



CMS Public Cloud Terms

These Public Cloud Terms (“**Terms**”) contain the terms governing the provision of Cloud Services by Interactive Pty Ltd (ABN: 17 088 952 023) of 461 Williamstown Road, Port Melbourne Vic 3207 (“**Interactive**”) and the customer named in the Public Cloud Statement of Work (“**Customer**”).

1 Cloud Services

- 1.1 Interactive will provision Cloud Resources and licenses for and on behalf of the Customer. The Customer may view its current usage at the Portal.
- 1.2 Interactive will provide the Tier of Managed Services, which may be Base, Essentials, Enhanced, Enterprise or Self-Managed, as applicable to each Cloud Resource. If the Tier of Managed Services is Self-Managed, Interactive provides no Managed Services for those Cloud Resources. If the Tier of Managed Services is Self-Managed, Interactive provides no Managed Services for those Cloud Resources. If a Cloud Resource is not an IaaS Cloud Resource or PaaS Cloud Resource (as those terms are defined in the Service Description), it will be deemed a Base Cloud Resource.
- 1.3 Interactive will provide the Managed Services to the Customer utilising all reasonable skill and care.
- 1.4 Interactive may improve; add, alter or remove functionality from; upgrade; or update the Managed Services at any time by posting an updated Service Description online, and will notify the Customer about any material amendments to the Service Description.
- 1.5 Cloud Resources are provisioned subject to the applicable Schedule of these Terms.

2 Term

- 2.1 Each Public Cloud Statement of Work begins on the Commencement Date and continues until all Cloud Services have been decommissioned and no storage is being consumed, unless duly terminated before that time.
- 2.2 These Terms apply to each Public Cloud Statement of Work until the Public Cloud Statement of Work is terminated.

3 Service Levels

- 3.1 Interactive will endeavour to provide the Managed Services in accordance with the SLA. Interactive may vary the SLA at any time without notice. The SLA does not apply if the Tier of Managed Services is Self-Managed.
- 3.2 The service levels applicable to Cloud Resources are set out in the applicable CRP Terms.
- 3.3 If a rebate is available under the CRP Terms in respect of any CRP’s service levels, the Customer may request Interactive apply to the CRP for the rebate. The Customer must comply with the CRP Terms when making the request to Interactive, including in respect of any time frames. If a rebate is available to a Customer in respect of CRP’s service levels, Interactive is only required to pass on the rebate made available by the CRP.

4 Cloud Resource Provisioning

- 4.1 The Customer authorises Interactive to provision Cloud Resources on the Customer's behalf, control and administer the Customer's account (including to modify or terminate access), and access the Data.
- 4.2 If additional Cloud Services are required to ensure the continued operational state and availability of the Customer's tenancy, Interactive may, at its discretion, add the additional Cloud Services, at the Customer's expense. If Interactive does so, it will then notify the Customer.
- 4.3 The Customer must do all things necessary to give effect to this clause 4.

5 Change Management Processes

- 5.1 The Customer may request to move, add, change or delete Cloud Resources under Interactive's management, or adjust the Tier of Managed Services, by making a Service Request.
- 5.2 After the Customer makes a Service Request, Interactive will issue an offer for a variation to the Cloud Services that the Customer may accept, via exchange of emails. After the Customer accepts the variation, Interactive will action the Service Request, using best endeavours to do so within the applicable Service Request Service Level. Once actioned, the Service Fees will be amended accordingly. Prices for changes (including the Service Request fee and for increases or decreases to the Cloud Resource Fee) will be based on Interactive's and/or the CRP's current pricing, unless the parties otherwise agree in writing.
- 5.3 The Customer must continue to pay for removed Cloud Resources until the earlier of:
 - (a) the time the Cloud Resource is removed; or
 - (b) the end of the target completion time for the applicable Service Request Service Level.
- 5.4 The Customer is not required to request changes for storage Cloud Resources, as storage is based on the Customer's consumption.
- 5.5 The Customer must make a Service Request as follows:
 - (a) Phone: 1300 669 670 (in Australia) or +61 2 9200 2679 (internationally);
 - (b) Email: cmssupport@interactive.com.au; or
 - (c) By contacting the Account Executive or Service Delivery Manager assigned to the Customer.
- 5.6 The Customer is liable for all moves, adds, changes and deletions of Cloud Services that are made by it, or by someone purporting to act on behalf of the Customer.
- 5.7 The change process in this clause 5 does not apply to Direct Customers. The change process for Direct Customers is set out in Schedule 1.

6 Licensing

- 6.1 The Cloud Resources utilise the CRP's service. The Customer's use of the Cloud Resources is subject to, and Customer must comply with, the CRP Terms.
- 6.2 The Customer must comply with the Acceptable Use Policies and must notify Interactive promptly about any actual or possible misuse of its account or authentication credentials.
- 6.3 The Customer must only use Cloud Resources for its internal business use, and must not resell, sublicense or distribute any Cloud Resources.
- 6.4 The Customer acknowledges the CRP Terms may vary at any time without notice.

- 6.5 The Customer shall have appropriate licensing for all applications and operating systems, except for licenses provided by Interactive, which may be provided in the provision of the Managed Services or will be set out in the Portal.
- 6.6 Where applicable, the Customer shall obtain valid licenses and obtain software maintenance services for its software, including upgrades necessary to correct defects. To the extent that the Customer is a party to a software agreement under which a third party provides software maintenance for its software, the Customer will make the benefits of such maintenance available to Interactive in order to enable Interactive to perform the Cloud Services.
- 6.7 The Customer warrants it has procured the required licences and rights of use for all software the Customer uses. The Customer shall pay all costs incurred in complying with this clause.
- 6.8 If the Cloud Services include the provision of one or more virtual instances or servers, then the Customer:
- (a) acknowledges that its rights to use operating system software are subject to the usage rights granted by the CRP and the Customer agrees to abide by such usage rights; and
 - (b) agrees that any software provided by Interactive remains the property of Interactive and must not be transferred or reassigned.
- 6.9 Except for guarantees that cannot be excluded by law, Interactive expressly disclaims all guarantees and warranties, whether express, implied or otherwise, including without limitation, guarantees of merchantability, quality and fitness for a particular purpose in respect of the Third Party Software. Interactive does not guarantee or warrant that the Third Party Software will be available, uninterrupted or error free, meet the Customer's requirements, or operate with the combination of hardware and software the Customer intends to use, including Services provided by Interactive.
- 6.10 The Customer:
- (a) shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Cloud Services;
 - (b) shall not reverse engineer, alter, decompile, or disassemble any part of the Cloud Services, except to the extent that such activity is expressly permitted by applicable law; and
 - (c) disclaims, to the extent permitted by applicable law, all warranties from the CRP and any liability of the CRP, Interactive or any of their suppliers for any damages, whether direct, indirect, or consequential, arising from the use of Cloud Services.
- 6.11 The Customer warrants that it is responsible for obtaining and complying with all CRP or other necessary Customer software licences and associated costs.
- 6.12 Interactive performs automated collection of installed licensable applications on a scheduled basis. The Customer agrees that it will not mask, and or attempt to obfuscate the collection of software inventory data from within the Windows® Registry, which is used solely for software compliance purposes.
- 6.13 Interactive may disclose details to the CRP regarding the Customer's use of Cloud Resources, including the number of licenses required by the Customer, the Customer's name and address and country in which the Customer is located.
- 6.14 The Customer indemnifies Interactive against any loss or liability incurred by Interactive in connection with the Customer's breach of this clause 6.

7 Customer Responsibilities

- 7.1 The Customer shall:
- (a) provide access to internal servers and resources as required by Interactive;
 - (b) provide network links;

- (c) provide application related configuration details for the correct set-up of servers and operating systems; and
 - (d) manage the Customer's third parties in relation to migration, Acceptance Testing and cut-over.
- 7.2 The Customer shall not use, attempt to use, or knowingly permit the use of the Cloud Services to store or transmit illegal material or in connection with any illegal, abusive or inappropriate behaviour.
- 7.3 The Customer is responsible for the Data and the use of the Cloud Resources, regardless of whether the Customer authorised the use. Neither Interactive nor a CRP is liable for any unauthorised access to the Customer's account.

