

## Cloud DRaaS Service Terms

These Cloud DRaaS Service Terms (“**Terms**”) contain the terms governing the provision of the cloud disaster recovery as a service (“DRaaS”) by Interactive Pty Ltd (ABN: 17 088 952 023) of 461 Williamstown Road, Port Melbourne Vic 3207 (“**Interactive**”) to the customer named in the CMS SOW that applies to these Terms (“**Customer**”). The Master Services Agreement applies to these Terms and the CMS SOW.

### 1 Cloud DRaaS

- 1.1 Cloud DRaaS provides a comprehensive disaster recovery service to the Customer, leveraging the Microsoft Azure Site Recovery feature and Interactive’s design, implementation and governance methodology to continuously replicate Protected Servers to the Recovery Site, being an Azure recovery vault.
- 1.2 Interactive will provide either Base Cloud DRaaS or Enhanced Cloud DRaaS, as specified in the CMS SOW.
- 1.3 As part of Base Cloud DRaaS, Interactive will:
  - (a) Continually monitor the replication status of the Protected Servers and inform the Customer about any issues with replication, aiming to ensure the RPO and RTO times are met.
- 1.4 If the Customer receives Enhanced Cloud DRaaS, Interactive will (in addition to the Base Cloud DRaaS features set out in item 1.3):
  - (a) conduct annual Bubble Tests;
  - (b) maintain the Disaster Recovery Runbook in readiness for Failover; and
  - (c) perform account management and monthly reporting governance activities.
- 1.5 Interactive will customise the Disaster Recovery Runbook if and as detailed in the CMS SOW.

### 2 Term of Services

- 2.1 Interactive will provide Cloud DRaaS for the Individual Term. The Individual Term commences on the Service Start Date.
- 2.2 Subject to clause 2.3, for planning and pricing and ensuring continuity of service purposes and unless otherwise detailed in the CMS SOW or otherwise agreed in writing:
  - (a) not less than 30 days before the end of the Service Term or a current Further Term of the CMS SOW either party may serve written notice on the other party stating it will not renew the CMS SOW; and
  - (b) if no such notices are served under clause 2.2(a) each CMS SOW 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.
- 2.3 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 CMS SOW 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 CMS SOW; unless
- (b) not less than 60 days before the end of the Service Term or a current Further Term of a CMS SOW, Interactive had sent a written notice to the Customer reminding them of the upcoming renewal.

### **3 Declaration of a Disaster**

3.1 Upon the occurrence of a Disaster:

- (a) the Customer shall make a Disaster Declaration; or
- (b) if Interactive is aware of a Disaster before the Customer, Interactive must immediately make a Disaster Declaration.

3.2 Once the Disaster Declaration is made Interactive will perform its obligations set out in the Disaster Recovery Runbook within the Recovery Time Objective set out in the CMS SOW to recover the Customer's environment.

3.3 The Customer shall pay the disaster declaration fee set out in the CMS SOW each time a Disaster Declaration is made.

### **4 Disaster Recovery Testing**

4.1 The Customer shall conduct Disaster Recovery Testing at least once per year. The Customer shall provide Interactive with a minimum of 8 weeks' notice of the date it requests to conduct Disaster Recovery Testing. Interactive will work with the Customer to allow the Disaster Recovery Testing on the date requested. The Customer may conduct Disaster Recovery Testing for the amount of days specified in the CMS SOW.

4.2 During Disaster Recovery Testing, Interactive and the Customer will each perform their respective duties as set out in the Disaster Recovery Runbook. The Disaster Recovery Tests will be non-disruptive Bubble Tests unless otherwise agreed.

4.3 The Customer may request to perform more than one Disaster Recovery Test in a year, or to conduct a Disaster Recovery Test After Hours, by making a request to Interactive. If Interactive agrees to the request, Interactive will provide a quote to the Customer for the cost of the Disaster Recovery Test. If the Customer agrees to pay the quoted amount, the Customer may perform the Disaster Recovery Test.

