

## TERMS AND CONDITIONS FOR SUPPLY OF THE SCREACH SERVICES AND SCREACH EQUIPMENT

### VERSION 3 2017

The Customer's attention is drawn in particular to the provisions of Clause 10.

#### 1. INTERPRETATION

1.1. **Definitions.** In these Conditions, the following definitions apply;

**Acceptance** means acceptance of the Screach Equipment by the Customer.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Commencement Date** means the date on which Screenreach commences providing the Services following Installation of the Screach Equipment.

**Conditions** means the terms and conditions set out in this document as amended from time to time in accordance with Clause 16.

**Confidential Information** has the meaning given in Clause 11.

**Content** means the content provided via the Screach Equipment as part of the Services, being applications, data, information (including emails, twitter feeds, RSS feeds, facebook pages or other like electronic communications), video, graphics, sound, music, photographs, software and any other material, and any other content displayed in the Customer's Operating Environment by way of the Service irrespective of origin or ownership and including Advertising Content.

**Contract** means the agreement between Screenreach and the Customer for the provision of the Services and being a document which comprises the following, which shall be binding as between the Customer and Screenreach in the following order of precedence:

- the Pricing List;
- the Order;
- the Terms and Conditions;
- the Discount and Offer, if applicable to the chosen Service;
- the Service Schedule;

and any other content expressly incorporated in the Contract or by agreement between the Customer and Screenreach in writing (including without limitation, Screenreach's privacy policy which can be found at [www.screach.com/privacy-policy](http://www.screach.com/privacy-policy))

**Customer** means the legal entity (person or company) who contracts with Screenreach for the provision of the Screach Equipment and the Services.

**Customer Equipment** means any equipment, including any software, for use with the Services and which is owned and controlled by the Customer (including without limitation the Displays).

**Customer Data** means any data that is collected usually at the Location(s) for eMarketing purposes or to form an anonymous understanding of the profile of retail customer attending the Location.

**Discount and Offer** means the agreement where applicable to certain Screenreach Services, between Screenreach and the Customer in relation to the discounting of those services or to the sharing of certain revenues generated by

Screenreach or the Customer via the Services or both.

**Displays** means each television screen that is located at the Location.

**Equipment** means any and all hardware and ancillaries required to provide the Screach Services.

**Excluded Maintenance** means any maintenance services required to repair any malfunctioning or faulty Screach Equipment where the malfunction or failure results directly from or is caused directly by any of the matters referred to in Clause 6.3.

**Force Majeure Event** has the meaning given in Clause 14.

**Information** means any information (including know-how, trade secrets, software or data) of a confidential nature which is obtained pursuant to the Contract whether such information is in written or oral or any other form and whether or not such information is marked as being confidential.

**Installation** bears the meaning ascribed to it in Clause 4.2.

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Internet Connection** means the broadband connection at the Location which is connected to in order that the services can be provided to the Customer.

**Location** means the location or locations of delivery of the Screach Equipment as set out in the Order or as otherwise agreed by the parties to the Contract.

**Minimum Period** means the minimum term over which the Services will be provided by Screenreach which will be stated in the Order, and shall commence from the Commencement Date, but shall not, in any circumstances, be less than 12 months unless expressly agreed in writing between the parties.

**Order** means the Customer's order for the Screach Equipment and the Services; as set out in the Customer's purchase order form; or website form completed by the Customer; or as agreed with the Screenreach Customer Service team, confirmation of which will then be emailed to the Customer.

**Price List** means the information containing a list of Screenreach's charges for the provision of the Screach Equipment and Services which can be seen at [www.screach.com](http://www.screach.com) or within the Contract or at such other address or location as may be notified by Screenreach to the Customer from time to time.

**Screach** is the operating brand of Screenreach

Interactive Limited.

**Services** means the services including installation and hardware provided by Screenreach to the Customer via the Screach Equipment and any other such services as are more particularly described within the Service Schedule and provided by Screenreach from time to time.

**Service Schedule** means the schedule to these Conditions which sets out the extent of the services to be provided by Screenreach pursuant to the Contract. Screenreach will provide the Customer with a copy of the Service Schedule which the parties acknowledge may be amended from time to time by Screenreach to reflect the addition or subtraction of certain services and Content, or which may be amended from time to time by the mutual agreement of the parties. The Customer acknowledges that the Service Schedule may be provided in different forms by Screenreach, including without limitation via the Screenreach website (www.screach.com), via email, or in response to the submission of the Order, or by inclusion on invoices provided by Screenreach to the Customer from time to time.

**Screach Equipment** means the hardware and software provided by Screenreach for the purpose of delivering the Services for the Locations.