8 Assumptions

- 8.1 Interactive relies on the information provided to it by the Customer to be able to perform the Cloud Services. If any assumptions made by Interactive or set out in the Public Cloud Statement of Work are proven inappropriate, including because the information provided by the Customer was incorrect or inadequate, or if technical requirements are proven to be beyond the capabilities of the Solution, Interactive will negotiate with the Customer with respect to one or more of:
- (a) altering the Solution, which may require a change in accordance with the standard Interactive Change Management Process;
 - (b) adjusting the Project Schedule in relation to any changes required to the Solution; and
 - (c) adjusting either or both of the Implementation Fees and the monthly Service Fees as a result of the alterations to the Project.

9 Exclusions

- 9.1 The following items are deemed Out of Scope Work and are not included in the Cloud Services provided by Interactive, unless specifically detailed in a Public Cloud Statement of Work:
- (a) anything not listed as being in-scope as part of the Services;
 - (b) Managed Services for Cloud Resources in the Self-Managed Tier;
 - (c) Microsoft Active Directory configuration;
 - (d) disaster recovery;
 - (e) support for desktop, laptop, handheld device & smart phone;
 - (f) telephone or fax systems;
 - (g) cabling infrastructure at the Customer Location;
 - (h) licensing at the Customer Location;
 - (i) management of any devices beyond the scope of this proposal;
 - (j) support of all other applications;
 - (k) maintaining user accounts and their group memberships in the Microsoft Active Directory;
 - (l) providing application specific firewall rules;
 - (m) management of database applications;
 - (n) two-factor authentication, unless specially detailed in the Service Description for a Tier of Managed Services; and

- (o) end-user support or work at any remote locations.
- 9.2 The following works are not included in the Cloud Services provided by Interactive, unless specifically detailed in the Public Cloud Statement of Work, but are available upon request on a time and material basis with labour charged at the Standard Charge Out Rate:
- (a) install application software and third party software patches;
 - (b) support for, or assistance with, any Cloud Resources in the Self-Managed Tier;
 - (c) rectifying or mitigating, or providing support for, issues within the Customer's environment, if the issue is caused by the Customer (for example, servers not being supported by the vendor) and Interactive has previously provided recommendations to the Customer to rectify or mitigate the issue, which the Customer has not implemented;
 - (d) implement additional security policies and standards for the server environment as requested by the Customer;
 - (e) provide the Customer with relevant information for auditors;
 - (f) Service Requests above the monthly allocation to which the Customer is entitled as part of the Managed Services, as detailed in the Service Description; and
 - (g) monitor and alert on the Customer defined application, database, and processes housekeeping routines.
- 9.3 Interactive is not required to provide any support for Cloud Resources that are not listed in Interactive's service catalogue, or for anything that is not included in the Service Description for Managed Services. If Interactive provides any such support at the Customer's request, the Customer shall pay Interactive in accordance with the Standard Charge Out Rate.

10 Planned Outage Periods

- 10.1 Planned Outage Periods may be notified by Interactive or the CRP from time to time for any purposes, including:
- (a) maintenance requirements on a facility, networks or systems;
 - (b) de-installation of infrastructure; and
 - (c) infrastructure, firmware or software currency upgrades.
- 10.2 Interactive will use reasonable endeavours to give the Customer at least 14 days' notice of any Planned Outage Periods and provide details of the expected length of any Planned Outage Period. The Customer acknowledges 14 days' notice may not always be provided, including in circumstances where the Planned Outage Period is notified by the CRP.
- 10.3 The Customer must comply with Interactive's reasonable requirements in connection with any Planned Outage Periods.

11 Project Delivery

- 11.1 Each party will assign a Project Manager and confirm an expected Project start date.
- 11.2 If the Customer is delaying the Project, Interactive may send the Customer a notice requiring it to rectify the delay within 5 Business Days. If the Customer fails to or is unable to rectify the delay, Interactive may complete the remaining activities that are not dependent on the Customer and issue a notice confirming the Service Start Date (for

the avoidance of doubt in these circumstances the provision of this notice will not require any Acceptance Tests to have occurred).

DUE DILIGENCE

- 11.3 The parties shall conduct the Due Diligence Stage to confirm the accuracy of the information the Customer has provided to Interactive and identify any possible issues or impact upon the Project,
- 11.4 If any issues are identified by Interactive which affect the Solution, the parties may agree to change the Solution in accordance with the Change Management Process (clause 5) or the Assumptions (clause 8).

BUILD STAGE

- 11.5 During the Build Stage, Interactive will liaise with the Customer to develop a detailed design, project plan and project schedule and complete the Solution design.
- 11.6 Interactive will perform the Build Stage in accordance with the project plan.
- 11.7 The Customer will complete Acceptance Testing, after the Build Stage.

ACCEPTANCE TESTING

- 11.8 On completion of the Build Stage for the Project, Interactive will notify the Customer of the date the Customer may commence conducting Acceptance Tests ("Acceptance Test Commencement Date").
- 11.9 The Customer shall complete Acceptance Testing no later than 5 Business Days after the Acceptance Test Commencement Date.
- 11.10 If the Customer's Acceptance Testing identifies any defects caused by Interactive that prevent the Customer from using the tested Cloud Resources, the Customer may provide Interactive with notice in writing rejecting the Acceptance Tests and detailing the reasons why. If the Customer delivers that notice:
- (a) the parties shall work together to identify and correct the error that caused the Acceptance Tests to fail; and
 - (b) after the cause of error is corrected, Interactive will notify the Customer of a new Acceptance Test Commencement Date and, in that event, clause 11.9 will apply again.
- 11.11 If the Customer, acting reasonably, delivers more than two notices rejecting the results of the Acceptance Tests, either party may refer the matter for resolution in accordance with the dispute resolution provisions in the Master Services Agreement.
- 11.12 If the Customer fails to complete Acceptance Testing or deliver a notice rejecting the Acceptance Tests within 5 Business Days after the Acceptance Test Commencement Date, then Acceptance Testing will be deemed completed by the Customer. After the Project has completed Acceptance Testing, or is deemed to have completed Acceptance Testing, Interactive will provide the Customer with a notice informing it of the Service Start Date.

INFRASTRUCTURE SUPPORT

- 11.13 From the Service Start Date, Interactive will provide support to the Customer for the Cloud Resources in accordance with the Service Description.

12 Pricing and Payment

- 12.1 From the time each Cloud Resource is provisioned until the Cloud Resource is no longer provisioned, the Customer must pay Interactive the Cloud Resource Fee and the Management Fee that applies to the Cloud Resource.
- 12.2 The Customer may view a list of active Cloud Services and the applicable Service Fees in the Portal.
- 12.3 The Cloud Resource Fee will vary in accordance with the CRP's fee adjustments. The Customer may view its Cloud Resources and current spend at the Portal. The Customer is liable for all Cloud Resource Fees, whether or not the Customer authorised or requested the Cloud Resources be provisioned.
- 12.4 The Management Fee is a percentage of the Service Fee applicable to provisioned Cloud Resources that are grouped in the relevant Tier. Interactive may change the Management Fee percentage on 30 days' notice.
- 12.5 The Customer must pay the applicable Service Fee for all licensing provisioned by Interactive. Licensing usage is measured on a daily basis, with the aggregate usage for each type of licence rounded up to the next whole month.
- 12.6 The Customer must pay the SIEM Fee for all provisioned Cloud Resources in the Enterprise Tier.
- 12.7 Interactive will issue invoices monthly in arrears. The Customer shall pay invoices no later than 14 days after the invoice date.
- 12.8 The Implementation Fee is payable by the Customer on the following milestones:
- (a) 50% on the Commencement Date.
 - (b) 50% on the Service Start Date.
- 12.9 The Service Fees are payable based on the Cloud Services provisioned. The Customer will incur Service Fees before the Service Start Date.
- 12.10 The Customer may be charged for Service Requests, as set out in the Service Description and Rate Card. The Customer must pay all Service Fees as required by the Rate Card.
- 12.11 All pricing is exclusive of GST.
- 12.12 The Customer shall pay Interactive the Standard Charge Out Rate for each hour of Out of Scope Work, plus expenses incurred by Interactive to provide materials required to perform the Out of Scope Work.
- 12.13 The Customer may only dispute all or any part of the amount of an invoice if the Customer provides Interactive with a written notice no later than 14 days after the date of the invoice, which identifies the invoice line item being disputed and details the basis for each disputed line item (that notice is an "Invoice Dispute Notice"). The parties shall use reasonable efforts to resolve valid Invoice Dispute Notices. If the parties are unable to resolve the dispute within 10 Business Days after the date of an Invoice Dispute Notice, either party may refer the matter for dispute resolution under clause 12.11.
- 12.14 The Customer may withhold amounts specified in an Invoice Dispute Notice but must pay all undisputed amounts in accordance with clause 12.5. Once the dispute is resolved, the Customer shall pay, or Interactive shall credit, as the case may be, amounts due within 14 days after resolution of the dispute.
- 12.15 If the Customer fails to perform, or delays in performing, its obligations under the Agreement, and such failure or delay results in Interactive being delayed by at least one month to perform Services or achieve one or more milestones under a Statement of Work Interactive may, notwithstanding the delay, invoice the Customer for Service Fees. In the case of time fixed monthly Service Fees, this means the fixed Service Fee applicable and, in the case of time and materials engagements, means the Service Fees for consultants booked for the engagement who cannot be deployed to other engagements or work.

