

HARDWARE PRODUCT ON SELL SERVICE DESCRIPTION

This Hardware Product On Sell Service Description ("Hardware Product On Sell 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 Systems Statement of Work (the "Statement of Work").

This Hardware Product On Sell 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 that 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 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 or Systems Maintenance 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 this Statement 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 3.5 is limited to the greater of (a) \$1; and (b) 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 Product from the relevant Third Party Vendor.
- 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 delivery of the Products 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 Deployment Services are Out of Scope Work.
- 6.2 Where the Out of Scope Work includes the provision of Deployment Services the particulars of any deployment will be mutually agreed in a separate Statement of Work for the Deployment Services.

7 General Terms

- 7.1 If the Customer requires Systems Maintenance Services for the purchased Products a separate Statement of Work for Systems Maintenance Services must be entered into.
- 7.2 Interactive may (acting reasonably) vary this Service Description 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 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 Service Description.
- 7.3 If a variation is proposed in accordance with the preceding clause that materially and adversely impacts the rights or obligations of the Customer under the 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 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 Service Description.

8 Definitions

- 8.1 Definitions:

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

Deployment 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 of the Statement of Work or in the absence of such a document the terms and conditions at <https://www.interactive.com.au/terms-and-conditions/> or such other head agreement between the parties.

Products means the hardware products purchased and on-sold by Interactive to the Customer as detailed in the Statement of Work.

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/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.