

screenFOOD Upgrade Agreement

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screenFOOD Upgrade Agreement

1 OBJECT OF THE CONTRACT

screenFOODnet Digital Signage Retail Services AG – referred to in the following as screenFOODnet – will make available to the customer the screenFOOD licences in its possession for use as part of the agreed software licence conditions. In this context screenFOODnet provides upgrade licences, for a fee, in order to make the very latest software, known as major releases, available to customers.

The conditions for the upgrade agreement detailed in this contract apply to all screenFOOD products. screenFOODnet is obliged to make the respective upgrades of the programs purchased by the customer available to the customer in accordance with the regulations of this contract.

2 RANGE OF SERVICES

2.1 Scope of validity

The services included in the upgrade offer are project-dependent, i.e. the customer/partner can use the upgrade for only one specific project. To conclude the contract, you must already have updated to the latest version.

2.2 Limitation of upgrade services

Upgrades and updates as set out in this contract are all adaptations of the contract software screenFOODnet develops and brings onto the market in such a way that it is made available to customers in general.

An upgrade means that screenFOODnet is making the latest major version of a software solution available. An upgrade of a piece of software contains significant function improvements, the latest features and the latest bug fixes.

An update refers to the latest software within a major version. An update contains the latest features and bug fixes.

While an update licence is free of charge, upgrades are made available for a fee.

If screenFOODnet makes updates and upgrades available in accordance with these regulations, screenFOODnet is also obliged to adapt the documentation (electronically) that was supplied to the customer with the contract software to the program version resulting from the update or upgrade.

2.3 Available Updates/Upgrades

Only the latest screenFOOD version will be supplied. Only the last two major releases will be supported.

3 GUARANTEE

3.1 Basic principle

The supply times of the releases will be determined by screenFOODnet. There will be at least one (1) major release from screenFOODnet per calendar year.

3.2 Guarantee

Should there be a defect in an update or upgrade, the customer must inform the licensor, screenFOODnet,

immediately by email and provide screenFOODnet with all available information, be it in written or electronic form, in order to enable screenFOODnet to eliminate the error, in particular, the customer must provide a precise description of the error that has

occurred and the application and application situation in which it occurred.

screenFOODnet is entitled to examine the defect that has been reported on the EDP system of the customer on which the software is installed and being used and in the program environment and data environment in which the error occurred, in order to facilitate this, the customer will grant screenFOODnet access to the system, the program and the data.

screenFOODnet is entitled to choose between repair and replacement.

If screenFOODnet declares that a defect in an update or upgrade complained about by a customer cannot be eliminated by repair or replacement, or if screenFOODnet unjustifiably refuses to fulfil the guarantee, and the onus of proof for this lies on the customer, the customer is entitled to refuse to accept the update or upgrade and/or terminate the upgrade agreement for important reasons. The fee for the upgrade agreement will be reduced in proportion to the amount due for the period until the last supply of an update/upgrade about which no complaint was raised.

If an upgrade is refused or this contract is terminated, the customer is obliged to delete all the files of the upgrade to which the complaint referred, including backup copies, and prove the deletion to screenFOODnet. screenFOODnet is entitled to make the repayment of any fees already paid dependent on the frequency at which the deletion of the files is communicated.

Any further guarantee claims, in particular the right to reduction, are excluded.

The guarantee will, in accordance with the software licence contract, last for 60 days from the point of transfer (announcement of the download link and transfer of the licence number) of the upgrade or update to the customer.

The guarantee in accordance with the software licence contract must be differentiated from the installation guarantee, which concerns installation and configuration errors during installation in accordance with the acceptance report.

3.3 Services not included

The following services are not included in the upgrade agreement:

- Services rendered on location
- Services rendered outside the office times of screenFOODnet Digital Signage Retail Services AG. These are Monday to Friday from 8 am to 12 pm and 1-6 pm, excluding Swiss canton and national holidays
- Hardware and operating system maintenance, services, third-party software maintenance and support
- Adaptation of screenFOOD software to a given piece of hardware or system or amended use and operating conditions
- Infrastructure and operation of hardware and system architecture and any applications connected to it outside of screenFOOD
- Monitoring of the database backup script installed
- Elimination of faults and errors caused by unprofessional operation, use, treatment and programming of the products or by interference by or products from third parties, by chance or by a force majeure
- Data backup and reconstruction
- Maintenance of screenFOOD software
- Consulting in the field of digital signage
- Processing support cases
- Installation of the update

- Installation of the upgrade
- Migration of data to the new version in the case of non-regular upgrades

4 DURATION OF THE CONTRACT

4.1 Commencement of the contract

This contract comes into effect when the customer has made the order in writing.