13 Taxes

- 13.1 In this clause 13, words have the same meaning as in the GST Act, unless the context otherwise requires.
- 13.2 The Customer shall pay taxes (including GST), duties, imposts or levies of any description (with the exception of income tax levied against Interactive) arising out of, affecting, or payable in connection with, the Agreement, in addition to any other amounts payable under the Agreement.
- 13.3 If there is an introduction of a new or an increase to an existing tax, duty, impost or levy by the Government (excluding income tax changes), the Service Fees shall be adjusted by an amount equal to the amount of the increased or new tax, duty, impost or levy.
- 13.4 If GST is imposed on any taxable supply in connection with the Agreement, the recipient must pay to the supplier the amount of GST in addition to, and at the same time as, payment for the taxable supply following receipt of a tax invoice.

14 Confidentiality

- 14.1 Each party must keep confidential all of the Confidential Information of the other party and must not, without the prior written approval of the other party, disclose or use the other party's Confidential Information, except as strictly required for the purposes of performing the Agreement.
- 14.2 Clause 14.1 does not apply to Confidential Information that is:
- (a) in the public domain, other than as a result of a breach of the Agreement;
 - (b) already known by the recipient at the time of disclosure; or
 - (c) received by the recipient from a source other than the discloser in circumstances where such source is entitled to disclose it.
- 14.3 Notwithstanding clause 14.1, the recipient of the other party's Confidential Information ("Recipient") may disclose that Confidential Information:
- (a) to the Recipient's personnel or professional advisors as required to perform the Agreement, provided, however, the person to whom the Confidential Information is disclosed is subject to confidentiality obligations no less restrictive than those contained in the Agreement; or
 - (b) if legally required to be disclosed by the Recipient, provided, however, that the Recipient only discloses the minimum amount of information necessary to comply with the obligation, and notifies the other party as soon as possible after becoming aware that the Recipient is required to disclose the Confidential Information.

15 Intellectual Property

- 15.1 Intellectual Property comprised in the Services and any other equipment or materials used by Interactive to provide the Services are, and remain, owned exclusively by Interactive and / or its third-party service providers.
- 15.2 Subject to clause 15.1, all right, title and interest in any content and data generated solely by the Customer as a direct result of using the Services is retained by the Customer and the Customer grants Interactive a non-exclusive, royalty-free licence to use the content and data to perform the Services.
- 15.3 If any additional third-party software or applications are required to receive the Services, unless otherwise specified in a Statement of Work the Customer is responsible for procuring the rights to such items and for any configuration, interoperability issues, maintenance and storage of the third-party software.

- 15.4 Unless explicitly stated, nothing in the Agreement is intended to give a party any Intellectual Property rights in, or other rights with respect to, any trademark, copyright, business name, logo, trading style, process, methodology or other Intellectual Property of the other party.

16 Privacy and Data Security

- 16.1 Interactive has implemented and will maintain technical and organisational measures to protect Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access. The Customer may request to view Interactive's security controls documentation, which outlines a set of security controls implemented by Interactive across Interactive's environment to manage risks that threaten the confidentiality, integrity and/or availability of Interactive's and customers' data, including Personal Information.
- 16.2 The Cloud Resources are hosted by a third party service provider (which may be a CRP) and the Customer Data will be backed up by that service provider. The Customer acknowledges the third party service provider's security practices will apply to the extent that the Customer Data is under the service provider's control.
- 16.3 Interactive relies on third party service providers in order to deliver the Cloud Services. Accordingly, to the extent that personal information is hosted by or processed through the Cloud Services or is otherwise under the control of any such service provider (including a CRP), it is subject to the relevant service provider's privacy policy.
- 16.4 Interactive reserves the right to remove or disable access to any of the Data that, if Interactive determines in its sole discretion, violates the law or the Agreement, or is adversely affecting the performance of the Cloud Services, or any cloud services provided to Interactive's other customers. Interactive may take these actions without prior notification to the Customer, but will endeavour to provide as much notice as is practicable in the circumstances. The Customer acknowledges that, if Interactive receives a direction from its third party service provider to remove or disable access, Interactive will need to act immediately to comply with that direction.
- 16.5 Interactive or a CRP may use or disclose Data in accordance with the CRP Terms.
- 16.6 To the extent required by any law, the Customer shall:
- (a) Notify the individual users of the Cloud Resources that their personal information may be processed for the purposes of disclosing it to law enforcement or other governmental authorities when required by applicable law as determined by Interactive or the CRP; and
 - (b) Obtain individual users' consent to the same.
- 16.7 The Customer acknowledges that Interactive, or its service providers, are the sole and exclusive owners of all Intellectual Property rights in the Cloud Resources. The Customer undertakes that it will not disassemble, reverse engineer or decompile, nor otherwise create or attempt to create the source code from the object code of the Cloud Resources in any manner. Neither the Agreement nor the Customer's use of Cloud Resources grants the Customer ownership in Cloud Resources, the processes Interactive employs in the Managed Services or the content the Customer accesses through Cloud Resources (other than Customer Data). The Agreement does not grant the Customer any right to use Interactive's or its service providers trademarks, business names or logos.
- 16.8 Interactive complies with the *Privacy Act 1988* (Cth) ("**Privacy Act**") and only processes, uses or discloses Personal Information (as that term is defined in the Privacy Act) received from the Customer for the purposes of performing Interactive's obligations to the Customer in accordance with Interactive's privacy policy, or as required by law.

17 Data Breaches

- 17.1 The Customer shall comply with its obligations under the Privacy Act, including the Notifiable Data Breaches Scheme established under Part IIIC of the Privacy Act.

- 17.2 If Interactive suspects or knows of a data breach, where the Personal Information that is the subject of the breach relates to the Customer (for example, the Customer's own customers or employees), Interactive will undertake the following:
- (a) remain in compliance with the Privacy Act at all times;
 - (b) seek to contain and remedy the data breach to prevent any serious harm occurring to an individual;
 - (c) if there are reasonable grounds to suspect that the data breach is an Eligible Data Breach (as defined in the Privacy Act), Interactive will conduct an assessment in accordance with the Privacy Act;
 - (d) if Interactive believes it cannot remedy the data breach before any serious harm may occur to an individual, Interactive will contact the Customer to discuss the data breach and come to an agreement about how to notify affected individuals and the Australian Information Commissioner ("**Commissioner**"), and which party will notify them;
 - (e) provide all reasonable co-operation to the Customer, the Commissioner and affected individuals in relation to the Eligible Data Breach; and
 - (f) if Interactive believes the Customer and Interactive will not come to an agreement about how to notify affected individuals or the Commissioner, or who will notify them, Interactive will seek direction from the Commissioner about how to proceed and, in those circumstances, will comply with the Commissioner's directions.
- 17.3 If the Customer suspects or knows of a data breach where the Personal Information that is the subject of the breach relates to the Customer's customers or employees and is connected with, or may impact on, an agreement the Customer has with Interactive (for example, if the Customer's data that Interactive hosts is accessed without authorisation), the Customer will undertake the following:
- (a) remain in compliance with the Privacy Act at all times;
 - (b) seek to contain and remedy the data breach to prevent any serious harm occurring to an individual;
 - (c) if there are reasonable grounds to suspect that the data breach is an Eligible Data Breach (as defined in the Privacy Act), the Customer will conduct an assessment in accordance with the Privacy Act;
 - (d) if the Customer believes it cannot remedy the data breach before any serious harm may occur to an individual, the Customer will contact Interactive to discuss the data breach and come to an agreement about how to notify affected individuals and the Commissioner, and which party will notify them; and
 - (e) provide all reasonable co-operation to Interactive, the Commissioner, Interactive's other customers that may be affected and individuals in relation to the Eligible Data Breach.
- 17.4 Interactive and the Customer shall each not notify any affected individuals about an Eligible Data Breach unless:
- (a) each party has approved (in writing) the content of the notification, how to notify affected individuals and the Commissioner, and who will notify them;
 - (b) either party reasonably believes there is a likelihood of serious harm to an affected individual, which requires either or both parties to notify the individual as soon as practicable;
 - (c) directed to by the Commissioner; or
 - (d) required by law to do so.