**Screenreach** means Screenreach Interactive Limited (registered in England and Wales with company number 07007633).

**Software** means any software and associated written and electronic documentation and data provided by Screenreach under the Contract.

**WiFi** means the Equipment used to connect wirelessly via an access point to the internet.

1.2. **Construction.** In these Conditions, the following rules apply:

1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), company, firm, local government or municipal institution, partnership, limited partnership, limited liability partnership, community benefit society or other similar body.

1.2.2. A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5. A reference to **writing** or **written** does include fax or email.

## 2. BASIS OF CONTRACT

2.1. The Contract of which these Conditions form part shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade,

custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Customer to purchase the Screach Equipment and the Services in accordance with the terms of the Contract. The Customer is solely responsible for ensuring that the terms of the Order are complete and accurate.

2.3. The Order shall only be deemed to be accepted when Screenreach issues an acceptance of the Order (whether in writing or by means of electronic communication).

2.4. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Screenreach which is not set out in the Contract.

2.5. Screenreach shall supply the Services in accordance with the Service Schedule. Any samples, drawings, descriptive matter, or advertising produced by Screenreach and any descriptions or illustrations contained in Screenreach's website, marketing materials, catalogues or brochures are produced for the sole purpose of giving an approximation of the functionality of the Screach Equipment and the Services. They shall not have any contractual force.

## 3. SERVICES AND CONTENT

3.1. Screenreach shall provide the Services to the Customer for at least the Minimum Period and for such extended period as the parties may otherwise agree. If the Customer does not notify Screenreach then the agreement will automatically renew on a rolling monthly basis under the same terms as this Contract or until such time as the Customer renews its Contract or notifies Screenreach in writing of its intention to terminate the Contract as per Clause 10.

3.2. Screenreach will use all reasonable skill, care and diligence in the performance of its obligations under this Contract and will provide the Services in accordance with applicable laws.

3.3. The extent of the Services to be provided by Screenreach to the Customer from time to time shall be set out in the Service Schedule provided by Screenreach to the Customer.

3.4. The parties agree that the price for the provision of the Screach Equipment and the Services shall be set out in the Price List or in such other written communication as may be provided by Screenreach to the Customer from time to time (including via email).

3.5. The parties acknowledge that Screenreach will provide Content to the Customer as part of the Services. The Customer agrees and acknowledges that the Customer's use of the content is at its own risk. The Customer understands and agrees that:

3.5.1. the Content will change from time to time;

3.5.2. the Content will only be used for its own purposes and is likely to be protected by copyright, trademark, and other Intellectual Property Rights;

3.5.3. Screenreach provides no guarantee of

- the accurateness or completeness of Content;
- 3.5.4. some of the Content will be subject to its own terms and conditions of use. These may be displayed online or elsewhere. If the Customer accesses this Content the Customer will adhere to these terms and conditions, and will actively make itself aware of the existence of, and provisions of such terms and conditions; and
  - 3.5.5. access to any Content provided on a subscription basis as part of the Services will cease when this Contract ends (for whatever reason).
- 3.6. Screenreach will use reasonable endeavours to ensure that any Content provided by Screenreach as part of the Services:
- 3.6.1. does not infringe, to the best of Screenreach's knowledge, any third party's Intellectual Property Rights, other proprietary rights or rights of privacy;
  - 3.6.2. complies, to the best of Screenreach's knowledge, with all relevant advertising standard codes and guidance;
  - 3.6.3. does not violate any law, statute, ordinance or regulation in the UK (including the laws and regulations governing export control);
  - 3.6.4. is not defamatory, libellous, unlawfully threatening or unlawfully harassing;
  - 3.6.5. is not obscene, pornographic or liable to incite racial hatred or acts of terrorism and does not contain any pornography;
  - 3.6.6. does not, to the best of Screenreach's knowledge, violate any UK laws regarding unfair competition, anti-discrimination or false advertising; and
  - 3.6.7. does not, to the best of Screenreach's knowledge, contain any viruses or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.
- 3.7. Depending on the nature of the Services, Screenreach may provide the Customer with the means of storing or uploading Content. The Customer accepts that unless Screenreach specifically agrees otherwise in writing, Screenreach has no obligation whatsoever to the Customer in relation to the storing or display of such content, nor any responsibility to the Customer should such content be lost or destroyed. The Customer is advised that it should undertake regular back ups of any Content that it wishes to store more permanently on devices that are not connected to the Screach Equipment.
- 3.8. The Customer may as part of the Services be permitted to create and upload its own content to the Services. The parties acknowledge that the Customer may create such content, or may engage the services of third parties or Screenreach to generate such

content on the instructions of the Customer (content which is generated by the Customer or is generated by third parties or by Screenreach on the instructions of the Customer is referred to as "**Customer Content**" in the remainder of this Clause 3.9). The Customer warrants to Screenreach that the Customer Content:

