

## Professional Services Service Terms

This document (“**Professional Services Service Terms**”) contains the terms governing the provision of the Professional Services 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 this Professional Services Service Terms (“**Customer**”). The Master Services Agreement applies to these Terms and the CMS SOW.

### 1 Services

1.1 Interactive will provide the Services to the Customer that are specified in the CMS SOW.

### 2 Term of Services

2.1 Interactive will provide the Services for the Engagement Period (where applicable). The Individual Term commences on the Service Start Date.

### 3 Payment Terms

3.1 If the CMS SOW states that Interactive is providing Fixed Scope Fixed Price Services, the following applies:

- (a) Interactive will perform the Services in accordance with the scope set out in the CMS SOW. The Service Fee for the FSFF Services only covers the work described in the relevant scope section.
- (b) The Service Fee is payable at the Milestones set out in the CMS SOW.
- (c) Unless any additional period is agreed between Interactive and the Customer in writing, Interactive will only perform the FSFF Services up to the expiration of the Engagement Period (“Expiration Date”) set out in the CMS SOW.
- (d) If Interactive is unable to complete the FSFF Services by the Expiration Date as a result of additional scope being identified, the Change Management Process set out in clause 5 will apply.
- (e) Any Out of Scope Work will be invoiced monthly in arrears and will be charged in accordance with the Standard Charge Out Rate.

3.2 If the CMS SOW states that Interactive is providing Fixed Scope Time & Materials Services, the following applies:

- (a) Interactive will perform Services in accordance with the scope set out in the CMS SOW for the FSTM Services. The Service Fee is an estimate only and the actual Service Fee will be based on the hours expended, calculated in accordance with the Standard Charge Out Rates.
- (b) Service Fees are payable monthly in arrears.

3.3 If the CMS SOW states that Interactive is providing Variable Scope Time & Materials the following applies:

- (a) Interactive will provide professional Services on a Time and Materials basis. The Service Fee for the Engagement will be based on the hours expended, calculated in accordance with the Standard Charge Out Rates.
- (b) The Variable Scope set out under the scope section with the heading VSTM is a guide only and will vary based on requirements agreed between the parties.
- (c) Service Fees are payable monthly in arrears.

- 3.4 If the CMS SOW states that Interactive is providing Prepaid Services, the following applies:
- (a) Interactive will provide the professional services based on either of the following Engagement Types: a predetermined number of Prepaid Services Hours or a Prepaid Services Dollars as set out in the CMS SOW for the Engagement Period set out in the CMS SOW.
  - (b) If the CMS SOW states that the Engagement Type is Prepaid Services Hours, the Customer agrees to purchase the specific number of professional service hours set out in the CMS SOW in advance. Interactive shall maintain accurate records of the hours consumed by the Customer and shall notify the Customer when the Prepaid Services Hours are about to be exhausted.
  - (c) If the CMS SOW states that the Engagement Type is Prepaid Dollars, the Customer agrees to prepay the specific dollar amount for professional services in advance. Interactive shall apply the Prepaid Dollars towards the hourly rates set out in the applicable Rate Card as at the date that the Services are provided to the Customer. Interactive shall provide regular updates to the Customer regarding the utilisation of Prepaid Dollars.
  - (d) In the event that the Prepaid Services Hours or Prepaid Services Dollars is exhausted before end of the Engagement Period, the Customer may choose to replenish the prepaid amount by agreement in writing to ensure continuous provision of professional services. Interactive shall notify the Customer in advance of the depletion of Prepaid Services Hours or Prepaid Services Dollars.
  - (e) Any Prepaid Services Hours or Prepaid Services Dollars not utilised prior to the end of the Engagement Period shall expire. No refunds shall be issued for unused prepaid amounts.
  - (f) The scope set out in the scope section of the CMS SOW under the heading Prepaid Services is a guide only and will vary based on requirements agreed between the parties.

