

Xeppo Hosting Agreement

1. Definitions

The meanings of terms used in these Conditions are set out below (unless the contrary intention appears):

Term	Meaning
Authorised Personnel	employees or agents of Xeppo, or its sub-contractors, who are authorised by Xeppo to provide the Products, and who are directly involved in that Service provision;
Conditions	this agreement and all schedules, appendices and other attachments to it;
Consequential Loss	loss of profits, loss of anticipated savings, or for any indirect or consequential loss;
Contract	any contract for the supply of Products constituted by acceptance or execution by the Distributor of any written request for Products incorporating the terms set out in the Sign Up Page attached to these Conditions, and any other terms specified by the Distributor in any other document or written quotation;
Customer	'Customer' is the purchaser of the Products;
Customer's Data	any data which is input, uploaded or otherwise integrated into the Products or Xeppo Technology by or on behalf of the Customer (including through interface with the Customer's Data Sources), which the parties acknowledge may include Personal Information;
Data Source	any database or information source which the Products access, manipulate or otherwise interact with to facilitate the proper use of the Products by the Customer;
Distributor	includes its officers, employees, agents and sub contractors of Opex Consulting Pty Ltd (Distributor). ABN 16 159 081 866
GST	the goods and services tax imposed by the 'A New Tax System (Goods and Products Tax) Act 1999' and related legislation;
Hosting	the provision by Xeppo to the Customer of Xeppo Technology and related connectivity to enable the Customer to access a system related to the provision of the Products via an internet connection;
Intellectual Property Rights	include all intellectual property and associated rights in respect of or in connection with the following: copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions) whether created before or during or after this agreement;
Liability	liabilities, losses, damages, actions, causes of action, arbitrations, claims, orders, judgments, outgoings, costs (including legal costs calculated on a solicitor and own client basis) and expenses, whether present or future, actual or contingent;
Minimum Term	12 months or as agreed by the Distributor and the Customer in writing;
Notice	90 days
Personal Information	the meaning given in the Privacy Act;
Privacy Act	the <i>Privacy Act 1988</i> (Cth);
Products	the Products as described in the Sign Up Page or the Statement of Agreed Deliverables or as otherwise agreed in writing between the parties
Related Body Corporate	has the meaning given to that term in the <i>Corporations Act 2001</i> ;
Service Availability Agreement	As defined in Schedule A. Limited to Products as indicated in the Standard Pricing table in the Statement of Deliverables.
Sign up Page	the online Sign Up Page linked to these Conditions

Term	Meaning
Statement of Agreed Deliverables	a document or section of this agreement so titled which relates to the Products, or part of them provided under a Contract;
Term	the Minimum Term and any Renewal Periods
Third Party Products	the Products excluding those which comprise Xeppo Core Features and Xeppo Technology
Xeppo	Xeppo Pty Ltd ACN 164 028 684;
Xeppo Core Features	core components of the Xeppo Technology as set out in schedule B . For the avoidance of doubt, the parties agree that it excludes any app related components.
Xeppo Technology	the web based software and mobile applications, application programming interface access (including but not limited to proprietary computer programs, code, software, processes, data, information, tables) and other components and any enhancements or improvements made to those components and made available to Xeppo customers from time to time.

2. Interpretation

In this agreement, unless the context otherwise requires:

- (a) headings do not affect interpretation;
- (b) singular includes plural and plural includes singular;
- (c) words of one gender include any gender;
- (d) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (e) a reference to a person includes a partnership, corporation, association, government body and any other entity;
- (f) a reference to this agreement includes any schedules and annexures to it;
- (g) an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (h) an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (i) a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (j) a provision is not construed against a party only because that party drafted it;
- (k) an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- (l) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

- (m) an expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in that Act at the date of this agreement.

3. Application

- (a) These Conditions apply to all Products supplied by Xeppeo to the Customer from time to time and the Customer is deemed to have read and agreed to these Conditions prior to requesting Products.
- (b) These Conditions prevail over all inconsistent conditions of the Customer's request, unless the Distributor expressly agrees otherwise in writing.
- (c) No other terms and conditions or other documents are relevant unless expressly acknowledged or referred to in or attached to these Conditions.
- (d) If any special conditions, including a Statement of Agreed Deliverables, are specified in any attachment to these Conditions, they form part of these Conditions and prevail over the balance of these Conditions to the extent of any inconsistency.

