

# Private Cloud Service Terms

These Private Cloud Service Terms (“**Terms**”) contain the terms governing the provision of private 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 CMS SOW (“**Customer**”). The Master Services Agreement applies to these Terms and the CMS SOW.

## 1 Services

- 1.1 Interactive will provide the Services to the Customer that are specified in the CMS SOW.
- 1.2 The Service Descriptions applicable to certain Services are found at [www.interactive.com.au/cms-terms-and-conditions](http://www.interactive.com.au/cms-terms-and-conditions) and are each incorporated into the Agreement if the Service is specified in the CMS SOW.

## 2 Term of Services

- 2.1 Interactive will provide the Services for the Individual Term. The Individual Term commences on the Service Start Date.
- 2.2 Not less than 90 days before the end of the Individual Term or a current Further Term, either party may serve written notice on the other party stating it will not renew the Services. The Services renew for successive terms of 12 months (each successive term being a “**Further Term**”), at the end of the Individual Term and each Further Term if no such notice is served.

## 3 Solution Description

- 3.1 The Services will be delivered to the specifications detailed in the CMS SOW and applicable Service Description, unless otherwise agreed by the parties in writing during Project delivery.
- 3.2 Interactive will provide the Customer with the storage capacity as detailed in the CMS SOW.
- 3.3 All Services will be housed in the Interactive Facility(s) as detailed in the CMS SOW.
- 3.4 The Customer’s data will be hosted and maintained in the tiers of storage specified in the CMS SOW.
- 3.5 Interactive will implement the Data Protection Service detailed in the CMS SOW as follows:
  - (a) Daily and weekly Backups will be performed locally at the Interactive Facility at 24-hour Recovery Points;
  - (b) The Data Protection Service will retain the most recent copies of the Customer’s Backup data on Tier-3 storage for 34 days only;
  - (c) Monthly and yearly Backups will be retained on Tier-4 Storage at a secure offsite facility;
  - (d) Monthly Backups will be retained for 12 months; and
  - (e) Yearly Backups will be retained for the lesser of 7 years or until termination of the CMS SOW.

## 4 System Maintenance

- 4.1 Interactive potentially requires a maintenance window every six months to perform maintenance in accordance with Interactive's change management policy.
- 4.2 Unless excluded in the CMS SOW and subject to clause 4.3, Interactive will apply the following operating system patch updates during maintenance windows agreed with the Customer:
- (a) performance and non-critical security updates, each month or as otherwise agreed to be scheduled; and
  - (b) updates determined by Interactive to be critical, as they are made available to Interactive by the vendor.
- 4.3 Interactive is not liable for any risk associated with a patch or the vulnerabilities the patch intends to fix if the Customer and Interactive have not agreed to a patch window within 30 days of Interactive notifying the Customer about the patch. The Customer shall provide personnel for testing during the patch window as required to test the environment (including applications) after the patch is deployed. Interactive only applies patches made available by operating system vendors and Interactive cannot guarantee the patches will address vulnerabilities or be free from defects.

## 5 Service Desk & NOC

- 5.1 Interactive will provide 24 hour Service Desk and National Operations Centre (NOC) coverage to handle Customer queries and monitor the systems, software and communications that make up the Services.
- 5.2 Interactive will provide appropriately skilled technical support 24 hours per day for the operation and ongoing delivery of the Services in line with the Availability Design detailed in the CMS SOW.

## 6 Monitoring Services

- 6.1 Interactive will provide server monitoring and remediation for all managed servers (physical or virtual) hosted on Interactive's IaaS environment. Alerts that affect performance or availability will be notified to the Customer and remediation will be on a proactive basis.
- 6.2 Interactive and the Customer may agree to expand the monitoring services to include the monitoring of the applications and all external network communications infrastructure for the number of monitoring points detailed in the CMS SOW, if requested by the Customer.

## 7 Antivirus Services

- 7.1 Interactive will provide antivirus services for all managed servers hosted on Interactive's IaaS environment as detailed in the CMS SOW. Alerts that affect security or availability will be notified to the Customer and remediation and antivirus updates will be on a proactive basis.

