

HARDWARE PRODUCT SERVICE DESCRIPTION

This Hardware Product Service Description ("Hardware Product Service Description") contains the terms governing the provision of Products by Interactive Pty Ltd ABN: 17 088 952 023 of 461 Williamstown Road, Port Melbourne VIC 3207 ("Interactive") to the Customer named in the CMS SOW (the "Statement of Work").

This Hardware Product Service Description forms part of the Agreement, also containing the Master Services Agreement.

1 Sale and Delivery of Products

- 1.1 The Customer has requested that Interactive purchase and on sell Products to the Customer.
- 1.2 Interactive will purchase the Products from the Third-Party Vendor upon execution of the Statement of Work and deliver the Products to the Customer's Delivery Location.

2 Risk and Title

- 2.1 Risk in the Products passes to the Customer when the Products have been delivered to the Customer.
- 2.2 Upon delivery, the Customer must sign a delivery docket and email Interactive acknowledging receipt of the Products.
- 2.3 Notwithstanding risk in the Products that may have already passed to the Customer in accordance with clause 2.1, title to the Products passes to the Customer only after the Customer has paid all amounts owing to Interactive for the Products.
- 2.4 Until the Customer has paid Interactive all amounts owing:
 - (a) the Customer shall not sell, dispose of, create any interest in, or otherwise seek to transfer title of the Products or purport to do so;
 - (b) if, despite clause 2.4(a), the Customer does dispose of the Products, then such disposal is by the Customer as bailee for and on behalf of Interactive and the Customer shall hold the proceeds on trust for Interactive in an account in Interactive's name;
 - (c) the Customer acknowledges and accepts that Interactive may be entitled under the *Personal Properties Securities Act 2009* (Cth) and *Personal Property Securities Regulations 2010* (Cth) to register its interests in the Products 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; and
 - (d) the Customer must, if required by Interactive, fully cooperate and execute any document (which may include amending the Original Agreement or executing any new document) that in Interactive's opinion, acting reasonably, is necessary to ensure that Interactive is able to register its interests within the time stipulated by Interactive.

3 Warranties, Indemnity and Liability

- 3.1 The following provisions in this clause 3 apply in place of any other provisions regarding warranties, guarantees or liability set out in the Master Services Agreements.

- 3.2 Subject to clause 3.3, all guarantees, warranties, terms, conditions, undertakings, representations or inducements, (a "Relevant Provision") whether express or implied, statutory or otherwise, relating to or connected with this Statement of Work of Work for Products manufactured, published or provided by a Third Party Vendor are excluded to the maximum extent permitted by law. Interactive will use reasonable endeavours to pass through to the Customer to the extent available, any Third Party Vendors, written warranties associated with the Products purchased from Interactive.
- 3.3 If Interactive is unable to exclude a Relevant Provision, but is able to limit the remedy for a breach of the Relevant Provision, then the liability of Interactive for breaching the Relevant Provision is, at the election of Interactive, limited to:
- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods; or
 - (b) in the case of services, the supply of the services again.
- 3.4 Subject to the obligations of Interactive under a Relevant Provision and to the maximum extent permitted by law, the maximum aggregate liability of Interactive for all claims (whether under common law, statute, or tort (including negligence)) under, this Statement of Work, with respect to the Products (including support or licences associated with the Products, if any), and subject to clause is limited to \$1.
- 3.5 Notwithstanding clause 3.4, Interactive will (also) do all things reasonably possible to ensure the Customer receives the benefit of any warranty or remedy actually made available to Interactive regarding the Product from the relevant third party.
- 3.6 To the extent permitted by law and notwithstanding any other provisions of the Agreement, Interactive, the Customer and each of their 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, loss of use, loss of goodwill and failure to realise anticipated savings are deemed to be damages of a consequential nature.
- 3.7 The Customer acknowledges, represents, warrants and agrees that:
- a) Interactive only purchases the Products from the relevant Third Party Vendor to on-sell and deliver them to the Customer, and is not the manufacturer of the Products or provider of any support services or associated licences provided with the Products; and
 - b) notwithstanding anything else, the terms of use for the Products are as set out in the applicable manufacturer terms supplied with the Products (if any), including with respect to warranties and are provided by the Third Party Vendor and not Interactive and is subject to any terms and conditions as made available by the Third Party Vendor, including, but not limited to, licenses, end user license agreements, policies, warranties, ownership of intellectual property, privacy, scope of permitted use and other documentation. The Customer agrees to comply with all such terms and conditions of the Third-Party Vendor. To the maximum extent permitted by law, Interactive makes no representation or commitment, and the Customer agrees Interactive shall have no liability or obligation whatsoever in relation to the contract the Customer has with any such Third Party Vendor;
 - c) it has not relied, and does not rely, upon Interactive regarding the nature or particular characteristics of any Product, the continued provision of any license, support or maintenance associated or included with any Product by any third party or for the Products being available, uninterrupted or error free, meeting the Customer's requirements, or operating with the combination of hardware and software the Customer uses or intends to use;
 - d) Interactive is only required to use reasonable endeavours to (whenever possible) pass on all warranties or the benefit of all warranties provided by the manufacturer of the Products to the Customer; and

- e) it is responsible for ensuring that the Products are suitable for their intended use by the Customer and Interactive is not liable to the Customer for any Product which is unsuitable for its intended use.

4 Payment

- 4.1 The Service Fees are payable upon execution of the Statement of Work unless others detailed in the Statement of Work.
- 4.2 All pricing is exclusive of GST. GST will be charged in addition.
- 4.3 Any shipping costs incurred by Interactive are payable by the Customer in addition to the fees specified in the Statement of Work.
- 4.4 If Interactive provides Out of Scope Work at the Customer's request, the Customer shall pay the applicable Standard Charge Out Rate (either the Business Hours rate or the After Hours rate) for each hour of Out of Scope Work provided.

5 Cancellations and Variations to orders

- 5.1 The Customer shall not cancel or vary the order for the Products without prior written agreement between the parties. If the Customer breaches this clause, the Customer shall pay Interactive the loss and liability incurred by Interactive as a result of the cancellation or variation, including lost profits.

6 Out of Scope

- 6.1 Hardware Installation Services are Out of Scope.
- 6.2 Where the Out-of-Scope Work includes the provision of Hardware Installation Services the particulars of any installation will be mutually agreed in the applicable quotation prior to the performance of the Hardware Installation Services. The Customer may accept the time and materials quotation for the Hardware Installation Services by email and Interactive will provide the relevant Services if the quote is accepted.

7 General Terms

- 7.1 If the Customer requires systems maintenance Services for the purchased Products a separate Systems Maintenance Agreement for those Services must be entered into.

8 Definitions

- 8.1 Definitions:

Delivery Location means the address set out in the Statement of Work that Interactive will deliver the Products to.

Hardware Installation Services means a new piece of hardware will be installed, configured and tested.

Master Services Agreement means a document, including a master services agreement or other head agreement, agreed between Interactive and Customer which sets out (amongst other things) the terms governing provision of the Services, and which is identified in the Contract Details in Schedule 1 or in the absence of such a document the terms and conditions at www.interactive.com.au/terms-and-conditions or such other head agreement between the parties

Products means the products purchased and on-sold by Interactive to the Customer as detailed in the CMS SOW.

Standard Charge Out Rate means the hourly rates charged for Out of Scope Work and those rates are published in the Systems Rate Card at <https://www.interactive.com.au/hwm-terms-and-conditions/> or such other URL as may be used by Interactive from time to time.

Third Party Vendor means a company that manufactures and or sells the Products to Interactive to resell to the Customer.