

Private Cloud Services

Third Party Licensing Terms

These Third Party Licensing Terms ("**Terms**") contain the terms governing the provision of Third Party Software by Interactive Pty Ltd (ABN: 17 088 952 023) of 461 Williamstown Road, Port Melbourne Vic 3207 ("**Interactive**") and the customer ("**Customer**") named in the statement of work for cloud and managed services entered into between Interactive and the Customer named in that statement of work ("**CMS SOW**").

1 General

- 1.1 If the Services include the provision of one or more virtual instances or servers, then the Customer acknowledges that its rights to use operating system software are subject to the usage rights granted by the Third Party Software Vendor and the Customer agrees to abide by such usage rights.
- 1.2 The Customer acknowledges that the Third Party Software Terms may vary at any time without notice and it is the Customer's responsibility to monitor the Third Party Software Terms for updates, and to comply with the relevant Third Party Software Terms (as each are updated).
- 1.3 The Customer:
 - (a) shall not, access, maintain, or otherwise use the Third Party Software, except for the sole purpose of accessing the functionality of the software;
 - (b) shall not permit any unauthorised installation, use, copying or distribution of the Third Party Software;
 - (c) shall not use the Third Party Software in breach or excess of any limitations (e.g. the types, quantities, user limits, time limits, or capacity limits) and other usage attributes related to the associated software licenses;
 - (d) shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Third Party Software and only use logos in accordance with the Third Party Software Vendor guidelines;
 - (e) shall not reverse engineer, decompile, or disassembling any part of the Third Party Software, except to the extent that such activity is expressly permitted by applicable law; and
 - (f) disclaims, to the extent permitted by applicable law, all warranties by Third Party Software Vendors and any liability by Third Party Software Vendors or their suppliers for any damages, whether direct, indirect, or consequential, arising from the use of Third Party Software.
- 1.4 The Customer shall not use the Third Party Software in any application or situation where the failure of the Third Party Software could lead to death or injury, or to severe physical or environmental damage ("High Risk Use").

- 1.5 The Customer will ensure that the Customer's contractual arrangements with their client(s) or customer(s), where relevant, include obligations that are no less onerous than are set out in these Terms. For the avoidance of doubt the Customer's client(s) or customer(s) are considered End Users as defined under the relevant Third Party Software Vendor terms.
- 1.6 Interactive may disclose details to Third Party Software Vendors regarding the Customer's use of Third Party Software, including, but not limited to, the amount of licenses required by the Customer, the Customer's name and address and country in which the Customer is located ("**Details**"). Any Third Party Software Vendor will be an intended third party beneficiary of this Statement of Work, with the right to enforce provisions of this Statement of Work and to verify the Customer's compliance. Where the Customer provides the Services to its client(s) or customer(s), the Customer must collect the Details relevant to the client(s) or customer(s). The Customer will reasonably comply with any reasonable audit requests made by Interactive or a relevant Third Party Software Vendor.
- 1.7 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.
- 1.8 The Customer agrees and acknowledges that Interactive is not liable for any failure of the Third Party Software (including if the Third Party Software is unavailable), or for any failure to provide Services, to the extent the failure is caused or contributed to by the Third Party Software or Third Party Software Vendor.
- 1.9 The Customer indemnifies Interactive against any loss or liability incurred by Interactive in connection with any third party claim relating to:
- (a) any software virus introduced by the Customer;
 - (b) unauthorized installation, use, access, copying, reproduction, and/or distribution of any portion of the Microsoft Software (or any third party providing services to the Customer); or
 - (c) the Customer's use of the Microsoft Software in connection with any High Risk Use.
- The obligations under this clause are not subject to the limitation of liability or exclusion of certain damages under the Master Services Agreement.
- 1.10 If Interactive's agreement with any Third Party Vendor terminates the Customers will no longer have the right to use the Third Party Software. Interactive will use endeavour to provide as much notice of such termination as is reasonably practicable in the circumstances.
- 1.11 The Customer acknowledges that Interactive may vary these Terms at any time by posting an updated version at <https://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 as updated. The updates to these Terms 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.

2 Microsoft

This clause 2 applies if the Customer receives any Microsoft Software.

