

# reinteractive – Terms of Use

v1.6 – 22<sup>nd</sup> of August, 2017

Welcome to reinteractive Pty Ltd (“*we*”, “*us*”, “*our*”). This document is our Terms of Use. We have prepared it in plain English to make it easy to understand and so that hopefully you don’t need to use a dictionary to decipher it.

This document is a legally binding agreement governed by New South Wales law that regulates your engagement of our services when you engage us to perform professional services like consulting, software development and design services, and when you purchase our [CodeCare](#) and [OpsCare](#) subscription services. Unless we otherwise agree in writing, no other terms or conditions shall apply and if you don’t agree to our Terms of Use we will not provide you with any of our services.

These Terms of Use are divided into three sections. Firstly, we set out below the “core terms” that apply to all of our services. In sections 2 and 3, we set out additional service-specific terms and conditions which cover our CodeCare and OpsCare services, respectively. In section 4, we set out our general terms and conditions that also apply to all of our services.

We may change these Terms of Use or the amount of our fees from time to time so please check back regularly to make sure that you understand this document.

## *Section 1 – Core Terms*

**Professional Services:** We provide various professional services, including software application design and development services, user experience (UX) services and consulting services. Each different matter for which you engage us to perform professional services will be classified as a *project* and will be allocated a project name or number by us. Your engagement of us under these Terms of Use to perform professional services only commences once you have paid an invoice that we have issued which expressly refers to these Terms of Use. Our invoices will set out the amount of time that we will spend providing our professional services for you (*Block of Time*). For example, you can engage our application design services in blocks of hours or weeks. Once you have used up a Block of Time, your engagement of our professional services shall be deemed to have come to an end until you buy a further Block of Time.

**Up-front Payment:** So that we can focus on delivering great services rather than chasing bills and engaging debt collectors, unless we agree otherwise, all of our services must be paid for in advance together with all applicable taxes, duties and charges. Please contact us if you would like to discuss an alternative payment arrangement.

**Large Projects:** Large ongoing projects will generally be billed every four weeks or so, in this case the invoices are due within 14 calendar days without discount, or before work starts on that invoice for a prepayment discount.

**Travel Expenses:** It may become necessary for our staff to travel on behalf of your project. If this is required, and with your prior approval, this travel will be billed to you at cost plus 5%.

**After-Hours Work:** Occasionally you might request our developers work in the evenings, weekends or public holidays on your project. Depending on the availability of your assigned developers to do this, we can do so at your request only at our after-hours rates. For clarity, after-hours work is any work done outside of the standard 9am till 5pm from Monday to Friday on the days your developers are working on your project in the time zone of your assigned developers.

**Agile Process:** When you engage us to perform professional services for a Block of Time, we will work on your current list of requirements until your Block of Time has been fully utilised. While we may give you feedback and recommendations, it is up to you to guide us as to the work that you would like us to carry out. For example, you may as you see fit from time to time change the priority of your project requirements, delete project requirements or add new project requirements. At any Sprint meetings that we schedule with you, you may select requirements to be included in a current Sprint backlog and we will estimate whether we think we can complete those requirements during the current Sprint without exceeding your purchased Block of Time or whether you will need to purchase additional Blocks of Time. However, we don't provide fixed fee quotes and any estimates that we provide are a "best guess" only, are non-binding and subject to change from time to time. We charge you for all time spent on your projects, including, for example, time spent attending Sprint meetings, providing estimates, providing support, carrying out development and integration, providing maintenance and defect fixes, participating in design activities and providing status reports. All time spent by each reinteractive staff member on your Projects will accrue against any Block of Time that you have purchased.

