

## PRODUCTS SERVICE DESCRIPTION

This Products Service Description (“**Products 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 Products Service Description forms part of the Agreement, also containing the Master Services Agreement.

### 1 Sale and Delivery of Products

- 1.1 If the Customer has purchased Hardware Products, Interactive will procure the Products upon execution of the Statement of Work and deliver the Hardware Products described in the Equipment List to the Customer’s Delivery Location.
- 1.2 If the Customer has purchased Licences and/or Support Services Products, Interactive will procure the Licenses and/ or the Support Services Products described in the Equipment List:
  - (a) If the Licence includes Support Services, Interactive will facilitate procurement of corresponding Support Services from the Third Party Vendor.
  - (b) Each Licence Subscription or Support Service will be provided for the Individual Term set out in the relevant Statement of Work commencing on the Service Start Date. Any Licenses provided in accordance with this Products Service Description via a relevant Statement of Work 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.
  - (c) The implementation, configuration and usage of the Licenses is the Customer’s responsibility.
  - (d) During an Individual Term, the Customer may not downgrade, reduce or remove any of the Services licensed from a third party.
  - (e) The Customer may at its option, request Support Services directly to the Third Party Vendor or to Interactive in accordance with the Support Card Procedure. If the request is made to Interactive, Interactive will facilitate the Support from the Third Party.

### 2 Product Standing Offer

- 2.1 Subject to the terms of the Agreement, Interactive makes a standing offer to provide Products in accordance with this Products Service Description.
- 2.2 Each Statement of Work identifies the Initial Order(s) placed under the standing offer and includes pricing, quantities and delivery details.

- 2.3 An executed Statement of Work incorporating this Products Service Description constitutes acceptance of one or more initial orders under this standing offer for the Products (each an Initial Order).
- 2.4 Until revoked in accordance with clause 2.11 the Customer may submit a written request to Interactive for additional Products (an Additional Product Request).
- 2.5 Upon receipt of an Additional Product Request, Interactive may issue a quote. Each quote constitutes an offer capable of acceptance under this standing offer framework.
- 2.6 The Customer may accept a quote by submitting a written purchase order, order form, email confirmation, or other written request agreed between the parties (each a Further Order). For the avoidance of doubt:
- (a) a purchase order is a mechanism for acceptance only; and
  - (b) a Further Order does not constitute a separate Statement of Work.
- 2.7 Each Initial Order and each Further Order forms a separate binding contract under and in accordance with the Agreement and is independent of the others.
- 2.8 Each Initial Order and each Further Order for Products that are Licences has its own separate Service Term and/or Individual Term and, unless expressly stated otherwise, those terms may run concurrently or overlap.
- 2.9 This standing offer does not create any minimum purchase commitment or exclusivity arrangement unless expressly agreed in writing.
- 2.10 Any terms or conditions included in, attached to, referenced by, or generated through a Customer purchase order, procurement portal, electronic purchasing system, supplier onboarding platform or similar process (including any automated or “click through” terms) are expressly excluded and do not apply unless Interactive expressly agrees to them in writing.
- 2.11 Interactive may withdraw or amend this standing offer at any time prior to acceptance of an Initial Order or Further Order by written notice to the Customer. Any withdrawal or amendment does not affect any Initial Order or Further Order already accepted, which remains binding under the Agreement.

### **3 Cancellations and Variations to orders**

- 3.1 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.

### **4 Risk and Title**

#### **HARDWARE PRODUCTS**

- 4.1 Risk in the Hardware Products passes to the Customer when the Hardware Products have been delivered to the Customer and title to the Hardware Product only passes to the Customer upon payment of all amounts owing to Interactive for the Hardware Products.
- 4.2 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 Hardware Products or purport to do so;

- (b) If, despite clause 4.2(a) the Customer does dispose of the Hardware 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 Hardware 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.
- 4.3 Upon delivery, the Customer must sign a delivery docket and email Interactive acknowledging receipt of the Hardware Products.

#### **LICENSE AND SUPPORT SERVICES PRODUCTS**

- 4.4 For Licences and Support Services Products, title to the License remains with the applicable Third-Party Vendor.
- 4.5 Interactive will order the Licences and / or Support Services Products as applicable from the Third-Party Vendor upon execution of the relevant Statement of Work and deliver the Licenses electronically to the Customer via the email address provided by the Customer to Interactive.

## **5 Warranties, Indemnity, Guarantees and Liability**

- 5.1 The following provisions in this clause 5 apply in place of any other provisions regarding warranties, guarantees or liability set out in the Master Services Agreements or Systems Maintenance Agreement.
- 5.2 Subject to clause 5.3, 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.
- 5.3 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.
- 5.4 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 5.5 is limited to the greater of (a) \$1; and (b) any amount actually recovered by Interactive from the Third Party Vendor.
- 5.5 Notwithstanding clause 5.4, 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 Products from the relevant Third Party Vendor.
- 5.6 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.

5.7 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.
- (f) availability of Products that are 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 Third Party Vendor terminates its agreement with Interactive or the order of the Licence cannot be fulfilled; and
- (g) it is buying the Products that are Licenses for its own internal business use and not for resale.

## **6 Payment**

6.1 The Service Fees are payable as follows:

- (a) For Hardware Products upon delivery unless others detailed in the Statement of Work.
- (b) For Licences and/ or Support Services Products either annually in advance or for the total Subscription Period as detailed in the Statement of Work.

6.2 All pricing is exclusive of GST. GST will be charged in addition.

6.3 Any shipping costs incurred by Interactive are payable by the Customer in addition to the fees specified in the Statement of Work.

6.4 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.

- 6.5 If the Third Party Vendor issues a readjustment of the fees for any Licences and/or Support Services Products 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.
- 6.6 Any price increase or readjustment of the Service Fees for Licences and/or Support Services Products 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.

## 7 Out of Scope

- 7.1 Deployment Services and Systems Maintenance Services are deemed Out of Scope Work.
- 7.2 Where the Out of Scope Work includes the provision of Deployment Services or Systems Maintenance Services the particulars of any deployment will be mutually agreed in a separate Statement of Work.

## 8 General Terms

- 8.1 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 [www.interactive.com.au/terms-and-conditions](http://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.
- 8.2 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.

## 9 Definitions

- 9.1 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.

**Equipment List** means the applicable list set out in the Statement of Work, comprising Licences (with or without Support Services) and/or Hardware.

**Hardware Products** means physical information technology equipment and components.

**Individual Term (also referred to as Subscription Period)** only relates to Licence and/or Support Services Products and not Hardware Products and means the period that the relevant License Subscription or Support Services will be provided for, commencing on the Service Start Date.

**License and/or Support Services Products** means the Licenses set out in the Equipment List (which may be either perpetual or a License Subscription).

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

**Products** means the Licence and/or Support Services products or the Hardware products as applicable that is purchased and on-sold by Interactive to the Customer as detailed in the Statement of Work.

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

**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 Services** (also referred to as maintenance services) means remote technical support provided by the Third Party Vendor to the Customer, if applicable.

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

**Third Party Vendor** means a third party that, as applicable, supplies or supports Licences or manufactures or supplies Hardware for resale by Interactive to the Customer.