

# VMware CSP License and Support Services - Service Description

This Service Description (“VMware CSP License and Support Services - Service Description”) contains the terms governing the provision of third-party licensed products and 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 VMware CSP License and Support Services SOW (VMCSP SOW) that applies to this Service Description (“Customer”).

This VMware License and Support Services - Service Description forms part of the Agreement, also containing the Master Services Agreement.

## 1 Provision of Licenses

- 1.1 Interactive will purchase from the License Vendor and provide to the Customer, the License Subscription described in the VMCSP SOW.
- 1.2 Each License Subscription and Support Service will be provided for the Individual Term set out in the VMCSP SOW commencing on the Service Start Date.
- 1.3 Licenses are provided only on a subscription basis.
- 2.1 Interactive will provide support for the Licence Subscriptions as set out in this Service Description.
- 2.2 The Customer can lodge Support Requests with Interactive 24x7 in accordance with the procedure set out in clause 10. Interactive will respond to such Support Requests in accordance with the Service Level Agreement set out at clause 4.
- 2.3 If Interactive is not be able to resolve the issue raised by the Customer in the Support Request, Interactive will lodge a support request with the License Vendor and work with the License Vendor and the Customer to resolve the issue.
- 2.4 A maximum of five (5) Support Requests per month are included in the monthly Service Fee (and this maximum per month relates to all of the Licence Subscriptions set out in the VMCSP SOW). Any additional Support Requests above this maximum limit of five (5) per month will be charged at a rate of \$215 per Support Request.
- 2.5 The Support Levels that will be provided for a Support Request are classified as follows:

Support Level	Description
Level 1	Interactive receive initial contact from the Customer; problem identification.
Level 2	Interactive specialised resources will work with the Customer and perform analysis and troubleshooting.
Level 3	Where problems cannot be solved by Interactive personnel, Interactive will escalate and lodge an issue (as raised by the Customer) with the License Vendor to resolve. Interactive will work with the License Vendor and the Customer to resolve the issue.

(These are the “Support Services”)

- 3.1 If the License Vendor increases the price at which it supplies the Licenses or support services to Interactive, Interactive may alter any applicable charges to reflect such increase accordingly in the first invoice that follows.
- 3.2 If the License Vendor issues a readjustment of the fees to Interactive to account for the Customers usage, Interactive will charge the Customer the readjusted fees based on the then applicable standard rates for the remainder of the relevant Individual Term.
- 3.3 Any price increase or readjustment of the Service Fees by the License Vendor will be invoiced immediately to the Customer.
- 3.4 Interactive will conduct quarterly reviews on exchange rates and adjust pricing if reasonably necessary.

## 4 Service Level Agreement

- 4.1 This Service Level Agreement sets out the procedure for the Customer to follow when lodging a Support Request and the applicable Service Levels that will be provided by Interactive to the Customer.
- 4.2 Support Request Procedure
  - (a) If the Customer requires Support Services for the License Subscriptions, the Customer may lodge a Support Request to the Interactive Service Desk in accordance with the procedure set out in clause 10.
  - (b) When logging a Support Request, the Customer must provide the following information:
    - (i) Customer Name.
    - (ii) Description of the Support Request.
    - (iii) Name and contact details of the person lodging the Support Request
    - (iv) Name and address of the Customer Location.
    - (v) Business / trading hours of the Customer Location.
  - (c) Interactive will issue a request number for all Support Requests logged with the Service Desk. This number will be the sole reference number for the Support Request and will be referenced in subsequent communication from Interactive regarding the Support Request.
  - (d) The Customer may log non-critical issues that do not affect the Service, but do require attention, by phone call or emailing the Service Desk. Interactive will provide a request number for all issues, including non-critical issues. Interactive will respond by email to all requests the Customer logs by email.
- 4.3 Support Request Classification
  - (a) Interactive will determine the severity of any reported support request based upon the Customer's impact assessment, having regard to the urgency and impact factors in Table A and Table B. Interactive will then allocate a severity level in accordance with Table C.
  - (b) The Customer's callers to the Service Desk must define the level or urgency of the support request in accordance with Table A and define the impact of the support request in accordance with Table B.
  - (c) Notwithstanding the urgency or impact factors:

- (i) Interactive will classify any Support Requests placed by the Customer by email or online as Severity 3 or 4 Support Requests; and
- (ii) Severity 1 or 2 Support Requests must be placed by the Customer by phone calls.