**No Guarantee of Delivery or Performance:** As we operate on a time and materials basis only, are constrained by the Blocks of Time that you purchase, and operate on an agile basis as described above, we cannot commit to deliver any specific project requirements and we do not guarantee or represent that the modifications we make or the code we develop will not have an adverse effect on the performance or operation of your application. In rare circumstances our services may have an adverse effect on the performance and operation of your application and result in other unintended consequences. Any proposals, project visions and other documents or representations provided which set out your objectives or our capabilities to fulfil your project requirements are a guide only and our completion or satisfaction of those objectives and requirements may or may not be possible during the limited time that you engage us to provide services under these Terms of Use. It may necessary for you to purchase additional Blocks of Time in order for us to fix defects and other problems associated with your application.

**Co-operation is Key:** In our experience the prospects of successful project completion are exponentially increased when there are regular and high levels of co-operation and interaction between our development team and your project team members. We expect your project team members to be available as often as we require them to be in order to answer any questions that we may have about your project, to prioritise project requirements and provide access to systems and other information that we may require from time to time in connection with your projects. You will need to assign a member of your project team to the position of “Project Owner”, who will be your main representative for your projects. We will be entitled to assume that he or she may perform your obligations and exercise your rights under these Terms of Use (including by giving approval where required and prioritising your requirements), without the need for us to seek any other approval from you. Your “Project Owner” must be fully familiar with your business and the project, actively participate in all Sprint meetings that are held by us, and dedicate such efforts to your projects as we may require from time to time.

**Backup, Security and Archiving:** It is your (and not our) responsibility to backup, secure and archive the code for your application so please make sure that you have and implement an appropriate backup, security and archiving strategy.

## ***Section 2 – CodeCare Terms***

**About CodeCare:** Our [CodeCare service](#) is a monthly code support and maintenance service for a single Ruby on Rails application that you can select by subscribing to this service. As a subscriber to our CodeCare service, you will receive a Block of Time each month (***Included Block of Time***). How big the Included Block of Time you receive is depends on the CodeCare plan you are subscribed to and this Included Block of Time expires at the end of each month even where it is not fully used. In addition your subscription includes our installation of security updates on your application that are released for specific use on Ruby on Rails applications that are brought to our attention and proactive bug and defect fixes for your application that are detected by our bug reporting tools. So that we can provide this service, it is necessary for you to provide us with full unrestricted access to the software code in your application.

**CodeCare Monitoring:** If you purchase our CodeCare service we will monitor your application using third-party monitoring services such as bug tracking tools, and endeavour to take necessary action identified by those monitoring services to keep your application online. However, while we are confident in the capabilities of those monitoring services, they may not always work and we cannot be held responsible for any downtime in your application that may nevertheless occur from time to time. We can add your team to these services for an additional monthly fee depending on the service requested.

**Priority:** CodeCare is a professional service and our goal is to have your application as stable as possible. Due to this, we will always fix issues in a set

order of priority. First, we attend to any security updates that we become aware of that are available for your application. Secondly we ensure that there is a working automated test suite for the application, or help you write one if it is missing. Thirdly, we address application errors brought to our attention that may cause your application to crash completely. Once the above three points are handled, we then can work on any bug fixes, tweaks and minor modifications that you ask us to address.

**Delivery Schedule:** As you send us work to do, it will go into a queue for your application. At the start of each month we will start working through those tickets in order until you have exhausted your Included Block of Time. Any further requests at this point will be placed in the queue for your application to be started the following month when you receive a new Included Block of Time. If you would like us to complete work urgently or in excess of your Included Block of Time you can purchase additional Blocks of Time that do not expire at the end of the month.

**Tweaks and Minor Modifications:** Our CodeCare services comes with unlimited requests for CodeCare software tweaks, fixes and minor modifications to your application. We will prioritise these requests to be done after completion of urgent issues discussed in the Priority section above. It may not be possible to fix all bugs in your application immediately or at all but we will do our best to get to them as quickly as possible. Depending on the state of your application, it may take some time for us to get to all of your bugs and fix them. Our CodeCare services does not come with any guaranteed turnaround times. We will attend to your requests for bug fixes, tweaks, fixes and minor modifications as soon as reasonably practicable.