4. Products

4.1. Term

- (a) Subject to these Conditions, Xeppeo grants the Customer a non-exclusive licence to use the Products for the purposes of the Customer's business as at the commencement of a Contract but for no other purpose except as otherwise agreed by the parties acting reasonably for the Minimum Term and for any extension to the Minimum Term agreed pursuant to these Conditions.
- (b) Unless either Xeppeo or the Customer notifies the other at least 90 days before the end of the Minimum Term that it wishes to terminate this agreement effective from the end of the Minimum Term, this agreement will automatically renew for a further three months on substantially the same terms (that period being a **Renewal Period**).
- (c) This agreement will automatically renew for periods of three calendar months (each a **Renewal Period**) unless Xeppeo or the Customer notifies the other at least 90 days before to the expiration of that current Renewal Period that it wishes to terminate this agreement effective from the end of that Renewal Period.

4.2. Time for supply of Products

- (a) The completion of the attached signed Sign Up Page provided by the Distributor to the Customer and received by the Distributor is deemed to be an authorisation for the Distributor or Xeppeo (as relevant) to provide the Products regardless of whether or not the Distributor has executed the Sign Up page.

4.3. Performance levels

- (a) Xeppeo warrants that the Products will be supplied in a professional, competent and timely manner and with due care, skill and diligence. The level of care and skill to be provided is that of an experienced and competent professional organisation providing services of a similar nature to those which Xeppeo is required to provide.

- (b) Xeppo's obligation to supply Products is limited by the support level requirements set out in **Schedule A**.
- (c) Xeppo is not responsible for the advice provided by the Customer to its clients, regardless of the fact that Xeppo may, as part of the Products, provide documents which the Customer uses in delivering that advice.

4.4. Hosting services

Notwithstanding anything else contained in this Agreement, if Xeppo agrees to provide the Customer with Hosting:

- (a) Xeppo is responsible for installation and maintenance of any software at the hosted site, including installation of upgrades and releases of that software;
- (b) Xeppo will implement and maintain a range of security measures to protect the Customer's Data, details of which are regularly updated on the Xeppo support portal, available as at the date of this Agreement at <https://xeppo.zendesk.com/hc/en-us/articles/115011656587-Xeppo-Security-Overview>.
- (c) Xeppo will implement appropriate back-up and disaster recovery procedures at the hosted site;
- (d) Xeppo will install and maintain equipment and communication infrastructure for the hosted site;
- (e) Xeppo Technology is hosted by servers within Australia that are underpinned by a minimum N+ 1 standard for power and cooling systems, delivering an optimal operating environment for the Xeppo Technology;
- (f) Xeppo will not transfer any of the Customer's Data outside of Australia without the Customer's written consent;
- (g) the Customer is responsible for maintaining login and passwords for accessing data at the hosted site; and
- (h) the Customer is responsible for all equipment and communication infrastructure necessary to access the internet web site.

5. Customer acknowledgements and obligations

- (a) The Customer agrees that at the request of Xeppo it must provide any further, reasonable assistance as required by Xeppo in connection with the supply of the Products, but only if such assistance will not cause the Customer to incur any material or unreasonable cost or expenditure.
- (b) The Customer must ensure that any information or data which the Customer uses in connection with the Products or its use:
 - (i) will not breach or infringe the rights, including any Intellectual Property Rights, of any person;
 - (ii) will not be illegal in any way;