4.4 The Customer shall manage any third parties engaged by the Customer in relation to Disaster Recovery Testing.

4.5 Interactive is not liable to the Customer for, and the Customer irrevocably releases Interactive from all claims arising out of, or in relation to, loss or liability suffered by the Customer as a result of one or more of the following:

- (a) the Customer not completing Disaster Recovery Testing in accordance with item 4.1 at no fault of Interactive; and
- (b) the Customer making significant changes to the Customer's applications or environment since the last Disaster Recovery Test was performed.

### **5 Methodology**

5.1 Disaster Recovery will be Crash Consistent by default unless Application Consistent Disaster Recovery options are specifically detailed in the CMS SOW.

5.2 Post Failover activities required to recover applications via Crash Consistent replicas are out of scope unless specifically set out in the CMS SOW.

5.3 Customers may experience some data loss post-failover when Crash Consistent snapshots are utilised.

5.4 If the Rate of Change exceeds the amount supported by Microsoft Azure Site Recovery, this may result in the RPO not being met. If the RPO is not met under these circumstances:

- (a) Interactive is not responsible for any loss or liability incurred by the Customer in connection with the RPO not being met; and

- (b) Interactive will make recommendations on changes to the Cloud DRaaS to meet the RPO in the future.

## 6 Customer Responsibilities

- 6.1 The Customer is responsible for all Azure Cloud Resources consumed in connection with the Cloud DRaaS.
- 6.2 The Customer must:
  - (a) provide information as requested by Interactive to prepare and maintain the Disaster Recovery Runbook;
  - (b) ensure the Customer's applications can retrieve data from a different server or IP address during a Disaster Recovery Test or during a Declared Disaster;
  - (c) provide appropriate access to Protected Servers;
  - (d) provide application dependencies to design the Disaster Recovery Runbook;
  - (e) have an appropriate disaster recovery strategy for any additional application components that are not in scope of Cloud DRaaS;
  - (f) provide network links (except those detailed in the CMS SOW); and
  - (g) manage the Customer's third parties in relation to Acceptance Testing.
- 6.3 If the Customer is delaying the Project, Interactive may send the Customer a notice requiring it to rectify the delay within five (5) Business Days. If the Customer fails to or is unable to rectify the delay, Interactive may complete the remaining activities that are not dependent on the Customer and issue a notice confirming the Service Start Date (for the avoidance of doubt in these circumstances the provision of this notice will not require any Acceptance Tests to have occurred).
- 6.4 The Customer shall not use, attempt to use, or knowingly permit the use of the Services to store or transmit illegal material or in connection with any illegal, abusive or inappropriate behaviour.
- 6.5 The CMS SOW may specify additional Customer responsibilities that apply.

## 7 System Maintenance

- 7.1 Unless excluded in the CMS SOW and subject to clause 7.2, Interactive will apply the following patches to the Microsoft software appliance and agent during maintenance windows agreed with the Customer:
  - (a) performance and non-critical security updates, each month or as otherwise agreed to be scheduled; and
  - (b) updates determined by Interactive to be critical, as they are made available to Interactive by the vendor.
- 7.2 Interactive is not liable for any risk associated with a patch or the vulnerabilities the patch intends to fix if the Customer and Interactive have not agreed to a patch window within 30 days of Interactive notifying the Customer about the patch. The Customer shall provide personnel for testing during the patch window as required to test the environment (including applications) after the patch is deployed. Interactive only applies patches made available by operating system vendors and Interactive cannot guarantee the patches will address vulnerabilities or be free from defects.

## 8 Service Desk & NOC

- 8.1 Interactive will provide 24 hour Service Desk and National Operations Centre ("NOC") coverage to handle Customer queries and monitor the systems, software and communications that make up the Services.
- 8.2 Interactive will provide appropriately skilled technical support 24 hours per day for the operation and ongoing delivery of the Services.