**Reports:** At the end of each month we will send you a report which sets out the work that we have done on your application as part of our CodeCare service during the month so that you can keep track of our service. This report will include the helpdesk tickets we have completed on your application and other work carried out. We will also include an itemised report of how your included Block of Time and any additional Blocks of Time purchased were used.

**Ramping up:** If you would like us to ramp up the speed in which we attend to bug fixes and minor modifications as part of our CodeCare service you always have the option of purchasing a Block of Time for a dedicated reinteractive resource to spend on your project. If you are not happy with our CodeCare service you can always terminate it at any time.

**Payment for CodeCare:** If you enter your credit card details into our website when subscribing to our CodeCare service, you will be deemed to have authorised us to charge your credit card on a monthly basis for the CodeCare services that you purchase. If you would prefer to pay by electronic funds transfer (EFT), wire transfer or cheque please let us know; we only agree to accept payment via EFT, wire transfer or cheque for our CodeCare service from clients who agree to pay for the CodeCare service annually in advance within 30

days of invoice (unless we otherwise agree in writing to alternative payment terms).

### ***Section 3 – OpsCare Terms***

**About OpsCare:** Our [OpsCare service](#) is an Operations as a Service (OaaS) for a single Ruby on Rails application hosting environment. It is a service which is designed to monitor and maintain the infrastructure (i.e. servers) upon which your Ruby on Rails application operates that you specify when subscribing to the service. Our OpsCare service is set at a fixed monthly price dependent on the complexity of your application environment. If you purchase this service we will monitor your hosting environment and endeavor to apply all relevant security patches and other maintenance that we become aware are required to your hosting environment to the extent necessary in order to ensure the continued availability of your Ruby on Rails application.

**Amazon Web Services:** If you purchase our OpsCare service we will arrange for the hosting of your Ruby on Rails application associated with your OpsCare account to be migrated to Amazon Web Services’ (**AWS**) hosting environment. If you subscribe to OpsCare, you will be deemed to have agreed and acknowledged that you are also applying for an AWS account, that you have considered and approve of the features and attributes of the AWS account, and that your use of the AWS account is subject to a separate agreement between you and Amazon Web Services, Inc. (**Amazon**), a current version of which is located [on Amazon’s website \(AWS Customer License Terms\)](#). If you subscribe to OpsCare, to the extent that our Terms of Use conflict with the AWS Customer License Terms, the AWS Customer License Terms prevail.

**AWS Accounts:** Our obligation to provide you with OpsCare services (if you purchase OpsCare services from us) is subject to your compliance with these Terms of Use and the AWS Customer License Terms but we cannot be held responsible for any problems that you experience with your AWS account beyond our control. For example, we cannot be held responsible for any changes, discontinuance or deprecation of any AWS account services or AWS APIs or for any breach of Amazon security measures. If you purchase our OpsCare service, we will help you manage the hosting environment for your AWS account and help you scale up and scale down the amount of AWS resources allocated to your application to cater to your application’s load requirements on a scheduled or manual basis that we will discuss with you. We will promptly forward any notice to you that we receive from Amazon regarding your AWS account that may affect you, including for example any notice of service interruption.

**Amazon requirements:** You must not contact Amazon for any support enquiries associated with your AWS account while you have a current OpsCare subscription. If You are an OpsCare subscriber We are obligated under our agreement with Amazon to provide you with support for your AWS account and to investigate and report to AWS all complaints made by our customers about AWS. You agree that we may also be obligated to facilitate an audit by Amazon of

our books and records at any time and to provide reports to Amazon which include the names, contact information and AWS account ID of our customers who procure our OpsCare services. Please also note that Amazon may capture, retain and use network, usage and other information regarding the use of its services. Please view Amazon’s privacy policy for details about its privacy practices.

