

Third Party Licensing Terms

These Third Party Licensing Terms (“Terms”) contain the terms governing the provision of Third Party Software and Third Party Licences by Interactive Pty Ltd (ABN: 17 088 952 023) of 461 Williamstown Road, Port Melbourne Vic 3207 (“Interactive”) and the customer (“Customer”) named in the statement of work for cloud and managed services entered into between Interactive and the Customer named in that statement of work (“CMS SOW”).

1 Definitions

1.1 Unless the context otherwise requires, words and expressions defined in the Master Services Agreement have the same meaning in these Terms and any terms not defined herein have the meaning set out in the Master Services Agreement.

1.2 The following definitions apply to the Agreement:

Third Party Licence means the legal rights granted by a Third Party Software Vendor to use the Third Party Software, including any usage metrics, restrictions, duration, and conditions.

Third Party Licence Terms means the licence rights, entitlements, restrictions, metrics, duration, and conditions under which a Customer is permitted to use Third Party Software, as granted by the relevant Third Party Software Vendor.

Third Party Software means programs or applications created by companies other than Interactive.

Third Party Software Vendor means a company that creates Third Party Software, supplies Third Party Software to Interactive, or grants or supplies licences to use that Third Party Software.

Third Party Software Terms means the terms and conditions, end user licence agreements, usage policies, and other contractual documents imposed by a Third Party Software Vendor governing the use of Third Party Software, as amended from time to time.

Third Party Terms means the Third Party Licence Terms and the Third Party Software Terms.

2 General

2.1 If the Services include the provision of one or more virtual instances or servers, then the Customer acknowledges that its rights to use operating system software are subject to the usage rights granted by the Third Party Software Vendor and the Customer agrees to abide by such usage rights.

2.2 The Customer acknowledges that the Third Party Terms may vary at any time without notice and that this is beyond Interactive’s control and therefore the Customer agrees that it is the Customer’s responsibility to monitor the Third Party Terms for updates, and to comply with the relevant terms (as each are updated).

2.3 The Customer:

- (a) shall not, access, maintain, or otherwise use the Third Party Software, except for the sole purpose of accessing the functionality of the software;
 - (b) shall not permit any unauthorised installation, use, copying or distribution of the Third Party Software;
 - (c) shall not use the Third Party Software in breach or excess of any limitations under the applicable Third Party Terms (e.g. the types, quantities, user limits, time limits, or capacity limits) and other usage attributes related to the associated Third Party Licences or Third Party Software;
 - (d) shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Third Party Software and only use logos in accordance with the Third Party Software Vendor guidelines;
 - (e) shall not reverse engineer, decompile, or disassembling any part of the Third Party Software, except to the extent that such activity is expressly permitted by applicable law; and
 - (f) disclaims, to the extent permitted by applicable law, all warranties by Third Party Software Vendors and any liability by Third Party Software Vendors or their suppliers for any damages, whether direct, indirect, or consequential, arising from the use of Third Party Software.
- 2.4 The Customer shall not use the Third Party Software in any application or situation where the failure of the Third Party Software could lead to death or injury, or to severe physical or environmental damage ("High Risk Use").
- 2.5 The Customer will ensure that the Customer's contractual arrangements with their client(s) or customer(s), where relevant, include obligations that are no less onerous than are set out in these Terms. For the avoidance of doubt the Customer's client(s) or customer(s) are considered End Users as defined under the relevant Third Party Terms.
- 2.6 Interactive may disclose details to Third Party Software Vendors regarding the Customer's use of Third Party Software, including, but not limited to, the amount of licenses required by the Customer, the Customer's name and address and country in which the Customer is located ("**Details**"). Any Third Party Software Vendor will be an intended third party beneficiary of this Statement of Work, with the right to enforce provisions of this Statement of Work and to verify the Customer's compliance. Where the Customer provides the Services to its client(s) or customer(s), the Customer must collect the Details relevant to the client(s) or customer(s). The Customer will reasonably comply with any reasonable audit requests made by Interactive or a relevant Third Party Software Vendor.
- 2.7 Except for guarantees that cannot be excluded by law, Interactive expressly disclaims all guarantees and warranties, whether express, implied or otherwise, including without limitation, guarantees of merchantability, quality and fitness for a particular purpose in respect of the Third Party Software. Interactive does not guarantee or warrant that the Third Party Software will be available, uninterrupted or error free, meet the Customer's requirements, or operate with the combination of hardware and software the Customer intends to use, including Services provided by Interactive.
- 2.8 The Customer agrees and acknowledges that Interactive is not liable for any failure of the Third Party Software (including if the Third Party Software is unavailable), or for any failure to provide Services, to the extent the failure is caused or contributed to by the Third Party Software or Third Party Software Vendor. For the avoidance of doubt, any failure of the Services arising from the Customer's failure to obtain, maintain, or comply with applicable Third Party Licences will be treated as a licensing compliance issue, not a failure of the Third Party Software itself.
- 2.9 The Customer indemnifies Interactive against any loss or liability incurred by Interactive in connection with any third party claim relating to:

- (a) any software virus introduced by the Customer;
- (b) unauthorized installation, use, access, copying, reproduction, and/or distribution of any portion of the Microsoft Software (or any third party providing services to the Customer); or
- (c) the Customer's use of the Microsoft Software in connection with any High Risk Use.

The obligations under this clause are not subject to the limitation of liability or exclusion of certain damages under the Master Services Agreement.