- 3.8.1. does not infringe any third party's Intellectual Property Rights, other proprietary rights or rights of privacy;
- 3.8.2. complies with all relevant advertising standard codes and guidance;
- 3.8.3. does not violate any law, statute, ordinance or regulation in the UK (including the laws and regulations governing export control);
- 3.8.4. is not defamatory, libellous, unlawfully threatening or unlawfully harassing;
- 3.8.5. is not obscene, pornographic or liable to incite racial hatred or acts of terrorism and does not contain any pornography;
- 3.8.6. does not violate any UK laws regarding unfair competition, anti-discrimination or false advertising; and
- 3.8.7. does not, to the best of the Customer's knowledge, contain any viruses or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

The warranties provided by the Customer under this Clause 3.9 shall not apply to any Customer Content created or generated by Screenreach.

- 3.9. The Customer shall not include all or any part of the Customer Content on the Displays without proper attribution to the creator or owner of all Intellectual Property Rights comprising the Customer Content, or without including the supplier of such Customer Content's copyright notice or any other notices that the relevant supplier of such Customer Content or Screenreach may require from time to time.
- 3.10. The Customer Content and Customer Equipment is provided to Screenreach on a non-exclusive, non-transferable, non-sublicensable basis and may only be used as necessary to perform the Services during the term of the Contract.

#### 4. DELIVERY AND INSTALLATION

- 4.1. If the parties have agreed a time and date for the delivery and installation of the Screach Equipment and the Customer delays or prevents the delivery or installation of the Screach Equipment without 2 Business Days prior acknowledged notification, Screenreach shall be entitled to apply reasonable additional charges, such charges being set out in the Price List.
- 4.2. Clause 4.3 to 4.7 shall apply only where the Customer has indicated in the Order that it wishes to engage Screenreach or its authorised subcontractors to carry out an

installation of the Screach Equipment ("**Installation**"). Where the Customer has indicated in the Order that it wishes to carry out a self-installation of the Screach Equipment, Screenreach shall have no responsibility to the Customer in respect of such self-installation.

- 4.3. The Customer shall ensure that the Locations have been prepared for installation in accordance with any instructions given by Screenreach or its authorised subcontractors provided that such instructions have been provided in writing or by email at least 2 Business Days in advance of the scheduled time and date for the installation. The Customer shall provide Screenreach or its authorised subcontractors with reasonable access to the Locations at reasonable times on a Business Day for the purposes of Installation. The Customer agrees to provide, at its expense, a suitable place for the Installation at the Locations and where required, readily available and continuous mains electricity supply, open internet connection and connection points to AV equipment.
- 4.4. The Customer is solely responsible for obtaining any permissions or consents that are necessary or desirable to enable the Installation (including obtaining the consent of any superior landlords or additional occupiers of the Locations).
- 4.5. The Customer and Screenreach and its authorised subcontractors shall meet each other's reasonable safety needs and security requirements when at the Locations. The Customer and Screenreach and its authorised subcontractors will take reasonable care of each other's equipment at the Locations. If the Customer or Screenreach or its authorised subcontractors cause damage to each others equipment (provided that the causing of such damage was reasonably foreseeable to occur during the course of the Installation) then the party causing such damage will pay for any repair or replacement needed. This will not apply where damage occurs during the normal use of any equipment, hardware or software.
- 4.6. Screenreach will use reasonable endeavours to adhere to any dates given for Installation but the Customer acknowledges that such dates are merely a best estimate of when Installation may take place, and that Installation may be affected by matters outside the control of Screenreach and its authorised subcontractors.
- 4.7. If Screenreach installs the Screach Equipment, then Acceptance of the Screach Equipment by the Customer will take place on the earlier of:
  - 4.7.1. the date when Screenreach notifies the Customer of successful Installation and the commencement of the Services; and
  - 4.7.2. the date on which the Customer begins to use the Services.
- 4.8. If the Customer has chosen to self-install the

Screach Equipment, then acceptance of the Screach Equipment by the Customer shall take place when the Customer takes delivery or possession of the Screach Equipment.

- 4.9. Acceptance will not be prevented by minor faults that Screenreach rectifies within a reasonable time.