## 8 Change Management

### **PRIOR TO SERVICE START DATE**

- 8.1 Before the Service Start Date, if either party requests any change to the CMS SOW, that party shall submit to the other party a Project Change Request ("PCR").
- 8.2 The party submitting the PCR shall describe the change, the rationale for the change and the effect the change will have on the Services, Service Fees and operation of the Customer's Equipment in the PCR.
- 8.3 Each party's Project Manager shall review the proposed change and may then either approve it, submit it for further investigation or reject it.

- 8.4 If parties agree to the PCR, they shall sign the PCR and, from the date it is signed, the CMS SOW will be amended according to the changes described in the PCR. If the PCR is not agreed to, the CMS SOW will continue to apply unchanged.

#### **AFTER THE SERVICE START DATE**

- 8.5 After the Service Start Date, if the Customer requests changes to the Services, the Customer may make a request for the changes as follows:
- (a) If the Customer requests changes to items that are listed in the Service Catalogue, Interactive shall provide the changes requested, subject to the limits specified in the Service Catalogue, and the Customer shall pay Interactive the Service Fee set out in the Service Catalogue effective upon activation of the Service item.
  - (b) If the new services are not available in the Service Catalogue, Interactive will consult with the Customer to identify a solution, including how to implement it, and provide a quotation for the new services. If the Customer accepts the quotation in writing, Interactive shall provide those new services as set out in the quotation and the Customer shall pay Interactive the fee set out in the quotation.

## **9 Title**

- 9.1 All title to, and ownership of Interactive's Equipment (if any), remains the property of Interactive. Interactive grants to the Customer for the Service Term, where applicable to the Services, a non-exclusive, royalty free and non-transferable licence, to use Interactive Equipment for the sole purpose of and to the extent necessary for the provision of the Services.
- 9.2 All title to and ownership of the Customer Equipment (if any) remains the property of the Customer. The Customer grants to Interactive for the Service Term, where applicable to the Services, a non-exclusive, royalty free and non-transferrable licence, to use the Customer Equipment for the sole purpose of and to the extent necessary for Interactive to provide the Services to the Customer.
- 9.3 If any On-Prem Interactive Equipment is involved in connection with the Services, the CMS SOW is a security agreement. The Customer grants Interactive a security interest in the On-Prem Interactive Equipment and any proceeds of the On-Prem Interactive Equipment. The Customer acknowledges and accepts that Interactive may be entitled under the *Personal Property Securities Act 2009* (Cth) ("PPSA") and *Personal Property Securities Regulations 2010* (Cth) to register its interests in the On-Prem Interactive Equipment as a purchase money security interest or as a PPS lease (as the case may be) and the Customer waives its rights to receive a copy of any such registration. The Customer shall do everything Interactive reasonably requires to be done to enable Interactive to register, and to exercise its rights in connection with, the security interest. The Customer shall not sell or transfer any interest in the On-Prem Interactive Equipment. Interactive may enter the premises where the On-Prem Interactive Equipment is stored to retrieve the On-Prem Interactive Equipment if the Customer is in breach of its obligations under the Agreement or upon termination of the CMS SOW. In this clause, the terms "PPS lease," "proceeds," "purchase money security interest," "security agreement," and "security interest" have the same meaning as is given to the terms by the PPSA.

## **10 Continued Operations**

- 10.1 If additional services are required by Interactive to ensure the continued operational state and Availability Design of the Services, Interactive may at its discretion add the additional services and thereafter immediately notify the Customer. If the Customer agrees to the additional services, the Customer will be responsible for the fees as detailed in the Service Catalogue at the unit price specified. If the Customer does not agree to the additional services, Interactive will work with the Customer to agree an alternate option within a maximum of five (5) Business Days, and if the Customer cannot

agree to any of the alternatives, either party can refer the matter in accordance with the dispute resolution procedure in the Master Services Agreement.

## 11 Transition Out

- 11.1 If the Services are terminated for any reason, the parties shall consult and agree on the terms and responsibilities involved in transitioning out of the Services to the Customer, or a third party appointed by the Customer. If the Services are validly terminated by the Customer in accordance with the Agreement, Interactive will promptly comply with all reasonable requests and directions of the Customer in order to facilitate the transitioning out of the Services and Customer data so as to cause minimal interruption to ongoing services.
- 11.2 The Customer shall pay Interactive on a time and materials basis (with labour charged at the Standard Charge Out Rate), all reasonable costs and charges incurred by Interactive in relation to the transitioning out of the Services.
- 11.3 Data may only be deleted by Interactive on the specific written request of a duly authorised officer of the Customer, or at the Customer's termination of the CMS SOW.