**Table A – Urgency Factors**

Critical	High	Medium	Low
Critical business function impacted.	Important business function is impacted.	Administration activities impacted.	Business function continues.

**Table B – Impact Factors**

Critical	High	Medium	Low
All Customer Users are affected.	All business unit or department Users are affected.	All team Users are affected.	Only an individual is affected.

**Table C – Severity Level**

Severity		Impact			
		Critical	High	Medium	Low
Urgency	Critical	SEV 1	SEV 2	SEV 2	SEV 3
	High	SEV 1	SEV 2	SEV 3	SEV 4
	Medium	n/a	SEV 3	SEV 4	SEV 4
	Low	n/a	SEV 4	SEV 4	SEV 4

#### 4.4 Service Level – Response Time

- (a) Interactive will use reasonable endeavours to respond to the Customer's Support Requests within the Response Time set out in Table D.

**Table D – Response Time**

Severity Level	Response Time
Severity 1 – Critical	< 1 hour
Severity 2 – High	< 2 hours
Severity 3 – Medium	< 2 Business Days
Severity 4 – Low	< 2 Business Days

#### 4.5 Excused Disruptions

- (a) Notwithstanding any other provision of the Service Level Agreement, Interactive is deemed to have not breached a Service Level where Interactive's failure to achieve the relevant Service Level is directly or indirectly caused or contributed by:
- (i) Third Party Fault;
  - (ii) Customer Events;
  - (iii) Emergency Events;
  - (iv) the Customer's failure to notify Interactive of a support request;
  - (v) The Licence Vendor's failure to resolve Level 3 Support issues as referenced in clause 6.7(c); or
  - (vi) the information provided by the Customer was incorrect or inadequate.

## 5 Delivery and Title

- 5.1 Interactive will order the Licenses from the License Vendor upon execution of the VMCSOW and deliver the Licenses electronically to the Customer via the email address provided by the Customer to Interactive.
- 5.2 Notwithstanding anything to the contrary in VMCSOW, title to the License remains with the License Vendor.

## 6 License Warranties, Guarantees, Liability and Termination

- 6.1 The following provisions in this clause 6 apply in place of any other provisions regarding warranties, guarantees or liability set out in the Master Services Agreement.
- 6.2 Subject to clause 6.3, all guarantees, warranties, terms, conditions, undertakings, representations or inducements ("a Relevant Provision"), whether express or implied, statutory or otherwise, relating to or connected with the VMCSOW or Licenses manufactured, published or provided by the License 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, the License Vendors written warranties associated with the Licenses.
- 6.3 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 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.
- 6.4 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 the VMCSOW with respect to the Licence and/or Support Services, and subject to clause 6.5, is limited to \$1.
- 6.5 Notwithstanding clause 6.4, 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 Licence and/or Support Services from the Licence Vendor.