## 5. **ADVERTISING**

- 5.1. Advertising is the promotion of an advert by virtue of, but not limited to; displaying on screen; or post to social media; or eMarketing; or by other means such as via a connected app. The basic principle of payment for advertising on these or other mediums is the advertiser pays a sum of money to display the advert. The receipt of that money may then mean that revenue is shared between Screenreach and the Customer on a ratio described in the contract.
- 5.2. Advertising takes two primary forms, local and national.
  - 5.2.1. Local Advertising is local to the venue or venues and is usually arranged at venue level, and fulfilled by either; using own content; a template in the portal; or by bespoke creation of and advert. For example an advert for the local taxi company.
  - 5.2.2. National Advertising is a widely distributed advert usually for a brand that would be recognisable on a large scale.
- 5.3. Any revenue to be shared between Screenreach and the Customer is only done so provided Clause 7.5 is complied with.
- 5.4. Unless the Customer is paying specifically to exclude advertising from their screens as described in the Discount and Offer, Screenreach reserves the right to display adverts from the prescribed list for the duration of this agreement.
- 5.5. Advert genres are pre-agreed in the contract and Screenreach will at its discretion accept adverts within those genres and display those at the agreed venues without secondary authorisation from the customer.
- 5.6. All adverts to be displayed will comply with Clause 3.6 and 3.7.

## 6. **GUARANTEE**

- 6.1. Screenreach warrants that on delivery, and for a period of six months from the date of delivery (**warranty period**), the Screach Equipment shall:
  - 6.1.1. conform in all material respects with its description; and
  - 6.1.2. be free from material defects in design, material and workmanship.
- 6.2. Subject to Clause 6.3 and to the Customer complying with its obligations under Clause 6.3, if:
  - 6.2.1. the Customer gives prompt notice in writing to Screenreach during the warranty period within a reasonable time of discovering that the Screach Equipment does not comply with the warranty set out in Clause 6.1;

6.2.2. Screenreach is given a reasonable opportunity of examining the Screach Equipment; and

6.2.3. the Customer (if asked to do so by Screenreach) returns the Screach Equipment to Screenreach's place of business at the Customer's cost,

Screenreach shall, at its option, repair or replace the defective Screach Equipment, or refund the price of the defective Screach Equipment equal to the amount the Customer paid for the Screach Equipment minus the use they have had from the Screach Equipment (an amount to be determined at the sole discretion of Screenreach (acting reasonably)).

6.3. Screenreach shall not be liable pursuant to the warranty set out in Clause 6.1 in any of the following events:

6.3.1. the Customer makes any further use of the Screach Equipment after giving notice in accordance with Clause 6.2;

6.3.2. the defect arises because the Customer failed to follow Screenreach's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Screach Equipment or (if there are none) good trade practice regarding the same;

6.3.3. the Customer uses the Screach Equipment in breach of any of the provisions of the Contract or any other conditions under which the Screach Equipment was supplied that is not covered by Clause 6.3.2;

6.3.4. the Customer alters or repairs the Screach Equipment without the written consent of Screenreach;

6.3.5. any maintenance, alteration, modification or adjustment to the Screach Equipment is performed by persons other than Screenreach or its employees or agents;

6.3.6. there is a failure, interruption or surge in the electrical power or its related infrastructure connected to the Screach Equipment;

6.3.7. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

6.3.8. the Screach Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;

6.3.9. there is a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Screach Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or

6.3.10. the neglect or misuse of the Screach Equipment by the Customer to the extent not already covered by this

Clause 6.3.

6.4. Except as provided in this Clause 6, Screenreach shall have no liability to the Customer in respect of the Screach Equipment's failure to comply with the warranty set out in Clause 6.1.

6.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from these Conditions.

6.6. These Conditions shall apply to any repaired or replacement Screach Equipment supplied by Screenreach

6.7. Screenreach is not obliged to perform any Excluded Maintenance.

6.8. Where Screenreach is performing or has performed any Excluded Maintenance, Screenreach may charge the Customer for, and the Customer shall pay for, all reasonable costs incurred by Screenreach in performing any such Excluded Maintenance provided such costs have been agreed with the Customer in advance by email or in writing.