**OpsCare Monitoring:** If you purchase our OpsCare service we will monitor your application using third-party monitoring services such as bug tracking tools, and endeavour to take necessary action identified by those monitoring services to keep your application online. However, while we are confident in the capabilities of those monitoring services, they may not always work and we cannot be held responsible for any downtime in your application that may nevertheless occur from time to time; and our ability to locate and rectify a failure of any such monitored application to operate in compliance with any specifications that you and we agree to (a **Fault**) is dependent on a number of factors, such as the AWS stack underlying the application. If you purchase our OpsCare service, we can add your team to the third party monitoring services that we use for an additional monthly fee depending on the service requested.

**OpsCare Standard Service Levels:** Due to the nature of software and the various circumstances that can result in downtime, unavailability and Faults, it is likely that even where you purchase our OpsCare service your application will suffer downtime, unavailability and Faults from time to time. If you purchase our OpsCare service, you may issue requests for Fault rectification to us using our online OpsCare support ticketing system and where you do so we will acknowledge receipt of your requests and promptly thereafter have one of our software engineers commence work on rectification of the Fault in accordance with the following table:

<b>OpsCare Standard Level Fault Rectification Request</b>	<b>OpsCare Standard Level Time for Response and Commencement of Rectification Work</b>
A request for rectification of a Fault that results in a non-production version of your application being impaired.	Within 12 business hours from the time we receive your request (where business hours are defined as Monday until Friday, 9 until 5pm in your time zone).
A request for rectification of a Fault that results in a production version of your application being impaired but not completely unusable.	Within 6 hours from the time we receive your request.
A request for rectification of a Fault that results in a production version of your application being completely unusable.	Within 2 hours from the time we receive your request.

While our goal of using the abovementioned third party monitoring services is to ensure that our OpsCare customers' applications are Fault-free 100% of the time, we are not responsible for rectifying Faults that the monitoring services fail to identify or for rectifying any Faults in any application caused or contributed to by your or AWS' planned downtime or your or AWS' decision to take your application (or the underlying AWS stack) down or offline (including, for example, where AWS suspends or terminates your AWS account due to your breach of the AWS Customer License Terms). We are also not responsible for any Faults that we cannot rectify (such as where a Fault is caused by internet service provider delays or failures or denial of service attacks) or that we cannot rectify despite us using our best endeavors to do so.

If you purchase our OpsCare service you may also request technical guidance from us with respect to your application from time to time and we will acknowledge receipt of your requests for general technical guidance with respect to your application by the end of the next business day following such a request.

**OpsCare Premium Service Levels:** You have an option to purchase our OpsCare Premium Service Levels which are subject to all of the same terms and conditions set out above under the heading "OpsCare Standard Service Levels", but with the following superior response times:

<b>OpsCare Premium Service Level Fault Rectification Request</b>	<b>OpsCare Premium Service Level Time for Response and Commencement of Rectification Work</b>
A request for rectification of a Fault that results in a production version of your application being impaired but not completely unusable.	Within 3 hours from the time we receive your request.
A request for rectification of a Fault that results in a production version of your application being completely unusable.	Within 1 hour from the time we receive your request.

**Payment for OpsCare:** If you enter your credit card details into our website when subscribing to our OpsCare service you will be deemed to have authorised us to charge your credit card on a monthly basis for the OpsCare services that you purchase and any AWS Charges. Your obligation to pay us continues during any temporary suspension of services initiated by Amazon. If you would prefer to pay by electronic funds transfer (EFT), wire transfer or cheque please let us know; we only agree to accept payment via EFT, wire transfer or cheque for our OpsCare service from clients who agree to pay for the OpsCare service annually

in advance within 30 days of invoice (unless we otherwise agree in writing to alternative payment terms).

**Payment for AWS Hosting Costs:** You must pay all fees, charges and applicable taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that accrue under or with respect to your AWS account (together, **AWS Charges**). Any prices specified on our website are exclusive of AWS Charges and unless we otherwise notify you in writing, all AWS Charges are payable to us at the end of each calendar month via a credit card or as otherwise agreed by us in writing. You must indemnify us from any loss or damage we incur as a result of any claim made by Amazon that you or we have breached any obligation owed in favour of Amazon caused by any of your acts or omissions.