- 6.6 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.
- 6.7 The Customer acknowledges, represents, warrants and agrees that:
- (a) Interactive only purchases the Licenses from the License Vendor to provide the License Subscriptions to the Customer for the Individual Term and is not the manufacturer of the Licenses.
  - (b) notwithstanding anything else, the terms of use for the Licenses are provided by the License Vendor and not Interactive and are subject to any terms and conditions as made available by the License Vendor, including but not limited to Licenses, End User License Agreement, policies, warranties, ownership of intellectual property, privacy, scope of permitted use and other documentation. The Customer agrees to comply (and must ensure that its' end users comply) with all such relevant terms and conditions of the License Vendor, including the End User Licence Agreement. 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 License Vendor;
  - (c) the Licence Vendor provides Level 3 Support to Interactive to resolve problems that are determined to be, or highly probable to be, the result of a design or manufacturing defect, or the result of a complex interaction between the Licence Vendor's product and another product that cannot be resolved by Interactive and requires product design knowledge or expertise to isolate and effect a problem resolution. 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 if the Licence Vendor is unable to resolve such issues;
  - (d) the Customer shall not remove, modify, or alter the End User Licence Agreement and acknowledges that the Licence Vendor shall not engage in negotiations of the End User Licence Agreement or related terms;
  - (e) availability of the 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 License Vendor terminates its agreement with Interactive;
  - (f) it has not relied, and does not rely, upon Interactive regarding the nature or particular characteristics of any License, the continued provision of any license, support or maintenance associated or included with any License by any third party or for the Licenses 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;
  - (g) it is responsible for ensuring that the Licenses are suitable for their intended use by the Customer and Interactive is not liable to the Customer for any License which is unsuitable for its intended use;
  - (h) it must not to de-compile, reverse engineer, reverse compile, modify, translate or perform any similar type of operation on any Licence or software, in any fashion or for any purpose whatsoever;

- (i) it must maintain the currency of its Licences to within the End of Service range and ensure the Customer's usage meter has Internet access. If these requirements are not met, then then the Customer can only consume subscription licenses on a 3 year commit with no overages;
- (j) it may only provide the Licences and any services using those licences to their final hosting clients and may not resell the Licences to any other Interim Users; and
- (k) upon the termination of the Licence Subscription, for any reason, the Customer must cease using all Licence Vendor offerings and destroy or return to Interactive all copies of the Licence Vendor offerings (including backup copies) in any and all media and delete any such copies that are resident in the memory or hard disks of computers owned or controlled the Customer.

## 7 Customer Responsibilities

7.1 The Customer acknowledges and agrees that:

- (a) it must provide the Customer's end user details to Interactive, or the License Vendor as required.
- (b) it must:
  - (i) install any required tools/devices/appliances (such as a usage meter) into its environment as required by the License Vendor for the purposes of collecting usage data related to the Licences. The Customer acknowledges and agrees that such device/application will report data gathered by the device/appliance to the License Vendor, and the device/appliance must not be blocked from any such communication. The Customer agrees it will not tamper with the device/appliance in any way; and
  - (ii) ensure that any usage meter deployed into the Customer's environment is manually configured with the actual Customers' end users' name for Customer end user reporting.
  - (iii) provide to Interactive any identification information from its environment (including usage meter) that is required to allow Interactive to register with the Licence Vendor.

7.2 The Customer may request that Interactive perform the requirements set out in clause 7.1 at an additional cost.

7.3 The Customer:

- (a) is responsible for all installation, configuration, management, updates and upgrades of the software or the Licences provided under the VM CSP SOW;
- (b) must perform any upgrade requirements that the License Vendor or Interactive may specify from time to time to:
  - (i) ensure all VMware software is current and not outside the End of Service range published by Broadcom at <https://support.broadcom.com/group/ecx/productlifecycle> and is compatible with supported versions of usage meter; and
  - (ii) ensure all hardware on the in-scope systems are current as defined by Broadcom as Supported Releases at <https://www.vmware.com/resources/compatibility/search.php>;
- (c) must be registered in the Broadcom Advanced Partner Program prior to and during the use of the Licences and Support Services.

## 8 Personal Data

- 8.1 If the Customer transfers any personal data to Interactive or the Licence Vendor as a requirement pursuant to this Service Description or the VM CSP SOW, then the Customer:
- (a) represents that it is duly authorised to provide such personal data and it does so lawfully in compliance with relevant legislation;
  - (b) authorises Interactive or the Licence Vendor as applicable to make necessary transfers of and process the personal data for the purposes of providing the Licences and Support Services;
  - (c) accepts that the Licence Vendor shall transfer the personal data in accordance with the terms set out at <https://www.broadcom.com/company/legal/privacy/data-transfers> and where applicable complies with the provisions of Art. 44 – 46 GDPR;
  - (d) accepts that where the Licence Vendor is acting as a data processor for Interactive under the GDPR, the Licence Vendor's processing shall be subject to and in accordance with its Data Processing Addendum, including the relevant Standard Contracting Clauses (SCC) for international data transfer incorporated in it, as located at: <https://www.broadcom.com/company/legal/privacy/data-transfers> ("DPA"); and
  - (e) where Interactive processes personal data on behalf of the Customer under the GDPR, Interactive and the Customer shall be entering into a relevant data processing agreement.
- 8.2 Customer Data may be processed outside Australia, including in connection with the provision of remote support or if disclosed to Interactive via email.

