

MASTER SERVICES AGREEMENT

This Master Services Agreement contains the terms governing the provision of services by Interactive New Zealand Limited NZBN: 9429031513197 Pty Ltd of 461 Williamstown Road, Port Melbourne VIC 3207 ("**Interactive**") and you, if you are a Customer who has entered into a Statement of Work with Interactive or are the recipient of Services. By agreeing to a Statement of Work, the Customer agrees to this Master Services Agreement

1 Services and Term

- 1.1 Interactive will provide the Services to the Customer utilising all reasonable skill and care.
- 1.2 A Statement of Work and this Master Services Agreement, as it applies to that Statement of Work, have effect on and from the date of the Statement of Work and continue for the Term.
- 1.3 Subject to clause 1.4, 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 1.3(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.
- 1.4 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 Termination

- 2.1 The Customer may immediately terminate a Statement of Work, by giving written notice to Interactive, if Interactive:
 - (a) materially breaches this Agreement and fails to remedy such breach within 30 days after receipt of written notice;
 - (b) assigns or purports to assign its rights in breach of the Agreement, or ceases to carry on business; or
 - (c) enters into or threatens to enter into an Insolvency Event.

- 2.2 Unless otherwise agreed in a Statement of Work, due to pricing and service delivery factors, if the Customer terminates or repudiates a Statement of Work for any reason, other than the circumstances detailed above in clause 2.1, before the end of the Term of that Statement of Work, or if Interactive terminates a Statement of Work in accordance with clause 2.3 before the end of the Term of that Statement of Work, then the Customer must pay to Interactive all Service Fees for the remainder of the Term of that Statement of Work, which represents a genuine pre-estimate of Interactive's losses.**
- 2.3 Interactive may immediately terminate or suspend a Statement of Work or Service, in whole or part, and any other Statement of Work, by giving written notice to the Customer, if the Customer:
- (a) materially breaches this Agreement and fails to remedy such breach within 30 days after the date of written notice;
 - (b) fails to pay any undisputed Service Fees within 30 days from the date of written notice of non-payment issued by Interactive, or fails to promptly pay any disputed Service Fees where the dispute is resolved in favour of Interactive either under clause 7 or otherwise;
 - (c) assigns or purports to assign its rights in breach of the Agreement, or ceases to carry on business; or
 - (d) enters into or threatens to enter into an Insolvency Event.
- 2.4 If Interactive suspends the provision of some or all Services in accordance with clause 2.3:
- (a) Interactive's rights to terminate the relevant Statement of Work are not prejudiced in any way;
 - (b) the Customer is and remains liable to pay Interactive all Service Fees, notwithstanding any suspension; and
 - (c) Interactive may recommence the performance of any suspended Services upon the Customer rectifying its breach.
- 2.5 Termination or suspension of a Statement of Work does not (subject to Interactive's rights to suspend provision of Service under other Statements of Work affect the validity of any other Statement of Work or this Master Services Agreement.
- 2.6 The Customer indemnifies Interactive against any cost or expense (including debt recovery and legal fees on a solicitor and own client basis) incurred by Interactive arising out of or in connection with Interactive exercising its rights under clause 2.3(b).

3 Payment

- 3.1 Interactive shall invoice Service Fees monthly in advance and shall invoice for consumables, Out of Scope Work and other charges (if any) monthly in arrears, unless otherwise agreed in a Statement of Work.
- 3.2 The Customer shall pay invoices no later than 14 days after the invoice date unless otherwise agreed in a Statement of Work.
- 3.3 The Customer shall pay Interactive the Standard Charge Out Rate for each hour of Out of Scope Work, plus expenses incurred by Interactive to provide materials required to perform the Out of Scope Work.
- 3.4 All Service Fees and other charges are exclusive of GST, unless expressed otherwise.
- 3.5 Unless otherwise agreed in a Statement of Work, Interactive may charge the Customer interest on overdue amounts at the rate equivalent to the Official Cash Rates published by the Reserve Bank of New Zealand, in addition to Interactive's other rights.