- (iii) will not contain any harmful components, including viruses, back doors, trap doors, hidden sequences, hot keys or time bombs.
- (c) The Customer acknowledges that the Customer is responsible for ensuring Xeppo Technology has nightly access to all necessary Data Sources.
- (d) The Customer acknowledges that the Customer is responsible for ensuring the accuracy of information contained within the Customer Data Sources.
- (e) The Customer acknowledges that Xeppo Technology obtains information from the Data Sources periodically. The Customer acknowledges that information within Xeppo Technology is not a real-time reflection of the data contained within the Customer's Data Sources.
- (f) The Customer acknowledges that using a login control as the sole validation measure is an appropriate standard of validation to permit a user access to data, client data, or other information from any application provided as part of the Products.
- (g) The Customer acknowledges that information of the Customer, relating to the Customer or to its clients, must be disclosed to Authorised Personnel for the proper provision of the Products. The Customer consents to such disclosure provided that it is limited to disclosure which is reasonably necessary for Xeppo to provide the Products.

6. Fees, payment and quotations

6.1. Fees and GST

Unless otherwise stated:

- (a) all fees quoted by the Distributor are exclusive of GST and the Customer is responsible for payment of any GST liability in respect of the provision of the Products which are payable at the same time as the GST exclusive consideration; and
- (b) The Distributor at its discretion may suspend the Customer's access to the Products at any time during a Contract until all overdue amounts payable to the Distributor by the Customer have been paid in full.

6.2. Price and payment

- (a) Unless otherwise agreed in writing, the agreed apportionment of charges for the Products is specified in the Sign Up Page and Statement of Agreed Deliverables and are payable upon the occurrence of the corresponding payment trigger.
- (b) The Customer must ensure that the direct debit facility or credit card details held by the Distributor or Xeppo under these Conditions remains valid and up to date while these Conditions are in force.
- (c) Xeppo Monthly Ongoing Fees, as stipulated on the Statement of Deliverable, are invoiced one month in advance
- (d) Unless the relevant amount is paid in accordance with **clauses 6.2 (a) or 6.2 (b)** as otherwise agreed in writing, the Customer must, within 7 days of receiving an invoice from the Distributor or Xeppo, pay the invoice in full in Australian dollars in any manner

required by the Distributor (or Xeppo) in writing and in full without deduction or set-off. Any costs or charges incurred by the Distributor or Xeppo in collecting or attempting to collect overdue amounts must be paid by the Customer to the Distributor or Xeppo on demand.

- (e) Without limiting **clauses 6.2 (a) or 6.2 (b)** the Customer may enter into a payment plan arrangement with Xeppo for the payment of the charges for the Products on such terms that are deemed appropriate by the Distributor.
- (f) The Customer must pay the reasonable costs incurred by the Distributor or Xeppo (including change fees cancellation fees and unrecoverable deposits) if the Customer changes a previously agreed date for the supply of any Products, including training or site visits.
- (g) All fees and rates specified in a Contract or in any other correspondence may be adjusted from 1 October in accordance with the annual change in the published CPI (All groups – Adelaide) on 1 July in each year during the Term.
- (h) After the initial Minimum Term, without limiting **clause 6.2(a) or 6.2(g)**, the Distributor or Xeppo may, by giving 90 business days' written notice to the Customer, adjust the fees and rates charged for the Products in accordance with:
 - (i) a change in the Australian Consumer Price Index (**CPI**) at the date of the fee and rate adjustment; or
 - (ii) a reasonable amount agreed to in writing by the Customer in advance.

6.3. Quotations

- (a) Subject to **clause 6.1** and **6.2(a)** all fees quoted for Products are valid quotes for 20 business days' from the date of quotation.
- (b) Quotations are based on the current costs of supplying the Products and unless the Distributor has otherwise agreed, are subject to amendment by the Distributor before or after the quotation is made to meet any rise and fall in such costs between the date of quotation and the date of providing the Products.
- (c) The Distributor or Xeppo reserves the right to charge the Customer for any work undertaken and/or costs incurred as a result of the Customer varying its request for Products, correcting any errors or omissions referred to in **clause 6.3 (e)** or requiring urgent Products (including any overtime costs).
- (d) The Distributor or Xeppo will supply the Products on the basis of the Customer's written request for Products. The Distributor will not be responsible for any errors or omissions in relation to the Products where those errors or omissions result wholly or partially from incomplete or unclear instructions in the Customer's request for Products.
- (e) The current costs for a variety of Products is included in the Statement of Agreed Deliverables. The Distributor or Xeppo may update or alter this document by Notice to the Customer provided that such a variation or alteration will only affect quotations and will not affect any existing Contracts.