## 7. CUSTOMER'S OBLIGATIONS

7.1. The Customer shall use reasonable endeavours:

7.1.1. where the Customer has elected to self-install the Screach Equipment, ensure the install is carried out correctly in accordance with the provided instructions;

7.1.2. ensure that the Screach Equipment is kept in suitable premises and under suitable conditions;

7.1.3. not permit or make any attempt to disassemble, deconstruct, break down, hack or otherwise interfere with the Screach Equipment;

7.1.4. permit only trained and competent personnel to use the Screach Equipment and follow any operating instructions as Screenreach may give from time to time provide to the Customer;

7.1.5. at all reasonable times permit full and free access to the Location and to the Screach Equipment to Screenreach, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable Screenreach to examine the Screach Equipment if required;

7.1.6. provide Screenreach with any information that is reasonably requested in the performance of any maintenance by Screenreach pursuant to these Conditions;

7.1.7. take any steps reasonably necessary to ensure the safety of the personnel of Screenreach and its authorised subcontractors when attending the Location;

7.1.8. not allow any person other than the personnel of Screenreach or its authorised subcontractors to maintain,

- alter, modify or adjust the Screach Equipment without the prior written approval of Screenreach;
- 7.1.9. not move the Screach Equipment from the Location without the prior written approval of Screenreach;
- 7.1.10. store any reserve equipment (if any) only in conditions approved by Screenreach, and make this equipment available for periodic maintenance; and
- 7.1.11. only use supplies or materials supplied or approved by Screenreach.
- 7.2. Any Customer Equipment will be:
  - 7.2.1. technically compatible with the Services and the Screach Equipment and will not cause interruption to the Services or the operation of the Screach Equipment; and
  - 7.2.2. adequately protected by the Customer against viruses, spyware, malware or other breaches of security; and
  - 7.2.3. safe for commercial use and where necessary tested and certified for correct operation included but not limited to the supply of electricity.
- 7.3. The Customer will use reasonable endeavours to ensure that the Services will not be used:
  - 7.3.1. in contravention of any licence, code of practice, instructions or guidelines issued by a regulatory authority, third party's rights or Screenreach's acceptable usage policies in force from time to time;
  - 7.3.2. fraudulently or in connection with a criminal offence or in any way that is unlawful and the Customer will ensure that this does not happen;
  - 7.3.3. to send, communicate, knowingly receive, upload, download or use any material that is offensive, abusive, indecent, defamatory, obscene, menacing, cause annoyance, inconvenience, anxiety or are intended to deceive; or
  - 7.3.4. in any way that Screenreach considers to be detrimental to the provision of the Services to the Customer.
- 7.4. The Customer will comply with Screenreach's reasonable instructions regarding health, security, safety or the quality of the Services.
- 7.5. The Customer will agree;
  - 7.5.1. where the Services have been supplied free of charge and or advertising revenues are shared that the screens shall not at any time throughout the Term be obscured, blocked or covered in any material way;
  - 7.5.2. to provide Screenreach, its employees, agents, consultants and subcontractors, with access to the Customer's Premises, office accommodation and other facilities as reasonably required by Screach for the purposes of monitoring the Customer's compliance with its obligations under this clause;
  - 7.5.3. where the Services have been supplied

free of charge and or advertising revenues are shared to ensure when not playing subscription sports or other customer entertainment, that the Screach Channel is playing for the majority of the remaining opening hours, and to play on screen no less than two hours per day throughout the term

7.5.4. that Screenreach shall, where the Services have been supplied free of charge, reserve the right to charge the installation and hardware costs to the customer in the event that the obligations set out in clause 7.5.1, 7.5.2 and 7.5.3 are not met for a continuous period of 7 days

7.5.5. where the Customer has subscribed to a package that qualifies for revenue share Screenreach reserves the right to withhold such revenue share if the Customer fails to comply with Clause 7.5.1, 7.5.2 and 7.5.3

## 8. TITLE AND RISK

8.1. The risk in the Screach Equipment shall pass to the Customer on Acceptance.

8.2. Title to the Screach Equipment shall not pass to the Customer until Screenreach receives payment in full (in cash or cleared funds) for the Screach Equipment in such amount is as set out in the Order. For the avoidance of doubt this does not include any charges for the installation, subscription fees or fees for any professional or other services.

8.3. Until title to the Screach Equipment has passed to the Customer, the Customer shall:

8.3.1. store the Screach Equipment separately from all other goods held by the Customer so that it remains readily identifiable as Screenreach's property;

8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Screach Equipment;

8.3.3. maintain the Screach Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;

8.3.4. notify Screenreach immediately if it becomes subject to any of the events listed in Clause 10.4; and

8.3.5. give Screenreach such information relating to the Screach Equipment as Screenreach may require from time to time

8.4. Unless provided free of charge the Customer may not use the Screach Equipment until Screenreach has received full cleared payment for the Screach Equipment. For the avoidance of doubt this does not include any charges for the installation, subscription fees or fees for any professional or other services.