18 Dispute Resolution

- 18.1 Neither party will commence court proceedings or action against the other party under or in connection with the Agreement unless it has first attempted to resolve the dispute under this clause 18 (subject to clause 18.4).
- 18.2 A party claiming that a dispute has arisen under the Agreement shall give the other party a notice setting out details of the dispute ("Dispute Notice") and, within a period of 5 Business Days after the Dispute Notice is given (or longer period if the parties agree in writing), representatives of the parties must meet and shall use reasonable endeavours to resolve the dispute.
- 18.3 If the dispute is not resolved under clause 18.2, the Chief Financial Officers (or equivalent) of the parties must meet and use reasonable endeavours to resolve the dispute within 10 Business Days after the date of the Dispute Notice. If the dispute is not resolved within 15 Business Days after the date of the Dispute Notice, either party may commence legal proceedings in a court of law.
- 18.4 This clause 18 does not apply where urgent interlocutory relief is required, or where the dispute relates to amounts not paid by the Customer that are not subject to a valid Invoice Dispute Notice in accordance with clause 12.13.

19 Warranties and Indemnities

- 19.1 The parties warrant to each other that they have all necessary licenses and consents to enter into and perform the Agreement.
- 19.2 Except for guarantees that cannot be excluded by law, Interactive provides no warranties, representations or guarantees, and assumes no liability, for any Cloud Resources. Except as specified in the CRP Terms, Cloud Resources and licenses are provided as-is, with no guarantee the Cloud Resources and licenses will be error free, free from harmful content, fit for any particular purpose, or of merchantable or acceptable quality.
- 19.3 The information presented on the Portal is made available for information purposes only. Interactive does not warrant information on the Portal is complete or accurate. Interactive is not liable to the Customer for information on the Portal being incomplete or inaccurate, or for any loss or liability the Customer incurs as a result of the Customer's reliance on the Portal.
- 19.4 Subject to the provisions of clause 20, the Customer and Interactive (each an "Indemnifier") indemnifies the other party (the "Indemnified Party") from any loss or liability incurred by the Indemnified Party that is caused by:
- (a) a material breach of the Agreement by the Indemnifier;
 - (b) the Indemnifier infringing the Intellectual Property of any person; or
 - (c) fraudulent or negligent acts or omissions of the Indemnifier, its officers, employees or agents.
- 19.5 The Indemnifier's liability to indemnify the Indemnified Party is reduced to the extent the Indemnified Party caused or contributed to the event giving rise to the indemnity.
- 19.6 The Customer must not act in any way that would cause Interactive to be in breach of the CRP Terms. The Customer indemnifies and holds Interactive, its officers, employees and contractors harmless from all loss and liability, (including legal and other professional fees incurred) incurred by Interactive in connection with:
- (a) any act or omission by the Customer, its officers, employees or contractors that places Interactive in breach of the CRP Terms;
 - (b) the Customer's use of the Cloud Services; or
 - (c) the Customer's breach of any law.

20 Limitations and Exclusions of Liability

- 20.1 This clause 20 applies to these Public Cloud Terms notwithstanding anything in the Master Services Agreement. Anything in the Master Services Agreement that excludes or limits either party's liability does not apply to limit either party's liability for a breach of these Terms, or in respect of any indemnity that relates to these Terms.
- 20.2 If a warranty, condition or guarantee is implied by the *Competition and Consumer Act 2010* (Cth) or other relevant legislation which may not be excluded, restricted or modified by agreement, then Interactive's liability for any breach of such an implied warranty, condition or guarantee is limited, to the extent permitted at law, solely to the resupply of the relevant Service or the payment to the Customer of the cost of having the Service provided again.
- 20.3 The Customer acknowledges that each CRP excludes and limits liability for provision of their services and Interactive excludes and limits its liability accordingly. Interactive excludes all liability to the Customer, and is not liable to the Customer, for any loss, damage, cost or expense, including direct, indirect, incidental, consequential, punitive, special or exemplary damages arising out of, or that relate to, the Cloud Resources, including in respect of any loss or liability the Customer incurs in connection with:
- (a) the Customer's, use of, access to, or inability to use or access, any Cloud Resources; or
 - (b) unauthorised access to, alteration of, or the deletion, destruction, damage, loss or failure to store, any Data.
- 20.4 To the extent that anything in connection with the Cloud Resources, or a failure, act or omission of one or more CRPs causes Interactive to be in breach of the Agreement and to the extent that Interactive's liability is not excluded by clause 20.3, Interactive's liability is limited in aggregate total to the lesser of:
- (a) whatever loss or damage it is able to recover from the relevant CRP in relation to that failure, act or omission, divided amongst all of Interactive's customers who are also affected by the failure, act or omission on a proportional basis based on the extent of the Cloud Resources purchased by each such customer relative to Interactive's other customers, as determined by Interactive; or
 - (b) the Cloud Resource Fee paid by the Customer to Interactive in the 12 month period immediately preceding the date on which the most recent event giving rise to a cause of action occurred (as agreed or determined by a Court).
- 20.5 If Interactive's liability is not excluded or limited by clause 20.2, 20.3 or 20.4, and Interactive is liable to the Customer under or in relation to the Agreement, Interactive's liability to the Customer for all proven loss and damage is limited, in aggregate total for all liability, to the Management Fee paid by the Customer (or on the Customer's behalf) in the 12 month period immediately preceding the date on which the most recent event giving rise to a cause of action occurred (as agreed or determined by a Court).
- 20.6 To the extent permitted by law and notwithstanding any other provisions of the Agreement, Interactive and its officers, employees, agents or contractors are not liable for any incidental, special, indirect, punitive or consequential damages. For the purposes of this clause and without limitation, loss and liability incurred by the Customer due to downtime costs, lost profits, lost revenue, lost reputation, lost data, loss of use, loss of goodwill and failure to realise anticipated savings are deemed to be consequential damages.
- 20.7 If Interactive provided recommendations to the Customer to rectify or mitigate issues within the Customer's environment, the Customer did not implement the recommendations, and those issues caused or contributed to loss or liability being incurred by the Customer, the Customer irrevocably releases Interactive from, and indemnifies Interactive against, any such loss or liability.
- 20.8 Interactive is not liable to the Customer for, and the Customer irrevocably releases Interactive from all claims arising out of or in relation to, any loss or damage suffered by the Customer, if such loss or damage was caused by the

Customer's business continuity and disaster recovery plan being faulty or inadequate, in that it failed to provide for the usual courses of action that would have prevented such loss or damage.

- 20.9 The limitations and exclusions of liability set out in this clause 20 apply regardless of the cause of action or nature of the claim, whether in common law, equity, contract (including under an indemnity or for breach of warranty), tort (including negligence), breach of statutory obligation or duty, repudiation, anticipatory breach or otherwise whatsoever.

21 Termination

- 21.1 Either party may terminate a Public Cloud Statement of Work, at any time and without penalty, except for payments for Reserved Instances or Savings Plans as required by item 1.6 of Schedule 1 and item 3.5 of Schedule 2, by giving written notice to the other party.