## 9 Monitoring Services

- 9.1 Interactive will provide replication monitoring and notify the Customer if Interactive receives any alerts. Remediation following any alerts is the Customer's responsibility.

## 10 Pricing Terms

- 10.1 The Customer shall pay the Service Fee for each Protected Server as set out in the CMS SOW.
- 10.2 The Customer shall pay the monthly Service Fees for each Protected Server listed in the CMS SOW from the date it passes Acceptance Testing (or is deemed to pass Acceptance Testing), even if all Protected Servers have not yet been accepted. Each Protected Server is deemed to be provisioned on the earlier of the date notified by Interactive in accordance with clause 15.11 or 6.3 for that Protected Server, or the date the Customer accepts the results of Acceptance Testing for that Protected Server.
- 10.3 Interactive will invoice the Customer for the monthly Service Fee monthly in advance.
- 10.4 The Customer may add additional Protected Servers to be covered by Cloud DRaaS by making a Service Request. There is a fee set out in the Cloud Rate Card applies for each Protected Server added. Interactive requires at least 14 days' notice to add a Protected Server.
- 10.5 If Interactive provides Disaster Recovery Customisation Services, the Customisation Fee is Time and Materials and will be set out in the CMS SOW. This Customisation Fee is an estimate only. The actual Customisation Fee will be based on the hours expended, calculated in accordance with the Standard Charge Out Rates set out in the Rate Card. Customisation Fees are payable in arrears. Any fee or duration estimates are based on the limited information the Customer has provided Interactive and may vary.
- 10.6 The implementation fee for Cloud DRaaS, as set out in the CMS SOW, is payable by the Customer on the following milestones:
  - (a) 50% upon signing of the CMS SOW (or relevant addendum).
  - (b) 50% on the Service Start Date.
- 10.7 Interactive may adjust the Service Fee annually for each of the Services detailed in the CMS SOW (for the avoidance of doubt, this change applies to both initial and additional Services) by giving no less than 30 days' notice to the Customer.

## 11 Change Management

### PRIOR TO SERVICE START DATE

- 11.1 Before the Service Start Date, if either party requests any change to the CMS SOW, that party shall submit to the other party a Project Change Request ("PCR").
- 11.2 The party submitting the PCR shall describe the change, the rationale for the change and the effect the change will have on the Services, Service Fees and operation of the Customer's Equipment in the PCR.
- 11.3 Each party's Project Manager shall review the proposed change and may then either approve it, submit it for further investigation or reject it.
- 11.4 If parties agree to the PCR, they shall sign the PCR and, from the date it is signed, the CMS SOW will be amended according to the changes described in the PCR. If the PCR is not agreed to, the CMS SOW will continue to apply unchanged.

### AFTER THE SERVICE START DATE

- 11.5 After the Service Start Date, if the Customer requests changes to the Services, the Customer may make a request for the changes as follows:
  - (a) If the Customer requests changes to items that are listed in the Service Catalogue, Interactive shall provide the changes requested, subject to the limits specified in the Service Catalogue, and the Customer shall pay Interactive the Service Fee set out in the Service Catalogue effective upon activation of the Service item.
  - (b) If the new services are not available in the Service Catalogue, Interactive will consult with the Customer to identify a solution, including how to implement it, and provide a quotation for the new services. If the Customer accepts the quotation in writing, Interactive shall provide those new services as set out in the quotation and the Customer shall pay Interactive the fee set out in the quotation.

## 12 Transition Out

- 12.1 If the Services are terminated for any reason, the parties shall consult and agree on the terms and responsibilities involved in transitioning out of the Services to the Customer, or a third party appointed by the Customer. If the Services are validly terminated by the Customer in accordance with the Agreement, Interactive will promptly comply with all reasonable requests and directions of the Customer in order to facilitate the transitioning out of the Services and Customer data so as to cause minimal interruption to ongoing services.
- 12.2 The Customer shall pay Interactive on a time and materials basis (with labour charged at the Standard Charge Out Rate), all reasonable costs and charges incurred by Interactive in relation to the transitioning out of the Services.

