

## ONALERT SERVICES SERVICE DESCRIPTION

This On Alert Services Service Description ("On Alert Services Service Description") contains the terms governing the sales of On Alert Services by Interactive New Zealand Limited (NZBN: 9429031513197) of 461 Williamstown Road, Port Melbourne VIC 3207 ("Interactive") and to the Customer named in the Systems Statement of Work ("Statement of Work") that applies to this Service Description.

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

### 1 Term

- 1.1 Interactive will provide the Services for the Individual Term, the Individual Term commences on the Service Start Date,
- 1.2 Subject to clause 1.3, for planning and pricing and ensuring continuity of service purposes and unless otherwise detailed in the Statement of Work or otherwise agreed in writing:
  - (a) not less than 30 days before the end of the Service Term or a current Further Term of a Statement of Work either party may serve written notice on the other party stating it will not renew the Statement of Work; and
  - (b) if no such notices are served under clause 1.2(a), each Statement of Work renews for successive terms of the lesser of (i) the original contract term; or (ii) 12 months (each successive term being a "Further Term"), at the end of its Service Term and each Further Term
- 1.3 If the Customer is a consumer or small business (as defined by the *Competition and Consumer Act 2010* or the *ASIC Act 2001*):
  - (a) the Customer may serve written notice to terminate a Statement of Work within no less than 30 days at any time after the end of the original Service Term or at any time during a Further Term of a Statement of Work; unless
  - (b) not less than 60 days before the end of the Service Term or a current Further Term of a Statement of Work, Interactive had sent a written notice to the Customer reminding them of the upcoming renewal.

### 2 Services

- 2.1 Prior to the Service Start Date:
  - (a) The Customer will be required to:
    - (i) create an environment for the Product to be installed and install the Product into the environment. Interactive will provide installation instructions and assist the Customer if required.
    - (ii) provide Interactive with:
      - A. confirmation of the serial numbers of the Equipment;
      - B. confirmation of the Location of the Equipment;
      - C. assistance to configure the Equipment to enable the email Alerts to be generated; and
      - D. the name, contact number and email addresses of the Customer nominated personnel who will receive email Alerts from the Service Desk.
    - (iii) Interactive will configure the Customer's Equipment listed in the Equipment List that is to be monitored by the Product to enable email Alerts to be issued to the Interactive Service Desk on a 24 x 7 basis when there is an Incident.

- 2.2 From the Service Start Date Interactive will:
- (a) contact the nominated Customer personnel to advise them of the Incident when an Alert is received by the Service Desk via the Product; and
  - (b) perform the Systems Maintenance Services during the Principal Hours if the Customer requests Interactive perform Systems Maintenance Services for the affected Equipment.
- 2.3 The Customer must provide Interactive with no less than 3 Business Days' written notice of any scheduled maintenance being conducted at a Location that would have the potential to create an Alert.
- 2.4 The OnAlert Service utilises the Third Party Software Vendor's Product. The Customer acknowledges and accepts that the Third Party Software Vendor may request usage reports and or audit Interactive's use of the Product installed at the Location. The Customer agrees to, if requested, and not more than once a year:
- (a) deliver to Interactive usage reports within 20 days of request. The Customer consents to the usage reports being distributed to the Third Party Software Vendor; and
  - (b) upon at least 8 days prior written notice, allow the Third Party Software Vendor to audit the relevant Location to ensure compliance with this Agreement. The Customer agrees to cooperate with such audit and to provide reasonable access to its information and systems during normal business hours.
- 2.5 Interactive grants the Customer limited access to, and use of, the Product subject to the following restrictions:
- (a) The Customer must only use the Product to receive the OnAlert Services from Interactive. The Customer acknowledges that it does not receive a transfer of any licence to the Product.
  - (b) Installation of the Product must be done securely and reasonably sufficiently to prevent the copying of, access to or use of the Product by any unauthorised third party.
  - (c) At the termination of the Statement of Work for the On Alert Services, the Customer must immediately de-install the Product, destroy the media and all documentation associated with the Product, and if requested by Interactive, certify its destruction in writing.
  - (d) The Customer acknowledges and accepts that the following restrictions apply with respect to Intellectual Property rights of the Third Party Software Vendor:
    - (i) The Third Party Software Vendor retains all right, title and interest to the Product, all related Intellectual Property and proprietary rights. The Product and all third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other Intellectual Property laws.
    - (ii) The Product is protected by United States Copyright law and applicable international copyright treaties;
    - (iii) The Customer may not claim or assert title to or ownership of the Product (or modifications thereto) or remove or alter any copyright or any proprietary notice from copies of the Product.
    - (iv) The Customer may not copy, de-compile, disassemble, reverse engineer or attempt to derive the Products source code from object code, except to the extent permitted by applicable law despite this limitation;
    - (v) The Customer must not distribute, sell, rent, lease licence, sublicense, modify, time share, outsource, otherwise use or transfer the products to any third party;
    - (vi) The Customer will use reasonable care and protection to prevent the unauthorised use, copying publication or dissemination of the Product;
    - (vii) The Customer must not modify, delete or remove any ownership, title, trademark, patent or copyright notices from any Product, or copy or partial copy of a Product;