- 21.2 On the expiry or termination of a Public Cloud Statement of Work for any reason:

- (a) the Customer shall pay Interactive all fees and charges for work performed and Services provided; and
- (b) Interactive may retain all fees paid by the Customer to Interactive up to the date of termination.

- 21.3 Interactive may immediately suspend the provision of some or all Cloud Services provided under a Public Cloud Statement of Work, without notice to the Customer, if:

- (a) the Customer materially breaches any of its obligations under the Agreement and fails to remedy such breach within 14 days after receipt of written notice;
- (b) the Customer fails to pay any undisputed Service Fees when due, or fails to promptly pay any disputed Service Fees where the dispute is resolved in favour of Interactive;
- (c) the CRP suspends, disables or terminates all or any part of the Cloud Resources;
- (d) the applicable agreement between Interactive and the CRP is terminated or suspended; or
- (e) the Customer assigns, or purports to assign, its rights in breach of the Agreement, ceases to carry on business, or enters into or threatens to enter into an Insolvency Event.

- 21.4 If Interactive suspends the provision of some or all Cloud Services in accordance with clause 21.2:

- (a) Interactive's rights to terminate this Statement of Work in accordance with clause 21.1 are not prejudiced in any way;
- (b) the Customer is, and remains, liable to pay Interactive all Service Fees for Cloud Services, notwithstanding any suspension; and
- (c) Interactive may recommence the performance of any suspended Cloud Services at any time, at Interactive's sole discretion.

- 21.5 The Customer indemnifies Interactive against any loss or liability (including debt recovery and legal fees on a solicitor and own client basis) incurred by Interactive arising out of or in connection with the exercise by Interactive of its rights under clause 21.2.

- 21.6 Interactive reserves the right to discontinue the Cloud Resources at any time where it is required to do so by the CRP. In those circumstances, if Interactive is unable to transition to a replacement service provider offering a service with similar functionality to the discontinued Cloud Resources, Interactive will give the Customer as much notice as is practicable and provide the Customer with reasonable time to export a copy of the Data from the Cloud Resource to an alternate service and service provider of Customer's choice.

22 Transition Out and Data Retention

- 22.1 If a Public Cloud Statement of Work is terminated for any reason, the parties shall consult and agree on the terms and responsibilities involved in transitioning the Cloud Services to the Customer, or a third party appointed by the Customer. As long as the Customer has paid all amounts owing to Interactive, Interactive may assist the Customer with migration of the Data upon request from the Customer, which will be charged at a rate to be agreed between the parties.
- 22.2 The Customer shall pay Interactive on a time and materials basis (with labour charged at the Standard Charge Out Rate), all costs and charges incurred by Interactive in relation to the transitioning out of the Cloud Services, including any costs for Cloud Resources provisioned during a transition period.
- 22.3 Interactive may delete all Data immediately upon termination of the relevant Public Cloud Statement of Work, subject to clause 22.4.
- 22.4 If, before the relevant Public Cloud Statement of Work is terminated, the Customer makes a request to Interactive in writing for a backup or copy of the Data, Interactive will provide the backup or copy at the Customer's expense (based on the Standard Charge Out Rate), and will not delete the Data until it has provided the backup or copy. The Customer acknowledges the CRP may delete Data in accordance with the CRP Terms.
- 22.5 The Customer must pay for all Cloud Resources provisioned until the Data is deleted and Interactive may require the Customer pay this amount monthly in advance, based on expected provisioning, with a true-up at the end of the month. This clause survives termination of the relevant Public Cloud Statement of Work.

23 Security Deposit

- 23.1 Interactive may require the Customer to provide a security deposit of up to two months' estimated Service Fees payable under a Public Cloud Statement of Work, determined in Interactive's discretion, exercised reasonably (the "Security Deposit").
- 23.2 If Interactive requires a Security Deposit pursuant to clause 23.1 and the Customer does not provide the Security Deposit within 5 Business Days of the request, Interactive may suspend or withhold some or all of the Cloud Services.
- 23.3 If Interactive holds a Security Deposit, it will be held by Interactive on account of Service Fees payable by the Customer, and any other amounts that may become payable by the Customer. Interactive may deduct the Service Fees and other amounts payable from the Security Deposit if the Customer fails to pay any amount when due, or when the relevant Public Cloud Statement of Work is terminated.
- 23.4 The Customer must ensure that the original amount of the Security Deposit is restored within 2 Business Days after Interactive deducts any amount from the Security Deposit.
- 23.5 Interactive will refund the Security Deposit after termination of the relevant Public Cloud Statement of Work, less any deductions permitted by clause 23.3.
- 23.6 The Customer consents to Interactive obtaining credit reporting information about the Customer, at any time, for the purposes of:
- (a) assessing the Customer's credit worthiness; or
 - (b) collecting payments that are overdue in relation to commercial credit provided by Interactive.
- 23.7 If the Customer fails to pay any Service Fees when due, or does not comply with these Terms, or if Interactive believes there is a risk the Customer will not pay Service Fees when due, Interactive may require the pre-payment of Service Fees or may invoice more frequently than monthly.

24 Subcontracting

- 24.1 Interactive may subcontract the Services, provided always that any subcontractor appointed by Interactive is appropriately trained, experienced and qualified to perform the Services. Despite the appointment of any sub-contractor by Interactive, Interactive remains liable to perform its obligations under the Agreement.
- 24.2 Interactive is responsible for the conduct of all sub-contractors appointed by Interactive that perform Services under the Agreement, whether or not the conduct is within the authority conferred on the particular sub-contractor.
- 24.3 For the avoidance of doubt, CRPs are not deemed sub-contractors.

25 Audit

- 25.1 Interactive will allow the Customer to have reasonable access to Interactive's facilities and documentation for the purposes of verifying Interactive's compliance with the terms of the Agreement by way of an audit, provided, however, that:
- (a) the Customer shall give Interactive at least 30 days' prior written notice;
 - (b) the Audit does not extend to the Cloud Resources or CRP;
 - (c) the Customer may only conduct one audit every 12 months, and shall not conduct any audit during the first 12 months it is a customer of Interactive;
 - (d) Interactive's involvement with each audit is for no more than 8 hours, across no more than two consecutive Business Days;
 - (e) the Customer is not permitted to access Interactive's pricing, costing, internal audit reports or other confidential information or data related to Interactive's other customers; and
 - (f) any access the Customer is granted will be limited to those areas of Interactive's facilities and documentation that are directly related to the Services, as determined by Interactive in its discretion, exercised reasonably.
- 25.2 Interactive will provide assistance with audits each year at the Customer's expense. If the Customer requires, and Interactive provides, any such assistance, the Customer shall pay Interactive for each hour of assistance at the Standard Charge Out Rate. The Customer is responsible for all costs incurred in connection with any audit it conducts, or that is conducted on the Customer's behalf.
- 25.3 The Customer shall use reasonable endeavours to ensure that any auditor it engages acts in a manner that minimises inconvenience and disruption to Interactive and its business operations.
- 25.4 The Customer, its auditors and other representatives shall execute and deliver to Interactive such confidentiality and non-disclosure agreements, and shall comply with such security and confidentiality requirements, as Interactive may reasonably require in connection with any audit.
- 25.5 Access to any of Interactive's equipment or facilities may be interrupted or postponed by Interactive without notice if Interactive's other customers experience a disaster.

26 Force Majeure

- 26.1 Neither party will be responsible for any delays or errors in its performance or non-performance of its obligations under the Agreement (except for payment obligations) due to a Force Majeure event.
- 26.2 If the Force Majeure event continues for more than 60 days, either party may terminate the Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by written notice to the other.

26.3 Interactive is not liable to the Customer for any delays, loss or liability suffered by the Customer where a system or the Cloud Services become unavailable due to a communication network failure, or for any reason that is beyond Interactive's control.

27 General

27.1 Each party will appoint one or more contract representatives, who will co-ordinate the performance of that party's obligations and have the authority to approve changes regarding the Agreement on behalf of that party.

27.2 If there is any inconsistency between these Terms, the Schedules to these Terms and a Public Cloud Statement of Work, the agreements will take the following order of precedence:

- (a) Schedules to the Public Cloud Terms.
- (b) Public Cloud Terms.
- (c) Public Cloud Statement of Work, unless it explicitly varies a clause of these Terms or any Schedules, in which case that variation will take precedence.