## 13 Licensing

- 13.1 The Customer shall have appropriate software licensing for all operating systems and applications, except for licenses specifically provided by Interactive as detailed in the CMS SOW.
- 13.2 Where applicable, the Customer shall obtain valid licenses and obtain software maintenance services for its software, including upgrades necessary to correct defects. To the extent that the Customer is a party to a software agreement under which a third party provides software maintenance for its software, the Customer will make the benefits of such maintenance available to Interactive in order to enable Interactive to perform the Services.
- 13.3 The Customer warrants it has procured the required licences and rights of use for all software the Customer relies upon for business functionality. The Customer shall pay all costs incurred in complying with this clause, unless otherwise agreed in writing by the parties.

## 14 Partner Associations

- 14.1 The following applies to the extent the Customer consumes Azure cloud resources in connection with the Cloud DRaaS:
- (a) The Customer must designate Interactive as the Digital Partner of Record ("DPOR"), Partner Admin Link ("PAL"), Claiming Partner of Record ("CPOR") or similar, as may be required from time to time ("Partner Association") to enable Microsoft to recognise Interactive as servicing the Customer's Microsoft Cloud Environment. The Customer authorises Interactive to do all things necessary to designate Interactive as the relevant Partner Association on the Customer's behalf.
  - (b) By designating Interactive as the relevant Partner Association, directly or by authorising a third party (including Interactive) to do so, the Customer consents to Microsoft paying fees to Interactive. The fees are for pre-sales support and may also include post-sales support. The fees are based on, and increase with, the size of the Customer's Microsoft Azure cloud resources.

## 15 Project Delivery

- 15.1 Each party will assign a Project Manager and confirm an expected Project start date.

### **DUE DILIGENCE**

- 15.2 The parties shall conduct the Due Diligence Stage to confirm the accuracy of the information the Customer has provided to Interactive and identify any possible issues or impact upon the Project.
- 15.3 If any issues are identified by Interactive that affect the Solution, the parties may agree to change the Solution in accordance with the Change Management Process (clause 11) or the Assumptions (clause 16).

### **BUILD STAGE**

- 15.4 During the Build Stage, Interactive will liaise with the Customer to develop a detailed design, project plan and Project schedule, which may include migration, Acceptance Testing, and cut-over (each where applicable).

15.5 Interactive will perform the Build Stage in accordance with the project plan.

#### **INFRASTRUCTURE SUPPORT**

15.6 At the conclusion of the Build Stage, Interactive will provide support to the Customer, 24 hours a day, 7 days a week for the services detailed in the CMS SOW.

#### **ACCEPTANCE TESTING**

15.7 On completion of the Build Stage for each Protected Servers, Interactive will notify the Customer of the date the Customer may commence conducting Acceptance Tests ("Acceptance Test Commencement Date").

15.8 The Customer shall complete Acceptance Testing no later than five (5) Business Days after the Acceptance Test Commencement Date.

15.9 If the Customer's Acceptance Testing identifies any defects caused by Interactive that prevent the Cloud DRaaS from operating, the Customer may provide Interactive with notice in writing rejecting the Acceptance Tests and detailing the reasons why. If the Customer delivers that notice:

- (a) the parties shall work together to identify and correct the error that caused the Acceptance Tests to fail; and
- (b) after the cause of error is corrected, Interactive will notify the Customer of a new Acceptance Test Commencement Date and, in that event, clause 15.8 will apply again.

15.10 If the Customer, acting reasonably, delivers more than two notices rejecting the results of the Acceptance Tests, either party may refer the matter for resolution in accordance with the dispute resolution provisions in the Master Services Agreement.