7. Intellectual property

7.1. No interest in Intellectual Property Rights

- (a) The Customer acknowledges that the Intellectual Property Rights in the Products are and will remain the property of Xeppo and the Distributor as relevant and that the Customer acquires no ownership or title to or interest in such Intellectual Property Rights under this Agreement.
- (b) Xeppo and the Distributor acknowledge that all Intellectual Property Rights in the Customer's Data are and will remain the property of the Customer and that neither Xeppo nor the Distributor acquires any ownership, title to or interest in such Intellectual Property Rights under this agreement.

7.2. Infringement

If any party becomes aware of any infringement or suspected or alleged infringement of any Intellectual Property Rights in relation to the Products then that party must notify the other parties in writing of such infringement, suspected infringement or alleged infringement as soon as practicably possible.

7.3. Warranty and indemnity

The Distributor warrants that the Products will not infringe the Intellectual Property Rights of any person. The Distributor must indemnify the Customer against any direct loss, costs, expenses, demands or liability arising out of a claim by a third party against the Customer alleging that the Products infringe any such Intellectual Property Rights.

8. Confidentiality

Each party agrees in favour of the other parties that all confidential information provided to it or which it becomes aware of under a Contract:

- (a) will be kept strictly confidential;
- (b) will not without the other party's consent be disclosed or divulged to any third party, reproduced or used for any purpose or enterprise other than for the purpose of a Contract, including pursuant to **clause 6.2(g)**;
- (c) will be safely and securely stored when not in use; and
- (d) will remain the absolute and exclusive property of the disclosing party.

9. Privacy

- (a) Xeppo and the Distributor must only use the Customer's Data for the purpose of performing their respective obligations under this agreement and otherwise as required to comply with law and for no other purpose, and must take all reasonable measures in accordance with good industry practice to protect the Customer's Data that is stored on, processed by or generated by Xeppo's servers (or servers controlled by Xeppo) against unauthorised access or disclosure, viruses and other malicious or destructive code.

- (b) Subject to **clause 5 (b)** and to the extent that the Customer has obligations under the Privacy Act, it remains fully responsible for those obligations and ensuring that the Products will comply with those obligations. The Customer must indemnify Xeppo and the Distributor to the full extent permitted by Law against any Liabilities suffered by Xeppo in relation to a breach of the Customer's obligations under this Act.
- (c) Xeppo and the Distributor must only allow their staff to access Personal Information stored on, processed by or generated by Xeppo's servers (or servers controlled by Xeppo) where necessary for the purpose of Xeppo or the Distributor performing its obligations under this agreement and otherwise in order to enable Xeppo to comply with the Privacy Act (whether or not Xeppo is strictly required to comply under the terms of the Privacy Act);
- (d) Xeppo and the Distributor must take reasonable steps to protect the Personal Information that is stored on, processed by or generated by Xeppo's servers (or servers controlled by Xeppo) against misuse, loss and from unauthorised access, modification or disclosure; and
- (e) Xeppo and the Distributor must promptly notify the Customer of any breach of this **clause 9** and any loss, unauthorised access to, or unauthorised disclosure of, any Personal Information that is stored on Xeppo's servers (or servers controlled by Xeppo).
- (f) Xeppo and the Distributor must cooperate, assist and respond to the Customer's requests as reasonably necessary in the event of a security breach in respect of the Customer's Data stored on Xeppo's servers (or servers controlled by Xeppo).

10. Insurance

Xeppo and the Distributor warrant that they will maintain insurance against all the reasonable risks which a reasonable and prudent provider of similar Products might be expected to insure, against including professional indemnity insurance and public liability insurance in respect of the supply of the Products with a reputable Australian insurer, to a level of cover Xeppo determines appropriate (acting reasonably and with regard to the level of cover that a reasonable and prudent provider of similar Products would maintain).