27.3 The Customer acknowledges that Interactive may vary these Terms at any time by posting an updated version at www.interactive.com.au/cms-terms-and-conditions, or such other URL as may be used by Interactive. It is the Customer's responsibility to monitor the relevant URL for updates, and to comply with these Terms as updated. The updates to these Terms will apply from the version date stated on it. By continuing to use the Cloud Services after that date, the Customer is deemed to have agreed to the updated Terms.

27.4 Interactive does not provide Payment Card Industry Data Security Standard ("PCI-DSS") compliance tiered accreditation as a service. The Customer is solely responsible for its PCI-DSS compliance.

27.5 The Customer does not have any right to set-off amounts it owes Interactive against any amounts owed by Interactive to the Customer including the amount of any claim that the Customer has or may have against Interactive.

27.6 The Agreement prevails over any terms and conditions contained in any Customer documentation, including the Customer's purchase order or other trade documentation.

27.7 The Agreement is governed by the laws of Victoria, Australia and each party submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.

27.8 Each Public Cloud Statement of Work may be signed in any number of counterparts. Each counterpart is an original and, together, all counterparts form one single document. Each Public Cloud Statement of Work may be signed electronically.

27.9 Any notice or other communication to or by a party to the Agreement must be in legible writing and in English and may be delivered by hand, post, facsimile or electronic mail.

27.10 If anything in the Agreement is unenforceable or invalid, it is severed, and the rest of the Agreement remains in force.

27.11 Each party must pay its own legal costs of and incidental to the preparation and completion of the Agreement.

27.12 The Agreement binds and benefits the parties and respective successors and assigns permitted under clause 27.14.

27.13 Capitalised terms defined in these Terms are given the same meaning when used in a Statement of Work.

27.14 The Agreement may not be assigned or novated without the prior written consent of the other party, such consent not to be unreasonably withheld.

- 27.15 A right may only be waived in writing and must be signed by the party giving the waiver, and no other conduct of a party (including a delay in exercising, relaxation of or failure to exercise the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- 27.16 The Agreement contains the entire agreement between the parties concerning the subject matter of the Agreement and supersedes all prior communications, agreements, proposals, work orders or correspondence between the parties.
- 27.17 The provisions of the Agreement that are intended to have, or are capable of having, effect after the expiration or termination of the Agreement (including provisions relating to warranties, indemnities, liability, confidentiality, licence and Intellectual Property rights) remain in full force and effect following termination of all or any part of the Agreement.
- 27.18 Unless otherwise notified in writing by the Customer, the Customer permits Interactive to refer to and use the Customer's name and logo in its marketing materials and promotional activities.

28 DEFINITIONS

- 28.1 Unless the context otherwise requires, words and expressions defined in the Master Services Agreement have the same meaning in these Terms and any terms not defined herein have the meaning set out in the Master Services Agreement.

- 28.2 The following definitions apply to the Agreement:

24 x 7 x 365 means 24 hours per day, every day of the year.

Acceptance Testing means the Customer's testing of the Project to evaluate the Project's compliance with the relevant Public Cloud Statement of Work.

Acceptable Use Policies means the CRP's acceptable use policies that are applicable to the Cloud Resources.

After Hours means hours that are not Business Hours.

Agreement means these Terms and each Public Cloud Statement of Work.

AWS Terms means the agreements, documents or terms, which are available online at the Amazon website, or on request from Interactive, and any other terms or policies referred to in those AWS terms or that apply to the Cloud Resources. AWS Terms includes the following:

- AWS Service Terms: <https://aws.amazon.com/service-terms>
- AWS Customer Agreement: <https://aws.amazon.com/agreement>
- Acceptable Use Policy: at <http://aws.amazon.com/aup>
- Service Levels: <https://aws.amazon.com/legal/service-level-agreements>

Business Day means a day that is not a Saturday, Sunday or a public holiday in the State in which the Services are to be performed.

Business Hours are the hours between 8.30am and 5.30pm, on Business Days, local time in the State in which the Services are to be performed.

Build Stage consists of implementing the Solution; tracking progress against the Project plans; conducting system tests; and providing system access to the Customer to perform migration and Acceptance Testing.

Cloud Resources means the CRP's online services the Customer subscribes to.

Cloud Resource Fee means the Service Fee payable for Cloud Resources.

Cloud Services means the Managed Services, the Cloud Resources and any licensing provided by Interactive.

Commencement Date means the date the relevant Public Cloud Statement of Work commences.

Complex Service Request means a request for additional Cloud Services as defined in the SLA.

Confidential Information means non-public information that relates to the disclosing party's business operations, financial condition, customers, products, services or technical knowledge, including the terms and conditions of the Agreement, except as otherwise specifically agreed in writing by the parties.

CRP means:

- (a) for Microsoft Azure Cloud Resources, the CRP is Microsoft Corporation; and
- (b) for Amazon AWS Cloud Resources, the CRP is Amazon Web Services, Inc.

CRP Terms means the Microsoft Terms, the AWS Terms, and any third party terms (such as a EULA) that apply to provisioned licenses, and **CRP Term** means either one of them.

CSP Customer means a Customer that has accepted Interactive's request for CSP partnership via the Azure Portal, to the extent it procures some or all of its Microsoft Azure Cloud Resources via Interactive.

Customer Location means the location of the Customer offices, as set out in the relevant Public Cloud Statement of Work.

Data means the Customer's data stored on the Cloud Resources.

Direct Customer means a Customer, to the extent that it has a direct relationship with Microsoft for the procurement of Microsoft Azure Cloud Resources, which may be via an Enterprise Agreement.

Due Diligence Stage comprises the Customer providing Interactive with access to its systems and supporting documentation; Interactive auditing the Customer's in scope systems and validating the Customer's performance requirements; and the parties attending joint workshops.

Failure means where Interactive fails to achieve a Service Level in any given month, other than where it is attributed to any excused event referred to in the SLA.

Force Majeure means any circumstances beyond the reasonable control of a party, including natural causes (such as fire, lightning, earthquake, flood, storm), explosion, industrial dispute and acts of terrorism.

GST means the goods and services tax prescribed under the GST Act or any replacement or subsequent similar tax.

GST Act means A New Tax System (Goods and Services) Act 1999 (Cth).

Implementation Fee means the fee of that name as set out in the Public Cloud Statement of Work.

Incident means an unplanned interruption to the standard operation of Cloud Resources that disrupts the quality of the Cloud Resources.

Insolvency Event means, in relation to a party, one or more of the following:

- (a) the party is presumed insolvent under s459C of the *Corporations Act 2001* (Cth);
- (b) a liquidator or controller is appointed in respect of the party or any property of the party; and
- (c) the party entering into a compromise, administration or arrangement with, or assignment for the benefit of, any of its members or creditors, except to reconstruct or amalgamate while solvent.

Intellectual Property means all intellectual property rights, including current and future registered and unregistered rights, in respect of copyright, patent, patent applications, designs, design applications, trade mark, trademark applications, service marks, trade names, business names, eligible layout right or similar right, whether registered or not any invention, discovery, trade secret, know-how, computer software, technical information, Confidential Information, any other rights resulting from intellectual activity in any field and any grant of registration for or title to anything referred to in this paragraph.

Invoice Dispute Notice is defined in clause 12.13.

Managed Services means the management services provided by Interactive for the Cloud Resources under the relevant Public Cloud Statement of Work, as described in the Service Description.

Management Fee means the Service Fee payable for Managed Services, which is a percentage of the Cloud Resource Fee depending on the applicable Tier, as set out in the Rate Card.

Master Services Agreement means the Master Services Agreement referred to in the Public Cloud SOW.

Microsoft Terms means the Microsoft Online Subscription Agreement, Online Service Terms, Microsoft Cloud Agreement, and the Microsoft Service Levels, which are available online at the Microsoft website, or on request from Interactive, and any other terms or policies referred to in those Microsoft terms or that apply to the Cloud Resources. Microsoft Terms includes the following:

- Cloud Agreement: <https://docs.microsoft.com/en-us/partner-center/agreements>
- Online Services Terms:
<https://www.microsoftvolumelicensing.com/Downloader.aspx?documenttype=OST&lang=English>
- Online Subscription Agreement: <https://azure.microsoft.com/en-au/support/legal/subscription-agreement>
- Service Levels: <https://azure.microsoft.com/en-au/support/legal/sla>

Out of Scope Work means any services performed or work provided by Interactive upon request by the Customer that is not included in the Services.