## 4 Customer Obligations

- 4.1 The Customer is responsible for the following:
- (a) providing complete and accurate information and directions to Interactive in a timely and responsive manner to enable Interactive to perform the Engagement;
  - (b) maintaining a procedure for the backing up and restoration of its own data;
  - (c) providing Interactive with the necessary access to its environment to perform the Services;
  - (d) ensuring business stakeholders are available for knowledge transfer, workshops and reviews;
  - (e) providing details of the servers and infrastructure as required;
  - (f) providing access to all documentation and business processes where applicable; and
  - (g) where physical access to the Customer Location is required, providing:
    - (i) safe access, including OHS & security training, at the Customer's cost; and
    - (ii) access to adequate working space, telephones, electricity and Internet.
- 4.2 The CMS SOW may specify additional Customer obligations that apply.

## 5 Change Management

- 5.1 Any revisions, modifications, or alterations requested by the Customer to the Engagement or sub-component of the Engagement (including any Engagement Framework Elements), after execution of the CMS SOW will be deemed a Change Request and must follow the Change Management Process below:
- (a) Either party may request a change to the Engagement by submitting a ("Change Request") to the other party.
  - (b) The party submitting the Change Request shall describe the change, the rationale for the change and the effect the change will have on the Services, Service Fees payable and the timeline for delivery of the Services.

- (c) Each party shall review the Change Request and may then either approve it, submit it for further investigation or reject it.
- (d) If the parties agree to the Change Request, they shall sign a variation or addendum to the Statement of Work based on the Change Request and, from the date it is signed, this Statement of Work will be amended according to the variation or addendum. If the Change Request is not agreed to, the Statement of Work will continue to apply unchanged.

## **6 Assumptions**

- 6.1 Interactive relies on the information provided to it by the Customer to be able to perform the Engagement. If any assumptions are proven inappropriate or incorrect, or if information provided by the Customer was incorrect or inadequate, or if technical requirements are beyond the scope of the Engagement, Interactive will negotiate with the Customer with respect to altering the Engagement, which may require a change in accordance with the Change Management Process.
- 6.2 The CMS SOW may specify specific assumptions.

## **7 Exclusions**

- 7.1 Any exclusions from the relevant engagement will be set out in the CMS SOW.

## **8 Termination**

- 8.1 In addition to the rights in the Master Service Agreement either party may terminate the Professional Services at any time by giving 30 days' notice to the other party.
- 8.2 If the Professional Services are terminated in accordance with clause 8.1:
  - (a) the Customer must pay Interactive for all work performed up to the date of termination in accordance with the Standard Charge Out Rate (for any Fixed Scope Fixed Fee Engagement Type, such payment will be capped at the fixed fee);
  - (b) any amounts paid in advance are not refundable; and
  - (c) if the Services include third party costs including but not limited to support or licencing, any associated fees charged by the third party will be payable by the Customer.

## **9 Acceptance Testing**

- 9.1 On completion of each Milestone (where applicable) or the Engagement, Interactive will notify the Customer of the date the Customer may commence conducting Acceptance Tests ("Acceptance Test Commencement Date").
- 9.2 The Customer shall complete Acceptance Testing no later than five (5) Business Days after the Acceptance Test Commencement Date.
- 9.3 If the Customer's Acceptance Testing identifies any defects caused by Interactive that prevent the Customer from using the tested Services, 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 9.2 will apply again.
- 9.4 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.
- 9.5 If the Customer fails to complete Acceptance Testing or deliver a notice rejecting the Acceptance Tests within 5 Business Days after the Acceptance Test Commencement Date, then Acceptance Testing will be deemed completed by the Customer.