## 9. PRICE AND PAYMENT

9.1. The price of the Screach Equipment and the Services shall be the price set out in the Order.

9.2. If the Customer requires one or more item of

Screenreach Equipment in addition to what it originally ordered, then it shall pay the price set out in the Order for each additional item of Screenreach Equipment that it may require, and will also (unless the Customer has chosen to install the relevant additional items of Screenreach Equipment itself) pay for any additional costs incurred by Screenreach for any related Installation(s).

- 9.3. The price of the Screenreach Equipment and Services is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Screenreach, pay to Screenreach such additional amounts in respect of VAT as are chargeable on the supply of the Screenreach Equipment and the Services.
- 9.4. Screenreach will send invoices to the address notified by the Customer but may also provide the Screenreach Equipment and the Services on the basis that invoices will be available only online. Where online billing is in force, Screenreach will provide a notification of invoices via the e-mail address provided by the Customer to Screenreach. The Customer agrees to maintain the e-mail address to which invoices are delivered by Screenreach throughout the duration of the Contract.
- 9.5. Screenreach will keep a record of invoices provided for a reasonable period, however the Customer is advised to keep its own records of invoices.
- 9.6. The Customer shall pay all invoices in full and in cleared funds within 14 Business Days of the date of the invoice unless otherwise agreed in writing between the parties. Payment shall be made to the bank account nominated in writing by Screenreach. Time of payment is of the essence.
- 9.7. The Customer will pay all monthly charges due under the Contract by direct debit or BACS monthly payment plan, or by providing an authorisation to Screenreach for the debit of all charges due from a credit/debit card. The Customer will advise Screenreach promptly of any change to its banking details.
- 9.8. If the Customer fails to make any payment due to Screenreach by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9. The Customer shall pay all amounts due in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Screenreach may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Screenreach to the Customer.
- 9.10. Screenreach will pay the customer any

revenue share due in the form of a credit against subscribed amounts in the month following the screening of the advert.

## 10. TERMINATION AND SUSPENSION

- 10.1. Subject to Clause 10.2, either party may terminate the Contract by giving the other party 30 days notice in writing of such cancellation, unless otherwise agreed in writing by both parties.
- 10.2. If the Customer terminates the Contract during the Minimum Period the Customer will pay to Screenreach the termination charges, calculated in accordance with the number of months remaining pursuant to the terms of the Contract multiplied by the monthly subscription fee due from the Customer as at the point of termination, unless the parties expressly agree another figure in writing.
- 10.3. If the Customer becomes subject to any of the events listed in Clause 10.4, Screenreach may terminate the Contract with immediate effect by giving written notice to the Customer.
- 10.4. For the purposes of Clause 10.3, the relevant events are:
  - 10.4.1. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - 10.4.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - 10.4.3. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 10.4.4. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - 10.4.5. (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

- 10.4.6. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 10.4.7. (being an individual or a sole trader) the Customer is the subject of a bankruptcy petition or order;
- 10.4.8. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 10.4.9. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 10.4.1 to Clause 10.4.8 (inclusive);
- 10.4.10. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 10.4.11. the Customer's financial position deteriorates to such an extent that in Screenreach's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 10.4.12. (being an individual or a sole trader) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; and
- 10.4.13. the Customer commits a breach of any provision in the Contract and such a breach is not remedied to the satisfaction of Screenreach within 10 Business Days of Screenreach notifying the Customer of the breach.
- 10.5. Without limiting its other rights or remedies, Screenreach may suspend provision of the Services under the Contract if the Customer becomes subject to any of the events listed in Clause 9.4.1 to Clause 10.4.13, or Screenreach reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment and, after receiving a reminder from Screenreach that the payment is due the Customer does not pay Screenreach within 7 days of the date of such reminder. For the avoidance of doubt, the Customer will continue to pay all amounts due to Screenreach under the Contract for the duration of such suspension.
- 10.6. On termination of the Contract for any reason the Customer shall immediately pay to Screenreach all of Screenreach's outstanding unpaid invoices and interest.
- 10.7. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 10.8. Upon termination of the Contract (for any reason whatsoever), Screenreach shall at the request of the Customer promptly return to the Customer all Customer Content and Customer Equipment.
- 10.9. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 11. CONFIDENTIALITY**
- 11.1. Confidential Information** means all **Information** (however recorded or preserved) disclosed by a party to the Contract or its Representatives (as defined below) ("**Disclosing Party**") to the other party and its Representatives (the "**Recipient**") whether before or after the date of the Contract, including, but not limited to any information (whether or not technical) that would be regarded as confidential by a reasonable business person.
- Representatives** means, in relation to a party, its employees, officers, representatives and advisers.
- 11.2. The provisions of this Clause 11 shall not apply to any Confidential Information that:
- 11.2.1. is or becomes generally available to the public (other than as a result of its disclosure by a party in breach of this Clause 11);
- 11.2.2. was available to the Recipient on a non-confidential basis before disclosure by the Disclosing Party;
- 11.2.3. was, is or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- 11.2.4. the parties agree in writing is not confidential or may be disclosed; or
- 11.2.5. is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.
- 11.3. The parties shall keep each other's Confidential Information confidential and shall not:
- 11.3.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Contract (**Permitted Purpose**); or
- 11.3.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 11.
- 11.4. Each party may disclose the Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 11.4.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and



11.4.2. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to the Contract and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.