- 3.6 Unless otherwise agreed in a Statement of Work, Interactive may adjust the Service Fees annually by giving the Customer at least 90 days' written notice and the increase applied will be the greater of:
- (a) the Consumer Price Index for the prevailing 3 months; or
 - (b) an increase in operating costs, changes in existing laws or new laws, changes in contractual arrangements or costs with third-party providers, and an increase in the costs of materials any of which directly or indirectly increase the cost of supplying the Services under this Agreement.
- 3.7 The Customer may only dispute all or any part of the amount of an invoice if the Customer provides Interactive with a written notice no later than 14 days after the date of the invoice, which identifies the invoice line item being disputed and details the basis for each disputed line item (that notice is an **"Invoice Dispute Notice"**). The parties shall use reasonable efforts to resolve valid Invoice Dispute Notices. If the parties are unable to resolve the dispute within 10 Business Days after the date of an Invoice Dispute Notice, either party may refer the matter for dispute resolution under clause 7.
- 3.8 The Customer may withhold amounts specified in an Invoice Dispute Notice but must pay all undisputed amounts in accordance with clause 3.2. Once the dispute is resolved, the Customer shall pay, or Interactive shall credit, as the case may be, amounts due within 14 days after resolution of the dispute.

4 Taxes

- 4.1 In this clause 4, words have the same meaning as in the GST Act, unless the context otherwise requires.
- 4.2 The Customer shall pay taxes (including GST), duties, imposts or levies (with the exception of income tax levied against Interactive) in connection with, the Agreement, in addition to any other amounts payable under the Agreement.
- 4.3 If there is an introduction of a new or an increase to an existing tax, duty, impost or levy by the Government (excluding income tax changes), the Service Fees shall be adjusted by an amount equal to the amount of the increase.
- 4.4 If GST is imposed on any taxable supply in connection with the Agreement, the recipient must pay to the supplier the amount of GST in addition to, and at the same time as, payment for the taxable supply following receipt of a tax invoice.

5 Insurance

- 5.1 Interactive will maintain professional indemnity and public liability insurance of \$20M in the aggregate.
- 5.2 The Customer will maintain insurance covering its Equipment, for reasonable types and amounts.
- 5.3 Each party will provide copies to the other of current certificates of currency upon request.

6 Confidentiality and Intellectual Property

- 6.1 Each party must keep confidential all of the Confidential Information of the other party and must not, without the prior written approval of the other party, disclose or use the other party's Confidential Information, except as strictly required for the purposes of performing the Agreement.

- 6.2 Clause 6.1 does not apply to Confidential Information that is:
- (a) in the public domain, other than as a result of a breach of the Agreement;
 - (b) already known by the recipient at the time of disclosure; or
 - (c) received by the recipient from a source other than the discloser in circumstances where such source is entitled to disclose it.
- 6.3 Notwithstanding clause 6.1, the recipient of the other party's Confidential Information ("Recipient") may disclose that Confidential Information:
- (a) to the Recipient's Personnel or professional advisors as required to perform the Agreement, provided, however, the person to whom the Confidential Information is disclosed is subject to confidentiality obligations no less restrictive than those contained in the Agreement; or
 - (b) if legally required to be disclosed by the Recipient, provided, however, that the Recipient only discloses the minimum amount of information necessary to comply with the obligation, and notifies the other party as soon as possible after becoming aware that the Recipient is required to disclose the Confidential Information.
- 6.4 Intellectual Property comprised in the Services and any other equipment or materials used by Interactive to provide the Services are, and remain, owned exclusively by Interactive and / or its third-party service providers.
- 6.5 Subject to clause 6.4, all right, title and interest in any content and data generated solely by the Customer as a direct result of using the Services is retained by the Customer and the Customer grants Interactive a non-exclusive, royalty-free licence to use the content and data to perform the Services.
- 6.6 If any additional third-party software or applications are required to receive the Services, unless otherwise specified in a Statement of Work the Customer is responsible for procuring the rights to such items and for any configuration, interoperability issues, maintenance and storage of the third-party software.
- 6.7 Unless explicitly stated, nothing in the Agreement is intended to give a party any Intellectual Property rights in, or other rights with respect to, any trademark, copyright, business name, logo, trading style, process, methodology or other Intellectual Property of the other party.