## 12 Pricing Terms

- 12.1 The Customer shall pay the Service Fee for each Service that is set out in the CMS SOW.
- 12.2 Notwithstanding clause 12.1 the Customer shall pay the monthly Service Fees for each individual Service listed in the CMS SOW from the date it is provisioned, even if all Services have not yet been accepted. Each individual Service is deemed to be provisioned on the earlier of the date notified by Interactive in accordance with clause 15.11 or 16.2 for that Service, or the date the Customer accepts the results of Acceptance Testing for that Service.
- 12.3 The implementation fee for the Services as set out in the CMS SOW is payable by the Customer on the following milestones:
  - (a) 50% upon commencement of Project delivery.
  - (b) 50% on the Service Start Date.
- 12.4 Interactive may adjust the Service Fee annually for each of the Services detailed in the CMS SOW (for the avoidance of doubt, this change applies to both initial and additional Services) by giving no less than 30 days' notice to the Customer.
- 12.5 Interactive may vary the monthly Service Fee when a variation to the Services is necessary due to changes in the Customer's volumes, and this shall occur as either an addendum to the CMS SOW or in accordance with the Change Management Process.
- 12.6 If the Customer's usage exceeds the amounts set out in the CMS SOW, then the Customer will be required to pay an additional Service Fee for the excess usage, which will be added to the following month's invoice.
- 12.7 With respect to any the Third Party Software detailed in the CMS SOW, if the relevant Third Party Software Vendor:
  - (a) increases its licence fees or introduces new licence fees for their products that directly relate to the Services being provided to the Customer, Interactive may increase the Service Fees upon 30 days' written notice from Interactive to the Customer; or
  - (b) issues a billing correction to Interactive that directly relates to the Services, Interactive may issue an additional invoice to the Customer in respect of the billing correction, which may include retrospective Service Fees payable.

## 13 Licensing

- 13.1 The Customer must comply with, and agrees to, the Third Party Licensing Terms.

- 13.2 The Customer shall have appropriate software licensing for all operating systems and applications, except for licenses specifically provided by Interactive as detailed in the CMS SOW.
- 13.3 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 Services.
- 13.4 The Customer warrants it has procured the required licences and rights of use for all software the Customer relies upon for business functionality. The Customer shall pay all costs incurred in complying with this clause, unless otherwise agreed in writing by the parties.

## 14 Partner Associations

- 14.1 The following applies to the extent the Customer consumes Azure cloud resources in connection with the Private Cloud Services:
- (a) The Customer must designate Interactive as the Digital Partner of Record (“DPOR”), Partner Admin Link (“PAL”), Claiming Partner of Record (“CPOR”) or similar, as may be required from time to time (“Partner Association”) to enable Microsoft to recognise Interactive as servicing the Customer’s Microsoft Cloud Environment. The Customer authorises Interactive to do all things necessary to designate Interactive as the relevant Partner Association on the Customer’s behalf.
  - (b) By designating Interactive as the relevant Partner Association, 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.

## 15 Project Delivery

- 15.1 Each party will assign a Project Manager and confirm an expected Project start date.

### **DUE DILIGENCE**

- 15.2 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.
- 15.3 If any issues are identified by Interactive that affect the Solution, the parties may agree to change the Solution in accordance with the Change Management Process (clause 8) or the Assumptions (clause 17).

### **BUILD STAGE**

- 15.4 During the Build Stage, Interactive will liaise with the Customer to develop a detailed design, project plan and project schedule, which may include migration, Acceptance Testing, and cut-over (each where applicable).
- 15.5 Interactive will perform the Build Stage in accordance with the project plan.

### **INFRASTRUCTURE SUPPORT**

- 15.6 At the conclusion of the Build Stage, Interactive will provide support to the Customer, 24 hours a day, 7 days a week for the services detailed in the CMS SOW. The Customer will complete migration, Acceptance Testing, and cut-over (each where applicable) after the Build Stage.