4.2 Duration

The contract is automatically extended by one calendar year if it is not terminated before the term of the contract elapses by the agreed deadline.

4.3 Termination

The upgrade agreement can be terminated after a minimum duration of 1 year (12 months), the contract will be terminated at the end of the calendar year. The deadline for the termination will be three months in advance. The termination must be in writing.

5 CONFIDENTIALITY AND DATA PROTECTION

5.1 Transfers

screenFOODnet is entitled to transfer the rights and duties arising from the terms and conditions of this contract to third parties (subcontractors and affiliated companies of screenFOODnet Digital Signage Retail Services AG).

5.2 Confidentiality

The parties to the contract are obliged not to release confidential information or use confidential information for any purpose other than that stated in the contract. Any release or extracontractual use of this information requires prior written agreement from the other party.

5.3 Data protection

The parties to the contract agree that the other party in each case may use the data received in the course of this business relationship for their own purposes, while adhering to the data protection laws.

5.4 Contradictions

Should there be any contradictions between individual components of the contract, these components will apply in the following order:

- This upgrade agreement
- The screenFOOD software licence contract

The right to make agreements in individual cases regarding deviations remains these, however, can only become valid if they refer specifically to the condition that is to be altered of a contractual document that is higher in the order.

6 CONDITIONS OF PAYMENT

6.1 Due date and payment deadline

In the first year, the fees for the upgrade agreement will be due when the licences are sent pro rata temporis until the end of the year. From the second year, the fees for the upgrade agreement will be due in advance at the beginning of the year. The deadline for payment is 20 days net. After this deadline has expired, the debtor will be deemed in arrears without any further reminder.

If there is no communication from the customer within 8 days of the invoice date, an invoice will be deemed to have been

received. Collection is handled via screenFOODnet or via a screenFOODnet sales partner.

6.2 Amount payable

For end customers, the cost of an upgrade agreement will amount to 18% of the originally paid licence costs per year. Partners with a contract can also deduct their partner discount from the 18% of the current listed price.

Update licences within the same version (minor release) are free of charge for partners and end customers.

In the case of screenFOOD CS Server updates/upgrades, there is also a compulsory installation cost for every update or upgrade according to the current price list. Further installation work will be invoiced according to the service performed.

If within the term of this contract further user licences are purchased by the customer, the yearly fee for the existing contract will be increased by 18% of the licence costs of the newly-purchased licences. Partners can deduct their partner discount from this.

6.3 Limitation

screenFOODnet only carries out the installations for the screenFOOD CS Server. The date of the installation will be coordinated with the partner/customer with a run-up time of two weeks. screenFOODnet will not carry out any further installations. screenFOODnet cannot make any guarantee that program products can be used uninterruptedly and free of error in any combination the customer wishes, with any data and programs, nor that the correction of a malfunction will prevent the occurrence of other malfunctions.

6.4 Alterations

screenFOODnet can adjust the fees for the upgrade agreement, adhering to a notification deadline of at least 4 months to the end of the calendar year.

7 LIABILITY

Compensation claims against screenFOODnet are excluded unless there is conclusive liability in terms of intention or gross negligence. Liability for consequential damage of any kind is excluded. Obligation to pay compensation is in any case limited by the amount of the agreed fees for the upgrade agreement per contractual year.

8 FINAL PROVISIONS

8.1 Written form

There can be no oral subsidiary agreements regarding this contract. Any additions and/or amendments to this contract must be made in writing. Any possible later amendment agreements must be in writing and refer to the respective contract; they must be signed by both contractual partners.

8.2 Partial invalidity

If any condition of this contract should be invalid or become invalid in the future, or should there turn out to be a gap in the contract, this will not affect the validity of the remaining conditions. The invalid condition or the gap must be replaced or resolved by a condition which comes as close as legally possible to what the parties originally wanted when they signed the contract or what they would have wanted according to the sense and purpose of this contract if they had considered the point in question.

8.3 Applicable law

This contract is subject to Swiss law.

8.4 Place of jurisdiction

The place of jurisdiction for all disputes and proceedings arising from or in connection with this contract, including its effectiveness, is Lucerne, Switzerland.