley is immediately entitled to require that the Equipment is returned from the Customer together with payment for the remaining part of the lease period. Thus, the Customer is not entitled to sell, mortgage, sublet or let the Equipment or to assign the Equipment to be taken into execution.

5. Return of the Equipment

eSmiley is entitled to terminate the Agreement without notice and to require that the Equipment is returned in the following cases:

1. The Customer does not pay the lease payment or other payment to eSmiley in due time.
2. The Customer further disregards provisions in this Agreement.
3. The Customer is declared bankrupt or enters into negotiations for compulsory or voluntary composition with creditors.

All costs in connection with a potential termination of the Agreement and the repossession of the Equipment must be paid by the Customer.

The Customer must also pay all due, unpaid lease payments.

Furthermore, the Customer shall pay eSmiley unpaid lease payment for the remaining part of the lease period.

6. Basis for execution

The parties agree that these Special terms for lease of Equipment constitute basis for execution pursuant to section 478 (1), no. 5, to the effect that eSmiley on the basis of these terms can have the Equipment returned through the court bailiff by summary enforcement proceedings without a court order for its outstanding amount.