## 10 Licencing / Tools

10.1 If a third party tool or licencing is relevant to the offering relevant provisions will be detailed in the CMS SOW.

## 11 General

- 11.1 Interactive will perform the Services with due care and skill and in a professional and workmanlike manner and may perform the Services remotely or at the Customer Location.
- 11.2 Interactive may adjust the Standard Charge Out Rates set out in the Rate Card by providing 30 days written notice where practicable.
- 11.3 Unless otherwise agreed in writing, the Services will be performed during Business Hours. Services performed After Hours will be charged at the applicable Standard Charge Out Rate.
- 11.4 The Customer will reimburse Interactive for pre-approved expenses, including for any required travel.
- 11.5 The Customer is responsible for all costs and expenses associated with its requirements for Interactive to conduct any training or acquire any security or other clearances to access the Customer sites, IT environment or other location. The Customer acknowledges that where such clearances and or training has not been arranged or paid for by the Customer Interactive may not be able to provide the Services.
- 11.6 All pricing is exclusive of GST.
- 11.7 The CMS SOW as it relates to the Professional Services is effective once it is signed by both parties, and remains in force until the Engagement is completed.
- 11.8 If Interactive performs Services at the Customer's direction:
- (a) Interactive may not have all information about the IT Environment, any Incident Interactive has been engaged to investigate or rectify, the Customer's operations or how the Services will impact the Customer or the IT Environment. Unless otherwise agreed, Interactive will endeavour to assist the Customer to rectify issues within the IT Environment, but Interactive is not required to fix, and is not responsible for rectifying, those issues or the Incident.
  - (b) The Customer indemnifies Interactive and its employees and contractors against loss and liability incurred by Interactive, which arises in connection with Interactive infringing any Intellectual Property rights when performing the Services.
  - (c) Interactive relies upon the information provided to it by the Customer regarding the IT Environment. The Customer agrees and acknowledges that Interactive only provides consulting and assistance services, and that Interactive is not liable or responsible for any incidents affecting the Customer or the IT Environment that are caused by the Services.
  - (d) The Customer releases Interactive from, and indemnifies Interactive against, all loss and liability incurred by the Customer in connection with the Services, unless the loss or liability was caused directly by Interactive breaching the warranty in clause 11.1. In addition to any limitation of liability in the Master Services Agreement, if Interactive breaches the warranty in clause 11.1 or is liable to the Customer for any other reason, Interactive's liability is limited to either of the following, at Interactive's discretion:
    - (i) performing the Services again; or
    - (ii) refunding the Customer the Services Fees paid for the Services.This is the Customer's sole remedy for Interactive's breach of this Statement of Work.
- 11.9 During the period that the Services are provided under this Statement of Work and for a period of 12 months after the termination of this Statement of Work, the Customer may not solicit or offer employment to any of the Interactive Personnel who perform the Services. This clause does not prohibit the Customer from offering employment to any Interactive Personnel who has applied for a position that has been advertised to the general public by the Customer in good faith.

- 11.10 Notwithstanding anything in the Master Services Agreement, this Statement of Work does not renew following completion of the Services.
- 11.11 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.
- 11.12 If a variation is proposed in accordance with clause 11.11 that materially and adversely impacts the rights or obligations of the Customer under the relevant Terms or 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 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.

## 12 Definitions

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

**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.

**Change Management Process** means the process described in clause 5.

**Customer Location** means the location of the Customer offices, as set out in the CMS SOW.

**Engagement** means the scope of Services to be provided by Interactive in accordance with these Service Terms and the CMS SOW.

**Engagement Type** means the type of engagement the Customer has requested as set out in the CMS SOW.

**Incident** means the incident or issue the Customer has engaged Interactive to investigate and rectify.

**IT Environment** means the Customer's IT infrastructure and environment, which may include hardware, software and networks.

**Master Services Agreement** means a document, including a master services agreement or other head agreement, agreed between Interactive and Customer which sets out (amongst other things) the terms governing provision of the Services, and which is identified in the CMS SOW or, in the absence of such a document, the terms and conditions at <https://www.interactive.com.au/terms-and-conditions>.

**Personnel** means Interactive's employees or contractors who perform the Services.

**Rate Card** means either the Cloud Rate Card or the Cyber Rate Card found at <https://www.interactive.com.au/terms-and-conditions> or such other URL as may be used by Interactive from time to time.

**Services** means the services provided by Interactive in accordance with these Service Terms and the CMS SOW.

**Service Fees** means the fees the Customer shall pay Interactive for the Services, which are set out in the CMS SOW.

**Standard Charge Out Rates** means the rates set out in the Rate Card.