11. General limitation on liability

- (a) Xeppo will not be liable for any guarantee, warranty or representation as to the quality and fitness for purpose or otherwise of any Products or the Customer's use of the Products, unless expressed in writing and signed on behalf of Xeppo. Any such warranty or representation must be limited to its express terms.
- (b) None of the guarantees, conditions, warranties or other terms implied by Commonwealth, State or Territory laws ('**Implied Terms**') apply to any Contract except to the extent that the implied terms cannot be lawfully excluded.
- (c) Xeppo's liability for breach of any provision of any Contract or for breach of any Implied Terms which by force of law cannot be excluded from applying to any Contract is limited at the option of Xeppo to re-supplying Products, or, paying the cost of re-supplying Products, except where a breach relates (in whole or in part) to the unauthorised access to, or disclosure of, the Customer's Data.
- (d) Under no circumstances will Xeppo be liable to the Customer or to any third party for

any Consequential Loss arising out of the supply or late supply of the Products or any failure to perform or observe Xeppo's obligations under any Contract or Implied Terms, and the Customer will keep Xeppo fully indemnified against any claim made against Xeppo by a third party for any claim or Consequential Loss.

- (e) To the extent permitted by law,
 - (i) The Customer acknowledges that it does not rely on any representations or warranties made by Xeppo in relation to any Intellectual Property of a third party provided as part of or connected with the Third Party Products;
 - (ii) the Customer releases Xeppo in respect of all Liability related to such Intellectual Property;
 - (iii) the Customer indemnifies Xeppo in respect of all Liabilities suffered by the Customer related to the Customer's use of data or Intellectual Property of the Customer or a third party connected with the Third Party Products; and
 - (iv) the Customer releases Xeppo from any Liability suffered in connection with the Customer's, or a user's, access to or use of data which is stored on any system which is used to access the Third Party Products.

12. Default

12.1. Default by Xeppo

- (a) If Xeppo makes default in any obligation under a Contract or enters into liquidation whether voluntary or involuntary, the Customer may give Notice to Xeppo requiring Xeppo to remedy the breach within a reasonable period and, if the breach is not remedied, at its discretion and by written Notice to Xeppo and the Distributor cancel the relevant Contract so far as it remains unperformed without prejudice to its rights.
- (b) Xeppo must indemnify the Customer and the Distributor against any Liability which the Customer or the Distributor may incur as a result of a termination under **clause 12.1**.

12.2. Default by the Distributor

- (a) If the Distributor makes default in any obligation under a Contract or enters into liquidation whether voluntary or involuntary, the Customer may give Notice to the Distributor requiring the Distributor to remedy the breach within a reasonable period and, if the breach is not remedied, at its discretion and by written Notice to Xeppo and the Distributor cancel the relevant Contract so far as it remains unperformed without prejudice to its rights.
- (b) If the Customer terminates the Contract under **clause 12.2** the rights and obligations of the Distributor under the Contract after the time of such termination may, by agreement between Xeppo and the Customer be assumed by Xeppo.
- (c) The Distributor must indemnify the Customer and Xeppo against any Liability which the Customer or Xeppo incurs as a result of a termination under **clause 12.2**

12.3. Default by the Customer

- (a) If the Customer commits any material breach or any act of bankruptcy or enters into liquidation whether voluntary or involuntary, Xeppo or the Distributor may give Notice to the Customer requiring the Customer to remedy the breach within a reasonable period and, if the breach is not remedied, at their discretion and by written Notice:
 - (i) terminate any credit arrangement with the Customer;
 - (ii) suspend provision of Products;
 - (iii) delete any of the Customer's Data held on Xeppo's servers (or servers controlled by Xeppo), provided that such right may not be exercised except after a period of fourteen days has passed from the date of such Notice;
 - (iv) cancel any Contract so far as it remains unperformed without prejudice to its rights.
- (b) The Customer must indemnify Xeppo and the Distributor against any Liability which Xeppo or the Distributor may incur as a result of any breach by the Customer of its warranties or obligations under a Contract.