## 9 General Terms

- 9.1 Interactive may disclose details to the Licence Vendor regarding the Customer's use of the Licences, including, but not limited to, the number of Licenses required by the Customer, the Customer's name and address and country in which the Customer is located ("Details"). Any Licence Vendor will be an intended third-party beneficiary of the Statement of Work, with the right to enforce provisions of the 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 the Licence Vendor.
- 9.2 During an Individual Term, the Customer may not downgrade, reduce or remove any of the Services listed in the VM CSP SOW.
- 9.3 Notwithstanding any other provisions in any other agreement between the parties, the Licenses and Support Services provided in accordance with this Service Description and the VM CSP SOW will not auto renew at the end of the Individual Term. If the Customer requires a renewal of the Licenses and Support Services, 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 and Support Services in good faith. If the Customer continues to use the Licences and Support Services beyond any Individual Term, the Service Fees will revert to an on-demand fee and will be charged at the then applicable rate.

## 10 Support Requests

10.1 Interactive will provide the Customer the ability to log a Support Request.

10.2 The Customer must lodge a Support Request as follows:

- (a) phone: 1300 669 670 (in Australia) or +61 2 9200 2679 (internationally); or Customer dedicated 1300;
- (b) email: [cmssupport@interactive.com.au](mailto:cmssupport@interactive.com.au) ; or
- (c) by contacting the Account Executive or Service Delivery Manager assigned to the Customer.

## 11 Definitions

11.1 Definitions

**Customer Data** means the Customer's data (which may include Confidential Information disclosed to Interactive by the Customer) that is held, accessed or used by Interactive.

**Customer Events** means any one or more of the following:

- (a) any act or omission by the Customer;
- (b) the Customer's negligent, fraudulent or intentional acts or omissions;
- (c) the Customer's breach of the Agreement for Services; or
- (d) the Customer's equipment failing.

**Emergency Events** means any one or more of the following:

- (a) a Force Majeure event;
- (b) unscheduled maintenance in cases of emergency or urgent Service interruption; or
- (c) power interruptions.

**End of Service** means the date at which the License Vendor officially discontinues support for the product.

**End User Agreement** means collectively the terms governing the Customer's and its end users use of the License located at: <https://www.broadcom.com/company/legal/licensing> including support terms, the Specific Program Documentation (the "SPD") and SaaS Listing(s) applicable to the Broadcom VMWare Offering.

**Individual Term** (also referred to as Committed Term or Subscription Period) means the period that the relevant License Subscription or Support Services will be provided for, commencing on the Service Start Date.

**Interim Users** means another cloud provider or reseller.

**License** means the Licenses set out in the VM CSP SOW which is a License Subscription.

**License Vendor** means:

- (a) where the Customer is an Australian Federal / Government organisation VMware Australia Pty Ltd; or
- (b) where the Customer is not an Australian Federal / Government organisation VMware International Unlimited Company.

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



**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 VM CSP SOW or in the absence of such a document the terms and conditions at [www.interactive.com.au/terms-and-conditions](http://www.interactive.com.au/terms-and-conditions).

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

**Supported Releases** means the combination of hardware models and versions of software that the Licence Vendor provides support for.

**Support Services** means technical support provided by Interactive with the support of the Licence Vendor to the Customer.

**Third Party Fault** means any one or more of the following:

- (a) any act or omission by any third party;
- (b) failure by the provider of services utilised by the third party to deliver Services; or
- (c) any event or component of the Service beyond Interactive's control, which may include breakdowns of machinery or equipment, facilities outside of Interactive's control or telecommunications failure.

**Users** means the Customer's employees and customers who utilise the software provided by the Licence Subscription.