**ACCEPTANCE TESTING**

- 15.7 On completion of the Build Stage for each Service, Interactive will notify the Customer of the date the Customer may commence conducting Acceptance Tests ("Acceptance Test Commencement Date").
- 15.8 The Customer shall complete Acceptance Testing no later than five (5) Business Days after the Acceptance Test Commencement Date.
- 15.9 If the Customer's Acceptance Testing identifies any defects caused by Interactive that prevent the Customer from using the tested Services, 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 15.8 will apply again.
- 15.10 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.
- 15.11 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 all Services have completed Acceptance Testing, or are deemed to have completed Acceptance Testing, Interactive will provide the Customer with a notice informing it of the Service Start Date.

**16 Customer Responsibilities**

- 16.1 The Customer shall:
- (a) provide network links (except those detailed in the CMS SOW);
  - (b) provide application related configuration details for the correct set-up of the server and operating system; and
  - (c) manage the Customer's third parties in relation to migration, Acceptance Testing and cut-over.
- 16.2 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).
- 16.3 The Customer shall not use, attempt to use, or knowingly permit the use of the Services to store or transmit illegal material or in connection with any illegal, abusive or inappropriate behaviour.
- 16.4 The Customer must provide Interactive with a minimum of 5 Business Days' notice of any security testing (including but not limited to penetration testing or denial of service testing) and receive written approval from Interactive prior to proceeding. Without limitation to Interactive's other rights, the Customer's failure to do so will result in any costs associated with responding to any alerts caused by the testing to be charged in accordance with the Standard Charge Out Rates, in addition to the suspension of any availability targets or service levels and any associated penalties. The purpose of this clause is to ensure that the activities of one customer do not affect other customers of Interactive.
- 16.5 The CMS SOW may specify additional Customer responsibilities that apply.

## 17 Assumptions

17.1 Interactive relies on the information provided to it by the Customer to be able to perform the Services as required by this Agreement. If any assumptions made by Interactive or set out in the CMS SOW or these Terms 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 the following:

- (a) altering the Solution, which may require a change in accordance with the 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 Fee and the monthly Service Fees as a result of the alterations to the Project.

17.2 The following assumptions apply if Interactive provides migration services:

- (a) the Customer will allow Interactive to install or upgrade the version of PowerShell & .NET on the Customer's existing servers to be migrated, which may be virtual or physical servers, and enable Interactive to run automation scripts, which may automate removing old agents from and/or adding Interactive's new agents to the servers;
- (b) the Customer will allow Interactive to enable or disable operating system components, such as Microsoft UAC (or similar), on the Customer's existing servers to be migrated to allow certain automation scripts to function; and
- (c) the Customer will whitelist and allow network access to certain URLs, nominated by Interactive, to allow Interactive to run automation tools. Interactive will provide the Customer with information explaining the purpose and security of these URLs on request.

## 18 Services not included – available on time and material basis

18.1 The following works are not included in the Services provided by Interactive, unless specifically detailed in the CMS SOW (the works are excluded, but are available upon request on a time and material basis):

- (a) Installation of application software and third party software patches;
- (b) rectifying or mitigating issues within the Customer's environment, if the issue is caused or contributed to 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;
- (c) implementation of additional security configurations and settings for the server environment as requested by the Customer;
- (d) provide the Customer with relevant information for auditors; and
- (e) monitor and alert on the Customer's application, database, and processes housekeeping routines.

18.2 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.

## 19 Exclusions

19.1 The following items are Out of Scope and are not included in the Services provided by Interactive unless specifically detailed in the CMS SOW:

- (a) support for desktop, laptop, handheld device & smart phone;
- (b) telephone or fax systems;
- (c) cabling infrastructure at the Customer's premises;
- (d) licensing at the Customer's premises;
- (e) management of any devices beyond the scope of this proposal;
- (f) support of all other applications;
- (g) maintaining user accounts and their group memberships in the Active Directory;
- (h) providing application specific firewall rules;
- (i) management of database applications;
- (j) production, test and disaster recovery storage encryption;
- (k) two-factor authentication; and
- (l) end-user support or work at any remote locations.

19.2 The CMS SOW may specify additional exclusions that apply.

19.3 Unless otherwise agreed in the CMS SOW, if Interactive caused loss of, or damage to, Customer data hosted on the Services, Interactive's sole liability for the lost or damaged data is to assist the Customer to restore the lost or damaged data to the last available restoration point.