- 2.1 If the Services include the provision of one or more virtual instances or servers (including outside the Customer's dedicated computing cluster), then the Customer:
- (a) with respect to Microsoft Software, acknowledges that Interactive is a Microsoft certified partner through the Microsoft SPLA Program and accordingly Interactive must supply Microsoft software on Interactive's Microsoft virtual instances;
 - (b) acknowledges that its rights to use operating system software are subject to the usage rights granted by Microsoft and the Customer agrees to abide by such usage rights; and
 - (c) agrees that any software provided by Interactive remains the property of Interactive and must not be transferred or reassigned.
- 2.2 The Customer warrants that it is responsible for obtaining and complying with all Microsoft or other necessary Customer software licences and associated costs and the Customer indemnifies Interactive with respect to same without limitation.
- 2.3 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.
- 2.4 Interactive may disclose details to Microsoft regarding the Customer's use of Microsoft Software, including the amount of licenses required by the Customer, the Customer's name and address and country in which the Customer is located. Microsoft will be an intended third party beneficiary of the CMS SOW, with the right to enforce provisions of the CMS SOW and to verify the Customer's compliance.
- 2.5 In the event that software billable licensing is identified within the Customer's environment, the Customer agrees to pay the applicable Service Catalogue prices for the software, until such time as the Customer provides a valid Software Mobility Licensing Agreement to Interactive.
- 2.6 Educational materials for License Mobility through Software Assurance are available in the program guide located at <http://www.microsoft.com/en-us/licensing/licensing-programs/software-assurance-license-mobility> or at a successor site.
- 2.7 Interactive will cooperate in good faith with Microsoft to investigate and remedy any potential non-compliance Microsoft Terms and may provide Microsoft the following information:
- (a) the number of Windows virtual machine instances provided on behalf of the Customer; and
 - (b) a list of Microsoft Software run in such Windows Virtual machine instances.
 - (c) all copies of its End Users' validated Mobility Verification Forms.
- 2.8 If Microsoft determines that the Customer is non-compliant with the program requirements for License Mobility through Software Assurance, Interactive may terminate hosting of those licenses to the Customer without penalty and without notice.
- 2.9 If the Customer is responsible to obtain and maintain its own licensing for certain software and fails to do so at any point during the Individual Term, and Interactive provided that licensing under its licensing arrangement with the relevant vendor because the Customer's license has expired or is no longer valid, the Customer must pay Interactive the license fees for any such period where Interactive provided the licensing.

For example, if the Customer exercised License Mobility through Software Assurance rights to obtain licensing for Microsoft Software and the Customer loses its verification status with Microsoft, the Customer would be required to pay Interactive the fees for the Microsoft Software licenses for the period the Customer lost its verification status.

- 2.10 The Customer shall comply with Microsoft's End User Licence Terms, which can be requested by the Customer from Interactive and are incorporated by reference into the CMS SOW.
- 2.11 In relation to the CMS SOW, the Customer acknowledges that Microsoft or its suppliers are not required to provide technical support for the Microsoft Software.
- 2.12 Microsoft Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted.
- 2.13 The Customer indemnifies Interactive in respect of any unauthorized installation, use, copying, access, or distribution of Microsoft Software.
- 2.14 Where the Customer's customers receive the benefit of the Services, during the term of the applicable CMS SOW and for a period of two years after its termination, the Customer shall maintain any books, documents, records, papers, or other materials of the Customer related to the provision of Microsoft Software, including any anti-corruption training materials and training completion records (the "Relevant Records"). The Customer agrees that Microsoft or its audit-related agents shall have access to the Relevant Records and Customer's operations, processes and facilities for the purpose of verifying Customer's compliance with the CMS SOW.

3 Red Hat

- 3.1 If Interactive provides any Red Hat licenses, the Customer shall comply with the Cloud Software and Services Agreement set out at: <https://www.redhat.com/en/about/licenses/cloud-cssa> or such other URL used by Red Hat from time to time.

4 VMware

- 4.1 If Interactive provides any VMware licenses, the Customer shall comply with the VMware terms set out at <https://www.vmware.com/download/eula.html> or such other URL used by VMware from time to time; and
- 4.2 The Customer acknowledges and agrees that if the Customer's customers receive the benefit of VMware licenses, the Customer:
 - (a) must be a minimally Enrolled Authorised member of the VMware Partner Connect Program (as defined in the VMware Partner Connect Program) via the following URL: https://vmware.secure.force.com/PartnerForms/PC_PartnerEnrollmentForm ("**Enrolment Process**");
 - (b) must abide by all the terms outlined in the VMware Partner Connect Program Guide and VMware Partner Connect Program Agreements;
 - (c) may only resell VMware licenses to Hosting Customers and must not resell the VMware licenses to any other interim users (i.e. additional cloud providers or resellers). A **Hosting Customer** means a person that will: (a) access the capabilities and functionality of Services; or (b) consume Services, or use Equipment; and
 - (d) must have successfully completed the Enrolment Process prior to use of the Services.

The Customer indemnifies Interactive with respect to any breach by the Customer of this clause.