- (viii) The Customer may not export or re-export the Product without both the written consent of Interactive and or the Third Party Software Vendor (as applicable) and the appropriate United States and/or foreign government licence; and
- (ix) The Customer may not use any software, library, utility, tool, or other computer or program code with the Product that in any way that would (i) weaken the Third Party Software Vendors Intellectual Property rights in the Product, or (ii) require the Product to become or be disclosed or distributed as open source software.
- (e) The Customer must not use the Product in an outsourcing or service bureau environment on behalf of non-Affiliate third parties, or allow the products to be used by an outsourcing or service bureau provider on the Customer's behalf (without obtaining prior written approval from Interactive). For the purposes of this clause an Affiliate is an entity that controls, is controlled by or shares common control with the Third Party Software Vendor or Interactive, where such control arises from the legal power to direct or cause the direction of the general management and policies of the company, partnership or legal entity.
- (f) Except for guarantees that cannot be excluded by Law, Interactive otherwise gives no warranties or guarantees that the operation of the Product will be uninterrupted or error free, meet the Customer's requirements, or operate with the combination of hardware and software the Customer intends to use, or will be fit for a particular purpose, merchantable or non-infringing, or that all defects can be corrected.
- (g) The Customer acknowledges that the Product and any third party software provided with the Product is Confidential Information.
- (h) The Product may generate reports to assess the server inventory and dependency mapping of the operating environment of the systems it is deployed on, or similar outputs (the "Outputs"). If the Product does generate Outputs, the Customer agrees and acknowledges that Interactive owns the Outputs.
- (i) The Products may contain hyperlinks to websites not controlled by the Third Party Software Vendor or Interactive. Neither the Third Party Software Vendor nor Interactive is responsible for and does not endorse the content or accept any responsibility for the Customer's use of the websites.
- (j) The Customer agrees and acknowledges that Interactive is not liable for any failure of the Product (including if the Product is unavailable), or for any failure to provide Services, to the extent the failure is caused or contributed to by the Product or Third Party Software Vendor.

### **3 Customer Obligations**

#### **3.1 The Customer shall:**

- (a) ensure that Interactive's personnel have full and safe access to the Equipment during the Principal Hours for the purposes of providing the Services;
- (b) ensure that Interactive's personnel have reasonable access to adequate working space, telephones, electricity and Internet access whilst on site;
- (c) be solely responsible for maintaining a procedure for the backing up and restoration of its own data; and
- (d) promptly provide Interactive with any information that Interactive reasonably requests to enable it to provide the Services.

### **4 Changes**

- 4.1 OnAlert Services may be added or deleted for any Equipment for which Systems Maintenance Services are being provided.

- 4.2 The Customer will give at least 30 days' written notice of its intent to add or delete OnAlert Services and the date the Customer would like the changes to take effect from. If such change is acceptable to Interactive, Interactive will provide a written quote to the Customer setting out the impact of the change on the Service Fees and the terms of the Statement of Work.
- 4.3 Upon acceptance of the quote by the Customer, the Service Fees payable hereunder will be adjusted in accordance with the quotation or as otherwise agreed in writing between the parties and the Equipment that will receive the OnAlert Services will be added to the Equipment List.
- 4.4 Prices related to the deletion of any OnAlert Services will be deleted from the Service Fees after the expiration of the 30-day notice period.
- 4.5 The Customer must assist Interactive to configure the added Equipment.
- 4.6 If Interactive ceases to provide Systems Maintenance Services for an item of Equipment, Interactive will not provide OnAlert Services for that item of Equipment, and the Service Fees will be reduced accordingly.

#### **Other Changes**

- 4.7 The Customer must provide 30 days' written notice before any upgrades to Equipment, change to Location or relocation of devices. If such change is acceptable to Interactive, Interactive will provide a written quote to the Customer setting out the impact of the change on the Service Fees and the terms of this Statement of Work.
- 4.8 Upon acceptance of the quote by the Customer, the Equipment and the Service Fees payable hereunder will be adjusted in accordance with the quotation, or as otherwise agreed in writing between the parties.

## **5 Payment**

- 5.1 Interactive shall invoice Service Fees at the invoice periods described in the Statement of Work and shall invoice for Out of Scope Work and other charges (if any) monthly in arrears, unless otherwise agreed in the Statement of Work.
- 5.2 The Customer shall pay invoices no later than 14 days after the invoice date unless otherwise agreed in the Statement of Work.
- 5.3 The Customer will be charged on a time and materials basis for any parts and labour that may be required for Out of Scope Work.

## **6 Variation**

- 6.1 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 <https://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 the varied Service Description, and by continuing to use the Services after that date, the Customer agrees to the varied the Service Description.
- 6.2 If a variation proposed in accordance with the preceding clause materially and adversely impacts the rights or obligations of the Customer under the this Service Description (including (i) through the imposition of, or increase to, any fee or charge payable by the Customer beyond anything detailed in the Statement of Work, Master Services Agreement, or a Service Description, but excluding changes required by law, regulatory bodies, third party providers, or to the Standard Charge Out Rates), the Customer may elect to remain on the then current version of this 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 Service Description.

## 7 Definitions and Precedence

### 7.1 Definitions

**Alerts** means the identification of potentially problematic or critical event that impairs the hardware operability of the device.

**Equipment** means the physical equipment set out in the Equipment List.

**Equipment List for the purposes of this Service Description** means the list of devices that Interactive will provide the On Alert Services for, as set out in the Statement of Work.

**Systems Maintenance Services** means the preventative and remedial maintenance services described in a Statement of Work.

**Location** means the Customer's site at which the Equipment is located, as set out in the Equipment List.

**Incident** means a hardware failure occurring in relation to an item of Equipment.

**OnAlert Services** means the Equipment monitoring Services to be supplied under the relevant Statement of Work.

**Product** means the software used to generate major and predictive failure Alerts.

**Remedial Maintenance** means the rectification of defects or breakdowns of the Equipment.

**Service Desk** means the point of contact between the Customer and Interactive for the Customer to report Incidents during the term of the Systems Maintenance Services or for receipt of Alerts generated during the term of the OnAlert Service.

**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.

**Support Card Procedure** means Interactive's procedure that the Customer is required to follow when making a call for service to Interactive.

**Third Party Software Vendor** means a company that creates the Product or a supplier of the Product to Interactive.