- 2.10 If Interactive's agreement with any Third Party Vendor terminates the Customers will no longer have the right to use the Third Party Software under the applicable Third Party Licence. Interactive will use endeavour to provide as much notice of such termination as is reasonably practicable in the circumstances.
- 2.11 Interactive may (acting reasonably) vary these Terms 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 relevant Terms 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.
- 2.12 If a variation is proposed in accordance with clause 2.11 that materially and adversely impacts the rights or obligations of the Customer under the Terms (including through the imposition of, or increase to, any fee or charge payable by the Customer beyond anything detailed in a Statement of Work, Master Services Agreement, these Terms, 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 Terms (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.
- 2.13 For the avoidance of doubt, references to software relate to the relevant software product, and references to licensing relate to the legal rights to use that software, which are governed by the applicable Third Party Terms.

3 Microsoft

This clause 3 applies if the Customer receives any Microsoft Software.

- 3.1 The Customer warrants that it is responsible for obtaining and complying with all Microsoft or other necessary Customer software licences and associated costs and the Customer indemnifies Interactive with respect to same without limitation.
- 3.2 If the Services include the provision of one or more virtual instances or servers (including outside the Customers dedicated computing cluster), then the Customer:
- (a) with respect to Microsoft Software, acknowledges that Interactive is a Microsoft certified partner through the Microsoft SPLA Program and accordingly Interactive must supply Microsoft software on Interactive's Microsoft virtual instances;
 - (b) acknowledges that its rights to use operating system software are subject to the usage rights granted by Microsoft and the Customer agrees to abide by such usage rights; and

- (c) agrees that any software provided by Interactive remains the property of Interactive and must not be transferred or reassigned.
- 3.3 Interactive performs automated collection of installed licensable applications on a scheduled basis. The Customer agrees that it will not mask, and or attempt to obfuscate the collection of software inventory data from within the Windows® Registry, which is used solely for software compliance purposes.
- 3.4 Interactive may disclose details to Microsoft regarding the Customer's use of Microsoft Software, including the amount of licenses required by the Customer, the Customer's name and address and country in which the Customer is located. Microsoft will be an intended third party beneficiary of the CMS SOW, with the right to enforce provisions of the CMS SOW and to verify the Customer's compliance.
- 3.5 In the event that software billable licensing is identified within the Customer's environment, the Customer agrees to pay the applicable Service Catalogue prices for the software, until such time as the Customer provides a valid Software Mobility Licensing Agreement to Interactive.
- 3.6 Educational materials for License Mobility through Software Assurance are available in the program guide located at <http://www.microsoft.com/en-us/licensing/licensing-programs/software-assurance-license-mobility> or at a successor site.
- 3.7 Interactive will cooperate in good faith with Microsoft to investigate and remedy any potential non-compliance Microsoft Terms and may provide Microsoft the following information:
- (a) the number of Windows virtual machine instances provided on behalf of the Customer; and
 - (b) a list of Microsoft Software run in such Windows Virtual machine instances.
 - (c) all copies of its End Users' validated Mobility Verification Forms.
- 3.8 If Microsoft determines that the Customer is non-compliant with the program requirements for License Mobility through Software Assurance, Interactive may (if required by Microsoft) terminate hosting of those licenses or the associated Third Party Licences to the Customer without penalty and without notice.
- 3.9 If the Customer is responsible to obtain and maintain its own licensing for certain software and fails to do so at any point during the Individual Term, and Interactive provided that licensing under its licensing arrangement with the relevant vendor because the Customer's license has expired or is no longer valid, the Customer must pay Interactive the license fees for any such period where Interactive provided the licensing.
- For example, if the Customer exercised License Mobility through Software Assurance rights to obtain licensing for Microsoft Software and the Customer loses its verification status with Microsoft, the Customer would be required to pay Interactive the fees for the Microsoft Software licenses for the period the Customer lost its verification status.
- 3.10 The Customer shall comply with Microsoft's End User Licence Terms, which can be requested by the Customer from Interactive and are incorporated by reference into the CMS SOW.
- 3.11 In relation to the CMS SOW, the Customer acknowledges that Microsoft or its suppliers are not required to provide technical support for the Microsoft Software.
- 3.12 Microsoft Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted.
- 3.13 The Customer indemnifies Interactive in respect of any unauthorized installation, use, copying, access, or distribution of Microsoft Software.

- 3.14 Where the Customer's customers receive the benefit of the Services, during the term of the applicable CMS SOW and for a period of two years after its termination, the Customer shall maintain any books, documents, records, papers, or other materials of the Customer related to the provision of Microsoft Software, including any anti-corruption training materials and training completion records (the "Relevant Records"). The Customer agrees that Microsoft or its audit-related agents shall have access to the Relevant Records and Customer's operations, processes and facilities for the purpose of verifying Customer's compliance with the CMS SOW.

4 Red Hat

- 4.1 If Interactive makes available to the Customer or arranges access to any Red Hat licenses, the Customer shall comply with the Cloud Software and Services Agreement set out at: <https://www.redhat.com/en/about/licenses/cloud-cssa> or such other URL used by Red Hat from time to time.

5 VMware by Broadcom

- 5.1 If Interactive makes available to the Customer or arranges access to any VMware licenses, the Customer shall comply with the Broadcom VMware terms set out at <https://www.broadcom.com/company/legal/licensing> or such other URL used by Broadcom from time to time; and
- 5.2 The Customer indemnifies Interactive with respect to any breach by the Customer of this clause 5.