

License and Support Services - Service Description

This Service Description (“**License and Support Services - Service Description**”) contains the terms governing the on-sale of third-party licensed products and services 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 that applies to this Service Description (“**Customer**”).

This License and Support Services - Service Description forms part of the Agreement, also containing the Master Services Agreement.

1 Provision of Licenses and / or Support Services

- 1.1 Interactive will purchase from the License Vendor and on-sell to the Customer the Licenses and / or the Support Services described in the relevant Statement of Work.
- 1.2 If the License includes Support Services, Interactive will facilitate the transaction of corresponding Support Services from the License Vendor.
- 1.3 Each License Subscription or Support Service will be provided for the Individual Term set out in the CMS SOW commencing on the Service Start Date.
- 1.4 The Customer shall make requests for Support Services directly to the License Vendor unless otherwise agreed to in writing.

2 Delivery and Title

- 2.1 Interactive will order the Licenses and / or Support Services as applicable from the License Vendor upon execution of the CMS SOW and deliver the Licenses electronically to the Customer via the email address provided by the Customer to Interactive.
- 2.2 Notwithstanding anything to the contrary in the relevant Statement of Work, title to the License remains with the applicable License Vendor.

3 License Warranties, Guarantees 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 Agreement.
- 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 a CMS SOW or Licenses manufactured, published or provided by a License 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 License Vendors / written warranties associated with the Licenses 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 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 a CMS SOW, with respect to the Licence and/or Support Services, and subject to clause 3.5, is limited to the greater of (i) \$1; and (ii) any amount actually recovered by Interactive from the Third Party Vendor.
- 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 Licence and/or Support Services 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 Licenses from the License Vendor to on-sell and deliver them to the Customer and is not the manufacturer of the Licenses or provider of the Support Services;
 - (b) notwithstanding anything else, the terms of use for the Licenses and Support Services is provided by the License Vendor and not Interactive and is subject to any terms and conditions as made available by the License 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 License 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 License Vendor;
 - (c) availability of the Licenses is subject to change without notice and Interactive reserves the right to cancel orders without liability to the Customer if the relevant License is discontinued, becomes unavailable in the market or if the License Vendor terminates its agreement with Interactive or the order of the Licence cannot be fulfilled;
 - (d) it has not relied, and does not rely, upon Interactive regarding the nature or particular characteristics of any License or services associated with any Licence, the continued provision of any license, support, services or maintenance associated or included with any License by any third party or for the Licenses 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; and
 - (e) it is buying the Licenses for its own internal business use and not for resale; and

- (f) it is responsible for ensuring that the Licenses are suitable for their intended use by the Customer and Interactive is not liable to the Customer for any License which is unsuitable for its intended use.

4 Payment

- 4.1 Interactive shall invoice the Service Fees relevant to the Licenses and or Support Services annually in advance.
- 4.2 If the License Vendor increases the price at which it supplies the Licenses or Support Services to Interactive, Interactive may alter any applicable charges to reflect such increase accordingly in the first invoice that follows.
- 4.3 If the License Vendor issues a readjustment of the fees to Interactive to account for the Customers overage, Interactive will charge the Customer the readjusted fees based on the then applicable standard rates for the remainder of the relevant Individual Term.
- 4.4 Any price increase or readjustment of the Service Fees by the License Vendor will be invoiced to the Customer. All changes to the Service Fee will be invoiced in advance accounting for the remainder of the Term.

5 General Terms

- 5.1 Interactive may (acting reasonably) vary these Terms or Service Descriptions (as applicable) at any time provided that Interactive notifies the Customer of any proposed material variation in writing no less than 30 days in advance of any such variation and posts an updated version at www.interactive.com.au/terms-and-conditions or such other URL as may be used by Interactive and stated in the notice. The variation to the Terms or relevant Service Description will apply from the version date stated on that document, and by continuing to use the Services after that date, the Customer agrees to the varied Terms or Service Description.
- 5.2 If a variation is proposed in accordance with clause 5.1 that materially and adversely impacts the rights or obligations of the Customer under the relevant Terms or Service Description (including through the imposition of, any fee or charge payable by the Customer beyond anything detailed in the Statement of Work, Master Service Agreement, the Service Terms, or a Service Description but excluding changes required by law or regulatory bodies or third party providers), the Customer may elect to remain on the then current version of the relevant Terms or Service Description (if possible) by giving fourteen (14) days written notice to Interactive. This notice must be given by the Customer to Interactive within thirty (30) days of Interactive notifying the Customer of the proposed variation. Where this election is made by the Customer the parties will sign an executable copy of the last agreed Terms or Service Description.
- 5.3 The implementation, configuration and usage of the Licenses is the Customer's responsibility.
- 5.4 During an Individual Term, the Customer may not downgrade, reduce or remove any of the Services licensed from a third party.
- 5.5 Notwithstanding any other provisions in any other agreement between the parties, the Licenses provided in accordance with this License and Support Services - Service Description via a CMS SOW will not auto renew at the end of the Individual Term. If the Customer requires a renewal of the Licenses, it must provide Interactive with no less than 90 days written notice prior to the end of the Individual Term and the parties will negotiate a renewal of the Licenses in good faith.

6 Definitions

6.1 Definitions

Individual Term (also referred to as Subscription Period) means, the period that the relevant License Subscription or Support Services will be provided for, commencing on the Service Start Date.

License means the Licenses set out in the CMS SOW (which may be either perpetual or a License Subscription).

License Vendor means a company that creates Licenses or supplies Licenses to Interactive to on sell and / or provides Support Services.

License Subscription means the right to use a License or extended features of a License for a specified period of time (Individual Term).

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.

Service Start Date means the activation date of the License Subscription and / or Support Service as notified by Interactive to the Customer.

Support Services means remote technical support provided by the License Vendor to the Customer, if applicable.