**Transition of AWS Accounts:** If you terminate your OpsCare service with us we will provide you with access to your AWS account and allow you to take control of it so that you can continue to operate your hosting environment following termination of your OpsCare service and transition the management of your AWS environment to yourself once any outstanding AWS Service charges billed to you by reinteractive on behalf of AWS are paid in full.

#### ***Section 4 – Our General Terms***

**Intellectual Property Rights:** All copyright, patents, designs, trade marks, trade names, rights to confidential information and any other intellectual proprietary right or form of intellectual property, and the right to apply to register and enforce all or any of the foregoing rights (together, **IPRs**) in any software that we develop for exclusive use in your project and deliver to you (**Delivered Software**) are and shall remain owned exclusively by you to the extent that we are lawfully entitled to transfer those rights to you. If we agree to develop software for your exclusive use in your project we will notify you on the relevant invoices that we issue to you in advance. However, irrespective of what our invoices stipulate, in some situations we won't be able to transfer IPRs in the deliverables that we deliver to you, for example where the deliverables include open source software (as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>)) and in those circumstances we will have no obligation to do so. All IPRs in any software development tools (i.e. software that we use to develop other software) and in software that we have developed prior to your engagement of our services, and software that we develop outside the scope of the work you engage us to carry out for your project (including software we have developed or do develop for any other customer) belong to us and is never transferred or licensed to you other than in circumstances where they are licensed in the form that we supply the software to you (if at all) and then only on a non-exclusive, non-assignable and non-sublicensable basis and solely for your use integrated into the Delivered Software. All IPRs in our services and any suggestions you make regarding them remain with us and our licensors and we do not assign or license you to use any of them. You hereby irrevocably assign to us all of your rights, title and interest in and to all of those suggestions and agree to provide



any assistance we may require to document, perfect and maintain our rights in all such services and suggestions.

**Third Party IPR Claims:** To the best of our knowledge our Delivered Software will not infringe the IPR of any person. If we are wrong about that, we will indemnify you for any losses suffered by you from third party claims that your use of Delivered Software infringes any such rights, unless the claim arises with respect to software that we did not develop, a software feature requested by you, modification or use of Delivered Software in a manner that we have not approved in writing, or the use of an old or obsolete version of Delivered Software. If we provide you with replacement software to replace any infringing Delivered Software you must immediately cease using that infringing software. We won't indemnify you unless you do so, and you give us all relevant records, your full cooperation and complete control of the defence and settlement of the claim.

**Your Content:** We are not responsible for any of your content or data that you or any other person transmit, store in, upload, download or process in connection with any software we develop for you or deliver to you (**your content**). You license us (and Amazon, if you subscribe to our OpsCare services) to use your content to the extent necessary for us (and Amazon, if you subscribe to our OpsCare services) to use it in order to provide services to you under or in connection with these Terms of Use or the AWS Customer License Terms. You are solely responsible for the correctness, technical operation, and all permissions and authorisations required in connection with your content (and for us and Amazon if you subscribe to OpsCare) to process and use your content) including any permissions and authorisations relating to the use of personal information. You are also solely responsible for handling and processing any claims and notices relating to your content and you are responsible for any use of your content by you or any other person (whether such use is authorised or not). If we incur any loss or damage resulting from or in any way connected with your content, you must indemnify us for all such loss and damage.