7 Dispute Resolution

- 7.1 Neither party will commence court proceedings or action against the other party under or in connection with the Agreement unless it has first attempted to resolve the dispute under this clause 7 (subject to clause 7.4).
- 7.2 A party claiming that a dispute has arisen under the Agreement shall give the other party a notice setting out details of the dispute ("Dispute Notice") and, within 5 Business Days after the Dispute Notice is given (or longer if the parties agree in writing), representatives of the parties must meet and shall use reasonable endeavours to resolve the dispute.
- 7.3 If the dispute is not resolved under clause 7.2, the Chief Financial Officers (or equivalent) of the parties must meet and use reasonable endeavours to resolve the dispute within 10 Business Days after the date of the Dispute Notice. If the dispute is not resolved within 15 Business Days after the date of the Dispute Notice, either party may commence legal proceedings.
- 7.4 This clause 7 does not apply where urgent interlocutory relief is required, or where the dispute relates to amounts not paid by the Customer that are not subject to a valid Invoice Dispute Notice in accordance with clause 3.7.

8 Force Majeure

- 8.1 Neither party will be responsible for any delays or errors in its performance or non-performance of its obligations under the Agreement (except for payment obligations) due to a Force Majeure event.
- 8.2 If the Force Majeure event continues for more than 60 days, either party may terminate the Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by written notice to the other.

9 Warranties and Indemnities

- 9.1 Each party warrants to the other that they have all necessary licenses and consents to enter into and perform the Agreement.
- 9.2 Subject to the provisions of clause 10, the Customer and Interactive (each an "Indemnifier") indemnifies the other party (the "Indemnified Party") from any loss or liability incurred by the Indemnified Party that is caused by:
- (a) a material breach of the Agreement by the Indemnifier;
 - (b) the Indemnifier infringing the Intellectual Property of any person; or
 - (c) fraudulent acts or omissions of the Indemnifier, its officers, employees or agents.
- 9.3 The Indemnifier's liability to indemnify the Indemnified Party is reduced to the extent the Indemnifier caused or contributed to the event giving rise to the indemnity.

10 Limitations of Liability

- 10.1 **The parties both confirm, acknowledge and agree that:**
- (a) **they are each 'in trade';**
 - (b) **the Services are supplied to the Customer and acquired by the Customer in trade and for a business purpose; and**
 - (c) **the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 are excluded from this Agreement to the fullest extent permitted at law.**
- 10.2 **Notwithstanding clause 10.1, If a warranty, condition or guarantee is implied by the Consumer Guarantees Act 1993 (CGA) or other relevant legislation which may not be excluded, restricted or modified by agreement, then Interactive's liability for any breach of such an implied warranty, condition or guarantee is limited solely to the resupply of the relevant Service or the payment to the Customer of the cost of having the Service provided again.**
- 10.3 **With the exception of any matters relating to clause 10.2 or 2.6 a party's liability to the other party for all proven loss and damage (except for personal injury, death to any person, or loss or damage to property of the other party) arising from a breach of the Agreement, or a claim under common law or tort (including negligence) is limited, in aggregate, to 12 months of Service Fees payable by the Customer under the breached Statement of Work.**
- 10.4 **To the extent permitted by law and notwithstanding any other provisions of the Agreement, Interactive and the Customer, 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, lost Non-Customer Data, loss of use, loss of goodwill and failure to realise anticipated savings are deemed to be damages of a consequential nature.**

- 10.5 If Interactive provided recommendations to the Customer to rectify or mitigate issues within the Customer's environment, the Customer did not implement the recommendations, and those issues caused or contributed to loss or liability being incurred by the Customer, the Customer irrevocably releases Interactive from, and indemnifies Interactive against, any such loss or liability.**
- 10.6 Interactive is not liable to the Customer for, and the Customer irrevocably releases Interactive from all claims arising out of or in relation to, any loss or damage suffered by the Customer if such loss or damage was caused by the Customer's business continuity and disaster recovery plan being faulty or inadequate, in that it failed to provide for the usual courses of action that would have prevented such loss or damage.**