11.5. Each party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

11.6. On termination of the Contract, each party shall:

11.6.1. destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information;

11.6.2. erase all the Disclosing Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

11.6.3. certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that the Recipient may retain documents and materials containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause 11 shall continue to apply to any such documents and materials retained by the Recipient.

Nothing in Clause 11.6 shall override or affect Screenreach's obligations in Clause 10.8

11.7. The provisions of this Clause 11 shall continue to apply after the expiry or earlier termination of the Contract.

## 12. INTELLECTUAL PROPERTY

12.1. All Intellectual Property Rights whether pre-existing or created by the Customer or Screenreach during or arising from the performance of the Contract will remain the absolute property of that party or its licensors.

12.2. The Customer acknowledges that Screenreach will provide Software to enable the Customer to use the Services, and Screenreach will grant the Customer a non-

transferable and non-exclusive license to use the Software in object code form solely as necessary for receipt of the Services and solely in accordance with the Contract and associated documentation. The terms of any licence granted by Screenreach under this Clause 12.2 is coterminous with the term of the Service for which the Software is associated.

12.3. If the Service provides the Customer with Software licensed by third parties who require the Customer to accept their terms of use, the Customer will comply with those terms.

12.4. The Customer will not copy, de-compile or modify any Software, or knowingly permit any person to do so, unless specifically authorised pursuant to the terms applicable to such Software.

## 13. LIMITATION OF LIABILITY

13.1. Nothing in the Contract shall limit or exclude Screenreach's liability for:

13.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

13.1.2. fraud or fraudulent misrepresentation;

13.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;

13.1.4. defective products under the Consumer Protection Act 1987; or

13.1.5. any matter in respect of which it would be unlawful for Screenreach to exclude or restrict liability.

13.2. Subject to Clause 13.1:

13.2.1. Screenreach shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

13.2.2. Screenreach's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of:

a. £40,000;  
and

b. 100% of the amounts paid by the Customer to Screenreach under the Contract.

## 14. FORCE MAJEURE

14.1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which

by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including without limitation strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

- 14.2. If any of the events detailed in Clause 14.1 materially affects the performance of the Contract and continues for more than three months then the Customer or Screenreach may terminate the Contract in whole or in part by written notice to the other.

## 15. REGULATORY

- 15.1. Orders placed for the Screach Equipment and the Services are acknowledged by both parties to be business to business transactions to which the Consumer Protection (Distance Selling) Regulations 2000 as amended by the Consumer Protection (Distance Selling) (Amendment) Regulations 2005 do not apply.
- 15.2. Where the Services allow the Customer to access the internet the Customer agrees and acknowledges that the use of the internet is at the Customer's own risk, and Screenreach shall have no liability for any content, viruses, malware, spyware or other like software or applications accessed by the Customer on the internet.
- 15.3. Screenreach may monitor telephone calls, emails, conversations via chat applications and other electronic real-time communications with its customers, including the Customer. The information collected by Screenreach may be used for training purposes, quality control, credit control, to collect data and other details about usage of the Services provided to the Customer, and in order that Screenreach may comply with its legal and regulatory obligations in any jurisdiction.
- 15.4. Unless the Customer has specifically informed Screenreach in writing, the Customer consents to receiving marketing communications from Screenreach via electronic communications, telephone and direct mail. Please refer to Screenreach's privacy policy (which can be found at [www.screach.com/privacy-policy](http://www.screach.com/privacy-policy)) for further information.
- 15.5. The Customer will:
- 15.5.1. be responsible under Regulation 9 of the Waste Electrical and Electronic Equipment Regulations 2006 (the "WEEE Regulations") for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any equipment supplied pursuant to the Contract that has become waste electrical and electronic equipment ("WEEE"). Screenreach and the Customer acknowledge that for the purposes of regulation 9 this Clause is an agreement stipulating other financing arrangements for the collection, treatment, recovery, recycling and environmentally sound disposal of WEEE;
- 15.5.2. be responsible for information recording or reporting obligations imposed by the WEEE Regulations; and
- 15.5.3. indemnify Screenreach against any claims or legal proceedings that are brought or threatened against Screenreach by a third party which would not have been caused or made had the Customer fulfilled its express or implied obligations under this Clause or in connection with the WEEE Regulations. Screenreach will notify the Customer of any such claims or proceedings and keep the Customer informed as to the progress of any such claims or proceedings.
- 15.6. Screenreach may check and verify the details of the Customer with a fraud prevention agency or credit referencing agency. If the Customer provides any information which Screenreach believes to be false or misleading and Screenreach suspects fraud, Screenreach may record such information with such fraud prevention agency or credit reference agency. The Customer acknowledges that Screenreach and other parties may search and review this information for fraud prevention purposes.
- 15.7. Information Screenreach holds on Customers may be used for fraud prevention and credit vetting purposes and this may include Screenreach sharing such information with third parties for fraud prevention purposes.
- 15.8. Where the Freedom of Information Act applies to a Customer and the Customer receives a request under that Act that includes any information held by the Customer that was provided to Screenreach in connection with the Contract the Customer will:
- 15.8.1. notify Screenreach immediately of such request; and
- 15.8.2. give Screenreach at least 5 Business Days to make representations to the Customer in connection with such request and the Customer's proposed response thereto.
- 15.9. The Customer and Screenreach will comply with their respective obligations under the Data Protection Act 1998 ("DPA"). Where one party transfers personal data (as defined in the DPA) to the other for processing, the receiving party will process that data only for the period of and to the extent necessary for