15.11 If the Customer fails to complete Acceptance Testing or deliver a notice rejecting the Acceptance Tests within five (5) Business Days after the Acceptance Test Commencement Date, then Acceptance Testing will be deemed completed by the Customer. After all Protected Servers have completed Acceptance Testing, or are deemed to have completed Acceptance Testing, Interactive will provide the Customer with a notice informing it of the Service Start Date.

## **16 Assumptions**

16.1 Interactive relies on the information provided to it by the Customer to be able to perform the Services as required by this Agreement. If any assumptions made by Interactive or set out in the CMS SOW are proven inappropriate, including because the information provided by the Customer was incorrect or inadequate, or if technical requirements are proven to be beyond the capabilities of the Solution, Interactive will negotiate with the Customer with respect to one or more of the following:

- (a) altering the Solution, which may require a change in accordance with the Change Management Process;
- (b) adjusting the Project schedule in relation to any changes required to the Solution; and
- (c) adjusting either or both of the implementation fee and the monthly Service Fees as a result of the alterations to the Project.

## **17 Exclusions**

17.1 Cloud DRaaS does not support the following:

- (a) Move Site Recovery Services Vaults across Azure resource groups.
- (b) Replication of Azure virtual machines from one Azure Active Directory tenant to another.
- (c) Azure dedicated hosts.
- (d) Any operating system not listed on the Microsoft website: <https://learn.microsoft.com/en-us/azure/site-recovery/azure-to-azure-support-matrix#replicated-machine-operating-systems> (or successor URL).
- (e) Virtual machine scale sets.

17.2 The CMS SOW may specify additional exclusions that apply.

- 17.3 Unless otherwise agreed in the CMS SOW, if Interactive caused loss of, or damage to, Customer data, Interactive's sole liability for the lost or damaged data is to assist the Customer to restore the lost or damaged data to the last available restoration point.
- 17.4 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.

## 18 Planned Outage Periods

- 18.1 Planned Outage Periods may be declared by Interactive from time to time for any purposes including:
- (a) maintenance requirements on networks or systems;
  - (b) de-installation of infrastructure; and
  - (c) infrastructure, firmware or software currency upgrades.
- 18.2 Interactive will use reasonable endeavours to give the Customer at least fourteen (14) days' notice of any Planned Outage Periods and provide details of the expected length of any Planned Outage Period.

## 19 Limitation of Obligations – Communications

- 19.1 Interactive is not liable to the Customer for any delays, loss or liability suffered by the Customer where a system or the Services become unavailable due to a communication network failure, or other such causes, beyond the control of Interactive.

## 20 General

- 20.1 Interactive may (acting reasonably) vary these Terms or Service Descriptions (as applicable) 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 Terms or relevant 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 Terms or Service Description.
- 20.2 If a variation is proposed in accordance with clause 20.1 that materially and adversely impacts the rights or obligations of the Customer under the relevant Terms or Service Description (including through the imposition of, or increase to, any fee or charge payable by the Customer beyond anything detailed in a CMS SOW, Master Services Agreement, these 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 relevant Terms or 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 Terms or Service Description.

## 21 Definitions

- 21.1 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.

21.2 The following definitions apply to the Agreement:

**Acceptance Testing** or **Acceptance Test** means the Customer's testing of the software or hardware on a complete integrated system to evaluate the system's compliance with the Customer's requirements specified during or prior to the Due Diligence Stage.

**Application Consistent** refers to a data replication method that ensures that replicas are consistent at the transaction level.

**Bubble Test:** A non-disruptive disaster recovery test in an isolated bubble network. The servers in scope of the bubble test are restored from a Recovery Point into an isolated network for validation of the Failover process.

**Build Stage** consists of implementing the Solution; tracking progress against the Project plans; conducting system tests; and providing system access to the Customer to perform migration and Acceptance Testing.