11 Privacy and Data Security

- 11.1 Interactive complies with the Privacy Act 2020 ("**Privacy Act**") and only processes, uses or discloses Personal Information (as that term is defined in the Privacy Act) received from the Customer for the purposes of performing Interactive's obligations to the Customer in accordance with Interactive's Privacy Policy, or as required by law.
- 11.2 The Customer must take reasonable steps to ensure that personal information provided to Interactive is accurate, up to date, complete, relevant and not misleading.
- 11.3 The Customer shall comply with its obligations under the Privacy Act, and promptly notify Interactive in writing if it becomes aware of any breach of the Privacy Act or any unauthorised disclosure misuse, or access to personal information, or action that prevents the Customer from accessing personal information on either a permanent or temporary basis, or this clause 11. The Customer shall provide all reasonable co-operation to Interactive in relation to any breach of the Privacy Act, any data breach or any investigation (including any investigation occurring as a consequence of any mandatory data breach notification) carried out by the Privacy Commissioner.
- 11.4 Interactive has implemented and will maintain technical and organisational measures to protect Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access. The Customer may request to view Interactive's security controls documentation, which outlines a set of security controls implemented by Interactive across Interactive's environment to manage risks that.

12 Subcontracting

- 12.1 Interactive may subcontract the Services, provided always that any subcontractor appointed by Interactive is appropriately trained, experienced and qualified to perform the Services. Despite the appointment of any sub-contractor by Interactive, Interactive remains liable to perform its obligations under the Agreement.
- 12.2 Interactive is responsible for the conduct of all sub-contractors appointed by Interactive that perform Services under the Agreement, whether or not the conduct is within the authority conferred on the particular sub-contractor.

13 Variation

- 13.1 Interactive may (acting reasonably) vary this Master Services Agreement 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/hwm-terms-and-conditions-nz/> or such other URL as may be used by Interactive and stated in the notice. The variation to the Master Services Agreement will apply from the version date stated on the varied Master Services Agreement, and by continuing to use the Services or signing a Statement of Work after that date, the Customer agrees to the varied Master Services Agreement.
- 13.2 If the proposed variation materially and adversely impacts the rights or obligations of the Customer under the Master Services Agreement (including (i) through the imposition of, or increase to, any fee or charge payable by the Customer beyond anything detailed at clause 3.6, or (ii) by amending clause 3, but excluding changes required by law or regulatory bodies), the Customer may elect to remain on the then current version of the Master Services Agreement (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 Master Services Agreement.

14 Miscellaneous

- 14.1 Each party will appoint one or more contract representatives, who will co-ordinate the performance of that party's obligations and have the authority to approve changes regarding the Agreement on behalf of that party.
- 14.2 Interactive does not provide Payment Card Industry Data Security Standard ("PCI-DSS") compliance tiered accreditation as a service. The Customer is solely responsible for its PCI-DSS compliance.
- 14.3 The Customer does not have any right to set-off amounts it owes Interactive against any amounts owed by Interactive.
- 14.4 In the event of any inconsistency in the provisions of a Statement of Work and the provisions of this Master Services Agreement, the following order of precedence will apply:
- (a) Master Services Agreement; and
 - (b) Statement of Work, unless the Statement of Work explicitly varies a clause of the Master Services Agreement in which case that variation will take precedence
- 14.5 The Agreement prevails over any terms and conditions contained in any Customer documentation.
- 14.6 The Agreement is governed by the laws of New Zealand and each party submits to the non-exclusive jurisdiction of the courts of New Zealand.
- 14.7 This Master Services Agreement and each Statement of Work may be signed in any number of counterparts. Each counterpart is an original and, together, all counterparts form one single document. This Master Services Agreement and each Statement of Work may be signed electronically.
- 14.8 Any notice or other communication to or by a party to the Agreement must be in legible writing and in English and may be delivered by hand, post or electronic mail.
- 14.9 If anything in the Agreement is unenforceable or invalid, it is severed, and the rest of the Agreement remains in force.
- 14.10 Each party must pay its own legal costs of and incidental to the preparation and completion of the Agreement.