the performance of the Contract and will comply with the first party's instructions in connection with the processing of such data; take measures to keep it secure and take appropriate technical and organisational measures equivalent to the measures imposed on the first party under the seventh data protection principle under the DPA; and, not transfer the personal data outside the European Economic Area (EEA) or to any subcontractors, without the prior written consent of the first party

15.10. Screenreach may rely on the instructions of any person whom it thinks, acting reasonably in the circumstances, is authorised to provide instructions on behalf of the Customer.

15.11. The Customer shall:

15.11.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

15.11.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

15.11.3. comply with the Customer's anti-bribery and corruption policies in each case as the Customer or the relevant industry body may update them from time to time (**Relevant Policies**).

15.11.4. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 15.11.2, and will enforce them where appropriate; and

15.11.5. promptly report to Screenreach any request or demand for any undue financial or other advantage of any kind received by any person in connection with the performance of the Contract.

15.12. For the purpose of Clause 15.11, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of Clause 15.11 a person associated with the Customer includes but is not limited to any subcontractor of the Customer.

## 16. CHANGES TO THE CONTRACT

16.1. Screenreach may change the Contract (including the charges due under the Contract) at any time and will notify the change in the Contract in accordance with

this Clause 16.

16.2. Unless otherwise stated, Screenreach will publish any changes to the Contract (including the charges due under the Contract) online at [www.screenreach.com](http://www.screenreach.com), (or any other address that Screenreach may notify to the Customer) or may at its sole discretion notify Customers in writing (including via e-mail).

## 17. GENERAL

### 17.1. Assignment and other dealings.

17.1.1. Screenreach may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.1.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Screenreach, such consent not to be unreasonably withheld.

### 17.2. No partnership and agency

17.2.1. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.2.2. Each party to the Contract confirms it is acting on its own behalf and not for the benefit of any other person.

### 17.3. Entire Agreement

17.3.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.3.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

17.3.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

17.3.4. Nothing in this clause shall limit or exclude any liability for fraud.

### 17.4. Notices.

17.4.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or

such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.

17.4.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 17.4.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

17.4.3. The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 17.5. Severance.

17.5.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.5.2. If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.6. **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.7. **Third party rights.** No party other than the Customer or Screenreach shall have any rights to enforce the terms of the Contract.

17.8. **Variation.** Save as provided by Clause 16, no variation to the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Screenreach and the Customer.

17.9. **Governing law.** This Contract, and any

dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

17.10. **Dispute resolution.** If a dispute arises out of or in connection with this Contract, the parties will seek in good faith to resolve the dispute by negotiation without recourse to court proceedings. In the event of a dispute either party may serve written notice ('Dispute Notice') on the other proposing that the parties resolve the dispute by negotiation. Within 10 days after service of the Dispute Notice, one or more representatives of each party at senior director level shall meet in good faith to attempt to resolve the dispute by agreement. If the dispute is not resolved within 21 days of the Dispute Notice, either party may upon written notice to the other refer the dispute to the courts of England and Wales for final determination in accordance with Clause 17.11 below.

17.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).