**Cloud DRaaS** means the disaster recovery services described in these Terms and the CMS SOW.

**Cloud Rate Card** means the rate card for Cloud Services found at [www.interactive.com.au/terms-and-conditions](http://www.interactive.com.au/terms-and-conditions).

**Crash Consistent** refers to a replicated snapshot of a server (virtual or physical) which represents the on-disk data at the point a server became unresponsive or unavailable.

**Change Management Process** means the process described in clause 11.

**CMS SOW** means the statement of work for cloud and managed services entered into between Interactive and the Customer named in that statement of work.

**Customisation Fee** means the fee for the Customisation Services as set out in the CMS SOW, if applicable.

**Declared Disaster** means a Disaster for which a Disaster Declaration has been made.

**Disaster** means any unplanned interruption to the operation of the Protected Servers.

**Disaster Declaration** means the notification of a Disaster in accordance with the CMS SOW, which may be made by either the Customer to Interactive, or Interactive to the Customer.

**Disaster Recovery Customisation Services** means the customisation of the Customers Disaster Recovery Runbook.

**Disaster Recovery Runbook** is the recovery plan setting out documented process or set of processes to be performed by the parties to enable recovery of the Protected Servers.

**Disaster Recovery Test** or **Testing** means the testing of the Cloud DRaaS. This testing allows the Customer, in accordance with these Terms, to test the procedures, requirements and capabilities of the Cloud DRaaS.

**Due Diligence Stage** comprises the Customer providing Interactive with access to its systems and supporting documentation; Interactive auditing the Customer's in scope systems and validating the Customer's performance requirements; and the parties attending joint workshops.

**Failover** means the process with which operations of the Protected Servers are restored to the Recovery Site through the execution of the Disaster Recovery Runbook.

**Further Term** has the meaning given to it in clause 2.2(b).



**Individual Term** means, for the Cloud DRaaS, the individual term set out in the CMS SOW, commencing on the Service Start Date, as extended in accordance with these Terms.

**Master Services Agreement** means the Master Services Agreement referred to in the CMS SOW.

**Microsoft Cloud Environment** means the Microsoft products such as Azure subscriptions and resources used in the delivery of this Service.

**Planned Outage Period** means a period during which time the Services may not be available, or that performance of the Services may be impacted.

**Project** means all work to be performed during the Due Diligence Stage, the Build Stage and Acceptance Testing to deliver the Solution to the Customer in accordance with this Statement of Work.

**Project Manager** means the Interactive or Customer staff member responsible for delivery of the CMS SOW.

**Protected Servers** means the servers replicated to the Azure recovery vault via Azure Site Recovery.

**Rate of Change** means the amount of data that is assumed to be changed on the Protected Servers in each RPO period.

**Recovery Point** means a recurring scheduled backup operation from which Customers nominated data and / or servers may be restored from.

**Recovery Point Objective (RPO)** means the maximum period of time in which replicated data at the Recovery Site is behind the production data on the Protected Servers, excluding periods where (1) the Rate of Change exceeds the range supported by Microsoft Azure Site Recovery; or (2) initial or delta synchronisation operations are active.

**Recovery Site** means the Azure location where the Protected Servers are replicated, as specified in the CMS SOW.

**Recovery Time Objective (RTO)** means the period of time beginning when Interactive initiates a Failover following a Declared Disaster, until the time when the Protected Servers are running at the Recovery Site.

**Site Recovery Services Vault** means the storage entity in Azure that houses data.

**Service Catalogue** means the catalogue of services and associated prices for repeatable Services that can be provided by Interactive, as may be updated from time to time.

**Service Start Date** means, for the Protected Servers, the earlier of the date notified by Interactive in accordance with clause 15.11 or 6.3 for all Protected Servers, or the date the Customer accepts the results of Acceptance Testing for all Protected Servers.

**Services** means, in these Terms, the Cloud DRaaS services as described in the CMS SOW and these Terms.

**Solution** means the proof of concept or technical design of the Services contained in the CMS SOW.