- 14.11 The Agreement binds and benefits the parties and respective successors and assigns permitted under clause 14.13.
- 14.12 No amendments or additions to the Agreement are binding unless in writing and signed by the parties.
- 14.13 The Agreement may not be assigned or novated without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 14.14 A right may only be waived in writing and must be signed by the party giving the waiver, and no other conduct of a party operates as a waiver of the right or otherwise prevents the exercise of the right.
- 14.15 The Agreement contains the entire agreement between the parties concerning the subject matter of the Agreement and supersedes all prior communications, agreements, proposals, work orders or correspondence between the parties.
- 14.16 The provisions of the Agreement that are intended to have, or are capable of having, effect after the expiration or termination of the Agreement (including provisions relating to warranties, indemnities, liability, confidentiality, licence and Intellectual Property rights) remain in full force and effect following termination of all or any part of the Agreement.
- 14.17 Unless otherwise notified in writing by the Customer, the Customer permits Interactive to refer to and use the Customer's name and logo in its marketing materials and promotional activities.
- 14.18 The parties shall adhere to all applicable New Zealand workplace laws and regulations concerning workplace safety, including with respect to both physical and psychological health. This applies to all work settings and each other's employees, agents, or contractors, including on-site at the other party's place of business and with respect to any form of communication.

15 Definitions and Interpretation

- 15.1 In this Master Services Agreement the following definitions apply:

Agreement means this Master Services Agreement and each Statement of Work.

After Hours means the hours that are not the Business Hours.

Business Day means:

- (a) for receiving a notice under clause 14.8 a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Auckland, New Zealand.

Business Hours are the hours between 8.30am and 5.30pm, on Business Days, in the State the Services are to be performed.

Confidential Information means non-public information that relates to the disclosing party's business operations, financial condition, customers, products, services or technical knowledge, including the terms and conditions of the Agreement, except as otherwise specifically agreed in writing by the parties.

Consumer Price Index or CPI means the Consumer Price Index published by Statistics New Zealand and is calculated as the percentage increase between the CPI for the quarter preceding the previous review date and the CPI for the quarter immediately preceding the current review date."

Customer means the entity detailed or defined as the customer in the Agreement, a Statement of Work or any document detailing the Services, or if the customer is not so defined, the entity receiving Services from Interactive.

Equipment means the physical or virtual equipment set out in the relevant Statement of Work and may include both hardware and software (if any) and is the property of either Interactive or the Customer (as specified).

Force Majeure means any circumstances beyond the reasonable control of a party, including natural causes (such as fire, lightning, earthquake, flood, storm), explosion, industrial dispute and acts of terrorism.

Further Term has the meaning given to it in clause 1.3(b)

GST means the goods and services tax prescribed under the GST Act or any subsequent similar tax.

GST Act means the Goods and Services Tax Act 1985.

Invoice Dispute Notice is defined in clause 3.7.

Insolvency Event means, in relation to a party, any one or more of the following, where that party becomes unable to pay its debts as they fall due, a statutory demand is served, or any insolvency procedure under the Companies Act 1993 is instituted or occurs.

Intellectual Property means all intellectual property rights, including current and future registered and unregistered rights, in respect of copyright, patent, patent applications, designs, design applications, trade mark, trademark applications, service marks, trade names, business names, eligible layout right or similar right, whether registered or not any invention, discovery, trade secret, know-how, computer software, technical information, Confidential Information, any other rights resulting from intellectual activity in any field and any grant of registration for or title to anything referred to in this paragraph.

Non-Customer Data means data that is owned by any person or entity that is not the Customer, even if the data is controlled by or in the possession of the Customer, and includes data owned by the Customer's own customers.

Out of Scope Work means any services performed or work provided by Interactive upon request by the Customer that is not included in the Services.

Service Fees means the fees for the Services as set out in the relevant Statement of Work.

Service Start Date means the first date Services are provided under a Statement of Work.

Service Term means the period commencing from the Service Start Date until the expiration of the Service Term, as set out in the relevant Statement of Work.

Services means the services described in the relevant Statement of Work, or otherwise agreed in writing between the parties, that are provided by Interactive to the Customer.

Standard Charge Out Rate means the hourly rates charged for Out of Scope Work as published and provided by Interactive to the Customer from time to time.

Statement of Work means a document, including a statement of work or purchase order, agreed between Interactive and the Customer that sets out the scope of the services Interactive will perform and the Service Fees payable for those services.

Term means, for each Statement of Work, the Service Term and each Further Term.

- 15.2 In the Agreement except where the contrary intention is expressed, the singular includes the plural and vice versa, and a gender includes other genders, "including" and similar expressions are not words of limitation, clause headings are for convenience only, and monetary references are to New Zealand currency.