**Our Liability:** Our liability under these Terms of Use is limited in a few different ways: First, we will not be liable for any claims made for a particular project in excess of the amount of money you pay us for that project; and we will not have any liability for our provision of a service in excess of the amount of money you pay us for that service; second, we will not have any liability for any matter beyond our reasonable control such as third party software failures, telecommunications network faults, non-performance or interruptions of software, hardware failures, service failures caused by third parties (including failures of Amazon services), adverse weather events and labour disputes; third, we will not be liable for software bugs, non-performance or downtime of software, applications or hardware, or for loss of profits, loss of revenue, loss of or unauthorised access to or alteration, deletion of, or failure to store, content or data, or for loss of goodwill, losses connected with software crashes and other unintended consequences of using our services, or other indirect or consequential losses even if we were advised of the possibility or likelihood of those losses; and fourth for any breach by us of any applicable guarantee under

schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (aka the *Australian Consumer Law*) our liability will be limited to one or more of the following as determined by us: if the liability concerns goods, (i) the replacement of the goods, or the re-supply of the goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and if the liability concerns services: (i) the supplying of the services again; or (ii) the payment of the cost of supplying the services again. You must indemnify us for any loss or damage we incur arising out of or relating to any third party claim concerning your use of our services, your breach of these Terms of Use, your content or a dispute between you and any third party.

**Confidentiality:** If you provide us with any information that the law deems to be confidential, we will do our best to keep it confidential other than where it is necessary for us to disclose the information for the purposes of performing our services for you. For example, we will need to disclose your credit card details to our payment gateway provider. If we give you any information that the law considers to be confidential you must do your best to keep it confidential and must not use it except for the purposes of the project that we delivered it for. You and we will return to each other or destroy each other's confidential information upon completion of the relevant project except where doing so would breach any applicable law. To avoid any doubt, you and we will have no obligation of confidence regarding any information that is disclosed by one of us (*giver*) to the other (*receiver*) that is independently developed by the receiver or obtained by the receiver without breaching any obligation of confidence and nor will either of us have or have had any obligation of confidence regarding any information in the public domain.

**Advertising:** If you engage us to perform any services you will be deemed to have given us your permission to list you as a client on our website and in our other marketing materials unless you give us written notification otherwise.

**Relationship:** We do not work exclusively for any particular client or clients. We work for many different clients across many different industries some of whom may be your competitors. Unless we otherwise expressly agree to do so, we do not work as employees, partners or in any other form of relationship with our clients other than as independent contractors. You cannot transfer your rights under these Terms of Use and you are responsible for your use of our services and for any other person that uses any of the services we provide to you. You are also responsible for any action that you permit, assist or facilitate any person or entity to take related to these Terms of Use.

**Non Solicitation of Employees:** Our employees are important to us. You cannot employ, engage or entice away from employment with reinteractive any person who is an employee of reinteractive who you had any dealings with at reinteractive. This restriction lasts for 6 months after you cease to receive any services from reinteractive. Also, this restriction prevents you from directly employing, engaging or enticing away any reinteractive employee directly or indirectly (i.e via another entity or any third party). If you breach your

obligations under this clause, you must pay reinteractive compensation in an amount equal to 20% of the employee's final year annual remuneration package with reinteractive or \$20,000 AUD, whichever is greater.

**Termination and Dispute Resolution.** Either one of us can terminate a project and your engagement of all or any of our services at any time by sending a written notice to the other party confirming the decision to terminate. If a project is terminated we will first apply any balance of any Block of Time you have purchased and paid for but not used against outstanding invoices if any and then refund the balance, if any. On termination, if you are not happy with our OpsCare or CodeCare service for any reason we will also give you a full refund of the monthly subscription fee you paid us (not including any additional Block of Time purchased) for the calendar month in which you issued your notice of termination. You may only exercise your right to this refund on one occasion only and only within 60 days of termination by [notifying us in writing](#) that you wish to exercise your rights to that refund. However if you have a problem with our performance or our services generally we would prefer to resolve the matter amicably rather than have our services terminated or either party waste time and money on legal action. If you have any problems with our services, please contact us. In our view, legal action, if it is ever necessary, should only be left as a last resort. If legal action is commenced, it may only be initiated in a court located in New South Wales.

**Contacting Us.** If you wish to make any enquiries with us about our services, we invite you to [contact us](#) at your convenience. We are available to speak to you during standard operating hours.