## 20 Planned Outage Periods

20.1 Planned Outage Periods may be declared by Interactive from time to time for any purposes including:

- (a) maintenance requirements on the Interactive Facility, its networks or systems;
- (b) de-installation of infrastructure; and
- (c) infrastructure, firmware or software currency upgrades.

20.2 Interactive will use reasonable endeavours to give the Customer at least fourteen (14) days' notice of any Planned Outage Periods and provide details of the expected length of any Planned Outage Period.

## 21 Limitation of Obligations – Communications

21.1 Interactive is not liable to the Customer for any delays, loss or liability suffered by the Customer where a system or the Services become unavailable due to a communication network failure, or other such causes, beyond the control of Interactive.

## 22 General

22.1 The Customer acknowledges that Interactive may vary these Terms or any Service Description at any time by posting an updated version at [www.interactive.com.au/terms-and-conditions](http://www.interactive.com.au/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 and each Service Description as updated. The updates to these Terms and each Service Description will apply from the version date stated on it. By continuing to use the Services after that date, the Customer is deemed to have agreed to the updated Terms and Service Descriptions.



## 23 Definitions

23.1 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.

23.2 The following definitions apply to the Agreement:

**Acceptance Testing** or **Acceptance Test** means the Customer's testing of the software or hardware on a complete integrated system to evaluate the systems compliance with the Customer's requirements specified during or prior to the Due Diligence Stage.

**Agreement** means these Terms, the CMS SOW, the Master Services Agreement, and each applicable Service Description.

**Backup** means a copy of the Customer's data.

**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.

**Change Management Process** means the process described in clause 8.

**CMS SOW** means the statement of work for cloud and managed services entered into between Interactive and the Customer named in that statement of work.

**Data Protection Services** means the services provided by Interactive in accordance with clause 3.5.

**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.

**Individual Term** means, for the Services, the individual term set out in the CMS SOW, commencing on the Service Start Date, as extended in accordance with these Terms.

**Interactive Facility** means Interactive's location(s) from which the Services will be provided.

**Implementation Fee** means the Service Fee for the onboarding of each Service, as set out in the CMS SOW.

**Master Services Agreement** means the Master Services Agreement referred to in the CMS SOW.

**Microsoft Software** means Microsoft products provided by Interactive in accordance with the CMS SOW and these Terms.

**On-Prem Interactive Equipment** means Interactive Equipment that is located at the Customer's premises for use by the Customer in connection with the Services.

**Planned Outage Period** means a period during which time the Services may not be available, or that performance of the Services may be impacted.

**Project** means all work to be performed during the Due Diligence Stage, the Build Stage and Acceptance Testing to deliver the Solution to the Customer in accordance with this Statement of Work.

**Project Manager** means the Interactive or Customer staff member responsible for delivery of the CMS SOW.

**Recovery Point** means a recurring scheduled backup operation from which Customers nominated data and / or servers may be restored from.

**Service Catalogue** means the catalogue of services and associated prices for repeatable Services that can be provided by Interactive, as may be updated from time to time.

**Service Description** means the description of, and terms applicable to, certain Services, which are found at [www.interactive.com.au/terms-and-conditions](http://www.interactive.com.au/terms-and-conditions), or such other URL as may be used.

**Service Start Date** means, for the Services, the earlier of the date notified by Interactive in accordance with clause 15.11 or 16.2 for all Services, or the date the Customer accepts the results of Acceptance Testing for all Services.

**Services**, in these Terms, means the private cloud services as described in the CMS SOW, which may be further described in a Service Description.

**Solution** means the proof of concept or technical design of the Services contained in the CMS SOW.

**Third Party Licensing Terms** means the licensing terms available online at <https://www.interactive.com.au/terms-and-conditions>, or such other URL as Interactive may use.

**Third Party Software** means programs or applications created by companies other than Interactive, which Interactive provides or licenses to the Customer in accordance with this Statement of Work, which includes but is not limited to Microsoft Software.

**Third Party Software Vendor** means a company that creates Third Party Software, or supplies Third Party Software to Interactive.

**Tier-3 Storage** means a secured storage location within the Interactive Facility for storing Backups.

**Tier-4 Storage** means a secured storage location within an offsite location for storing Backups.