Planned Outage Period means an outage period declared by Interactive or a CRP for any reason, including maintenance requirements on a facility, networks, infrastructure or systems, de-installation of infrastructure, or infrastructure, firmware or software currency upgrades.

Portal means:

- (a) the Interactive portal;
- (b) for Direct Customers, the Microsoft Azure portal and the Interactive portal; or
- (c) AWS Customer portal.

Priority Service Request means a Simple Service Request that has been upgraded in accordance with the process set out in the Service Description.

Project means all work to be performed during the Build Stage under the relevant Public Cloud Statement of Work.

Project Manager means the Interactive or Customer staff member responsible for delivery of the relevant Project.

Public Cloud Statement of Work means the statement of work for Cloud Services entered into between Interactive and the Customer named in that statement of work.

Rate Card means the rate card found at www.interactive.com.au/cms-terms-and-conditions

Reserved Instances means pre-paid Cloud Resources reserved for use by the Customer for the specified period (being either one or three years).

Responsibility Domain means, in relation to a party, equipment or networks owned or managed by the party, or anything provided by a third party engaged by the party.

Restoration means, in relation to a Managed Service, the return to correct operability, which may be achieved by temporary measures, and **Restored** has a corresponding meaning.

Savings Plan means pre-paid Cloud Resources reserved for use by the Customer for the specified period (being either one or three years).

Service Catalogue means the catalogue of Cloud Resources that can be provided by Interactive, as may be updated from time to time.

Service Description means the document found at www.interactive.com.au/cms-terms-and-conditions, containing information about the Managed Services, as may be updated from time to time by Interactive.

Service Desk means the first point of contact between Interactive and the Customer in respect of reporting and communicating Incidents.

Service Fees means the fees for the Services as set out in, or payable in accordance with, the relevant Statement of Work.

Service Level means one of the service levels described in the SLA.

Service Request means a request for service from the Customer, which may be a Simple Service Request or Complex Service Request, that is a move, add, change or delete to the Cloud Services (excluding Incidents).

Service Start Date means the earlier of the date notified by Interactive in accordance with clause 11.2 or 11.12 for the Project, or the date the Customer accepts the results of Acceptance Testing for the Project.

Service Term means the service term set out in the relevant Public Cloud Statement of Work.

SIEM Fee is the fee payable for the SIEM service, as is set out in the Rate Card, which consists of:

- (a) fee per event per second (EPS) per month, for Cloud Resources provisioned in the Enterprise Tier; and
- (b) licence fee per tenancy.

Simple Service Request means a request for additional Services as defined in the SLA.

SLA means Interactive's Service Level Agreement, which is set out at www.interactive.com.au/cms-terms-and-conditions.

Solution means the proof of concept or technical design of the Services contained in the relevant Public Cloud Statement of Work.

Standard Charge Out Rate means the hourly rates set out in the Rate Card.

Tenant Specific Infrastructure means the VNET, VPC, Subnet, Resource Group, Security Groups and Storage Accounts.

Third Party Fault means an Incident affecting Managed Services where:

- (a) the root cause is solely or partly the responsibility of a third party, such as a telecommunications provider;
- (b) the Incident is wholly or partly dependent on a third party for Restoration;

- (c) the Incident is caused by an issue with hardware, networks or software and the vendor or manufacturer of the hardware, network or software has not issued a patch or other fix to remedy the Incident; or
- (d) the Incident is caused by a new or undocumented issue that is inherent in the Services.

Third Party Software means programs or applications created by companies other than Interactive, which Interactive provides or licenses to the Customer in accordance with these Terms, which includes but is not limited to CRP software.

Tier means the level of Managed Services, which may be Base, Essentials, Enhanced, Enterprise, or Self-Managed.

28.1 Interpretation:

- (a) A reference to Cloud Resources being 'provisioned' includes Cloud Resources being consumed for storage and network traffic.
- (b) Any URLs referred to in these Terms may be updated.
- (c) A Customer for Cloud Resources may be a Direct Customer, CSP Customer, or both a Direct Customer and CSP Customer, based on how the Customer's Cloud Resources are provisioned, and must comply with these Terms as applicable.

28.2 In the Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) "including" and similar expressions are not words of limitation;
- (c) clause headings are for convenience only; and
- (d) monetary references are to Australian currency.

Schedule 1 Microsoft Azure Cloud Resources

This Schedule applies to all Microsoft Azure Cloud Resources provisioned by Interactive for or on behalf of the Customer.

1 Reserved Instances (Microsoft Azure)

- 1.1 CSP Customers may order Reserved Instances, which are upfront commitments for certain Microsoft Azure Cloud Resources that are ordered for fixed terms of one or three years (that fixed term is the “RI Period”). At the end of the RI Period, the Reserved Instances will transition to consumption based Microsoft Azure Cloud Resources and will be charged at the then-current rates. Reserved Instances, and the corresponding discount from consumption based pricing, does not automatically renew.
- 1.2 CSP Customers may order Reserved Instances, which are upfront commitments for certain Microsoft Azure Cloud Resources that are ordered for fixed terms of one or three years (that fixed term is the “RI Period”). At the end of the RI Period, the Reserved Instances will transition to consumption based Microsoft Azure Cloud Resources and will be charged at the then-current rates. Reserved Instances, and the corresponding discount from consumption based pricing, does not automatically renew.
- 1.3 Reserved Instances are subject to the pricing and other terms, including as to availability and flexibility, as set out in the Microsoft Terms
- 1.4 Reserved Instances can be purchased as either “Monthly” or “Upfront” with the cost added to the monthly invoice in accordance with the following:
- (a) The Customer shall pay the Cloud Resource Fee for the upfront portion of the “Upfront” Reserved Instances and in the first invoice after the order is placed.
 - (b) The Customer shall pay the Cloud Resource Fee for the “Monthly” purchases in accordance with the monthly invoice.
- 1.5 The Customer shall pay the Management Fee for Reserved Instances monthly, calculated as a percentage of the Cloud Resource Fee in accordance with the following formula:
- $$\text{Management Fee} = \text{Management Fee percentage} * (\text{Cloud Resource Fee for RI Period} / \text{months in RI Period})$$
- To the extent Reserved Instances are charged Monthly, the Management Fee will be charged in accordance with clause 12.4, in addition to the Management Fee payable in respect of the upfront portion.
- 1.6 The Customer may cancel a Reserved Instance during the RI Period by making a Service Request. Once cancelled, or if the relevant Public Cloud Statement of Work is terminated during the RI Period, the Customer must pay Interactive an early termination fee equal to the early termination fee charged to Interactive by Microsoft in respect of that Reserved Instance, regardless of the point during the RI Period that the Customer cancels the Reserved Instance, or the termination takes effect.
- 1.7 Interactive will refund the amount paid for cancelled Reserved Instances, pro-rata with the amount of time left in the RI Period, less the early termination fee. Any such refund is conditional on Interactive receiving a corresponding refund from Microsoft and will be reflected in the next invoice after Microsoft refunds Interactive.
- 1.8 The Customer must pay the Management Fee until the end of the month in which the Customer cancelled the Reserved Instance.

2 Licensing

- 2.1 In respect of Microsoft Azure Cloud Services, the Customer must comply with the applicable CRP Terms as if the Customer were the “Customer” referred to in the terms and Interactive were Microsoft, to the extent applicable.

- 2.2 Microsoft will be an intended third party beneficiary of the relevant Public Cloud Statement of Work, with the right to enforce provisions of the relevant Public Cloud Statement of Work and to verify the Customer's compliance.
- 2.3 The Customer shall not use the Cloud Resources in any application or situation where the failure of the Cloud Resources could lead to death or injury, or to severe physical or environmental damage ("High Risk Use").
- 2.4 CSP Customers acknowledge that Microsoft or its suppliers are not required to provide technical support for the Microsoft Azure Cloud Resources. Interactive will provide support services to the Customer for the Microsoft Azure Cloud Resources.

3 Digital Partner of Record (Microsoft Azure)

- 3.1 The Customer must designate Interactive as the Digital Partner of Record ("DPOR") for all Microsoft Azure Cloud Resources. The Customer authorises Interactive to do all things necessary to designate Interactive as the DPOR on the Customer's behalf.
- 3.2 By designating Interactive as the DPOR, directly or by authorising a third party (including Interactive) to do so, the Customer consents to Microsoft paying fees to Interactive. The fees are for pre-sales support and may also include post-sales support. The fees are based on, and increase with, the size of the Customer's Microsoft Azure Cloud Resources.
- 3.3 Each month (or part of a month) the Customer does not designate Interactive as the DPOR, the Management Fee percentage applicable to Microsoft Azure Cloud Resources will be increased by 10%.

For example, if the Management Fee was 20% of the Cloud Resource Fee for Microsoft Azure Cloud Resources, if the Customer does not identify Interactive as the Microsoft Partner of Record, the Management Fee for those Microsoft Azure Cloud Resources will be increased to 30% of the Cloud Resource Fee.

4 Customer Responsibilities

- 4.1 To receive Microsoft Azure Cloud Resources, the Customer must accept a digital request from Interactive to be Interactive's CSP partner. This will grant Interactive access to administer the Customer's CSP subscription. The Customer acknowledges Project delivery and Cloud Service provisioning cannot commence until Interactive is identified as the CSP partner.
- 4.2 Direct Customers must notify Interactive if the Customer's Microsoft Azure Cloud Resources are suspended, and when the suspension is lifted, to enable Interactive to provide Managed Services. The Customer acknowledges that Interactive will not provide Management Services during any period the Customer's Microsoft Azure Cloud Resources are suspended.

5 Direct Customers

- 5.1 This clause applies to Microsoft Azure Cloud Resources where the Customer is a Direct Customer.

MANAGED SERVICES

- 5.2 Direct Customers may purchase Managed Services for Microsoft Azure online services in the Customer's resource group.

SERVICE LEVELS

- 5.3 Direct Customers must request any rebate under the Microsoft Terms from Microsoft directly. Interactive is not responsible to assist with any rebates that may be payable by Microsoft to Direct Customers.

PORTAL ACCESS

- 5.4 Direct Customers must provide Interactive with log-in details to access the Customer's Portal and access to the EA. Microsoft Portal APIs.
- 5.5 Direct Customers authorise Interactive to:
- (a) manage the Customer's service and subscription on its behalf, and grants Interactive administrator permissions for that service or subscription; and
 - (b) incur spend on the Customer's behalf by making changes to the Customer's Cloud Services with the Customer's Portal details.

CHANGE MANAGEMENT

- 5.6 Direct Customers may move, add, change or delete Microsoft Azure online services in the Customer's resource group via the Portal.
- 5.7 Direct Customers may move, add, change or delete Cloud Resources in Interactive's managed resource group, or adjust the Tier of Managed Services, by making a Service Request.

PAYMENT

- 5.8 Direct Customers will be charged for Cloud Resources by either or both of Microsoft and Interactive.
- 5.9 Direct Customers must pay Interactive the Management Fee that applies to the Cloud Resources provisioned in the previous month.
- 5.10 Direct Customers may view the current Cloud Resources and Cloud Resource Fee on the Portal.
- 5.11 If a Direct Customer revokes Interactive's access to the EA. Microsoft Portal APIs, Interactive may suspend or terminate the Cloud Services and may invoice the Customer for the Managed Services based on an estimate of the Management Fee, determined in Interactive's discretion, exercised reasonably. Any remedies available to Interactive in this clause are without prejudice to Interactive's other rights.

LICENSING

- 5.12 Direct Customers must comply with the licence agreement between the Customer and Microsoft.

6 Data Retention on Termination

- 6.1 Microsoft may delete Data on Microsoft Azure Cloud Resources after termination of the relevant Microsoft Azure Cloud Resources in accordance with the Microsoft Terms. The Customer will have 90 days after termination of the relevant Microsoft Azure Cloud Resources to migrate any of Data to either a new subscription of Microsoft Azure services, or to some other service.

Schedule 2 Amazon AWS Cloud Resources

This Schedule applies to all Amazon AWS Cloud Resources provisioned by Interactive for or on behalf of the Customer.

1 Customer Responsibilities

- 1.1 Customers receiving AWS Cloud Resources must transfer root access of the Customer's AWS account to Interactive.

2 Payment

- 2.1 Amazon AWS Cloud Resources may be priced by Amazon in USD. All Services will be invoiced to the Customer in AUD. If Cloud Resources are priced in USD, Interactive will convert the currency on the last day of the month using the current exchange rate from the Reserve Bank of Australia. The Management Fee will be based on the Cloud Resource Fee after conversion to AUD.
- 2.2 If the USD to AUD exchange rate fluctuates by more than 1% during the Payment Period, resulting in a loss to Interactive in connection with the invoice for the Payment Period, Interactive may invoice the Customer an additional amount in the next month's invoice to account for that loss. In this clause, the **Payment Period** means the period between the date Interactive converts the relevant invoice to AUD and the day the Customer pays Interactive.
- 2.3 The Portal may show a price for Amazon AWS Cloud Resources in USD and AUD, based on a current exchange rate. The Customer acknowledges the AUD pricing on the Portal is indicative only and may not represent the actual amount that Interactive will invoice the Customer, as it will be dependent on current exchange rates.

3 Reserved Instances and Savings Plans

- 3.1 Customers receiving AWS Cloud Resources may order "Reserved Instances" or "Savings Plans," which are each upfront commitments for certain AWS Cloud Resources that are ordered for fixed terms of one or three years (that fixed term is the "AWS RI Period"). At the end of the AWS RI Period, Reserved Instances and Savings Plans transition to consumption based AWS Cloud Resources and will be charged at the then-current rates. Reserved Instances and Savings Plans, and the corresponding discount from consumption based pricing, do not automatically renew.
- 3.2 Reserved Instances and Savings Plans are subject to the pricing and other terms, including as to flexibility, as set out in the AWS Terms.
- 3.3 Reserved Instances and Savings Plans can be purchased either as "No Upfront", "Partial Upfront", or "Full Upfront" with the cost added to the monthly invoice in accordance with the following:
- (a) The Customer shall pay the Cloud Resource Fee for the upfront portion of the "Partial Upfront" and "Full Upfront" Reserved Instances and Savings Plans in the first invoice after the order is placed.
 - (b) The Customer shall pay the Cloud Resource Fee for the "No Upfront", and the remaining portion of "Partial Upfront" Reserved Instance and Savings Plan purchases in accordance with the monthly invoice.
- 3.4 The Customer shall pay the Management Fee for the upfront portion of all Reserved Instances and Savings Plans monthly, calculated as a percentage of the upfront portion of the Cloud Resource Fee in accordance with the following formula:

$$\text{Management Fee} = (\text{Management Fee percentage} * (\text{upfront Cloud Resource Fee for the AWS RI Period} / \text{months in AWS RI Period}))$$

To the extent Reserved Instances or Savings Plans are charged monthly, the Management Fee will be charged in accordance with clause 12.4, in addition to the Management Fee payable in respect of the upfront portion.

- 3.5 AWS Reserved Instance and Savings Plans are non-refundable. The Customer may cancel a Reserved Instance or Savings Plan during the RI Period by making a Service Request (which will reduce the Management Fee in accordance with item 3.6). Once cancelled, or if the relevant Public Cloud Statement of Work is terminated during the AWS RI Period, the Customer must pay Interactive an early termination fee equal to the Cloud Resource Fee payable until the end of the AWS RI Period, regardless of the point during the AWS RI Period that the Customer cancels the Reserved Instance or Savings Plan, or the termination takes effect.
- 3.6 The Customer must pay the Management Fee until the end of the month in which the Customer cancelled the Reserved Instance or Savings Plan.

4 Data Retention on Termination

- 4.1 Amazon may delete Data on Amazon AWS Cloud Resources after termination of the relevant Public Cloud Statement of Work in accordance with the AWS Terms. The Customer will have 30 days from termination of the agreement between Amazon and Interactive to remove Data.