13. Termination

13.1. Termination by Xeppo

Without prejudice to any of its other rights, Xeppo may without Liability and by written notice terminate a Contract or suspend the supply of Products:

- (a) if the Customer commits any breach of this or any other Contract with Xeppo (including failure to make any payments on the due date), Xeppo gives notice to the Customer requiring the Customer to remedy the breach (if the breach is capable of remedy) within a reasonable period having regard to the nature of the breach, which must not be less than 10 business days, and the breach is not remedied within that period;
- (b) if, being an individual, the Customer dies or has a receiver appointed over his or her assets;
- (c) if, being a Company, the Customer calls any meeting of its creditors or has a receiver of all or any of its assets appointed or enter into liquidation or becomes subject to a winding up order of the Court;
- (d) if the Customer is not capable of paying any of its payments due to Xeppo within 10 days of being required to do so by Xeppo; or
- (e) if, when provided with written notice pursuant to **clause 6.2(i)**, the Customer refuses to accept any service or price variations that are made strictly in accordance with a Contract.

13.2. Termination by the Distributor

Without prejudice to any of its other rights, the Distributor may without Liability and notice terminate a Contract or suspend the supply of Products:

- (a) if the Customer commits any breach of this or any other Contract with the Distributor, including failure to make any payments on the due date and fails to remedy that breach (if such remedy is possible) within a reasonable period;
- (b) if, being an individual, the Customer dies or has a receiver appointed over his or her assets;
- (c) if, being a Company, the Customer calls any meeting of its creditors or has a receiver of all or any of its assets appointed or enter into liquidation or becomes subject to a winding up order of the Court;
- (d) if the Customer is not capable of paying any of its payments due to the Distributor within 10 days of being required to do so by the Distributor;
- (e) if, when provided with Notice, the Customer refuses to accept any service or price variations that are made in accordance with agreement; or
- (f) in accordance with clause 13.1(d).

13.3. Termination by Customer

- (a) Subject to **clause 13.3(b)** the Customer may terminate a Contract by providing Xeppo and the Distributor with at least 90 days' prior written notice.
- (b) The parties acknowledge that, except where a termination is pursuant to **clause 13.3(c)** the Customer agrees to pay the Distributor for the Products for at least the Minimum Term and any termination pursuant to **clause 13.3(a)** cannot be effective until after the Minimum Term has expired.
- (c) Without prejudice to any of its other rights, the Customer may without Liability and notice terminate a Contract if
 - (i) Xeppo commits any material breach of this Contract and fails to remedy that breach (if such remedy is possible) within a reasonable period; or
 - (ii) Xeppo calls any meeting of its creditors or has a receiver of all or any of its assets appointed or enter into liquidation or becomes subject to a winding up order of the Court.

13.4. Consequences of Termination

- (a) Except if terminated pursuant to **clause 13.3**, if a Contract is terminated for any reason prior to the end of the Term, the Customer will be liable to pay any portion of the fees for the Products which are unpaid but which are payable, or would have become payable during the Term if the termination had not occurred. Such amount must be due as a debt owing immediately upon termination.
- (b) Upon termination, Xeppo must, if requested by the Customer and at the cost of the Customer (which cost must only be in respect of the reasonable, actual costs to be incurred by the Distributor) effect the migration of the Customer's Data and associated materials in accordance with the format reasonably specified by the Customer no later than 10 business days after the Customer's request.

- (c) Following termination, Xeppo must on the request of the Customer delete any of the Customer's Data held on Xeppo's servers (or servers controlled by Xeppo).

14. Miscellaneous

- (a) A Contract may be altered by a written agreement signed by all parties.
- (b) Except as expressly provided otherwise in a Contract or in accordance with clause 13.5(b), a party must not assign or otherwise deal with a Contract or any right under it without the written consent of the other parties.
- (c) A Contract constitutes the entire agreement between the parties about its subject matter and supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.
- (d) A waiver of a provision of or right under a Contract must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.
- (e) The failure, delay, relaxation or indulgence by a party in exercising a power or right under a Contract is not a waiver of that power or right.
- (f) An exercise of a power or right under a Contract does not preclude a further exercise of it or the exercise of another right or power.
- (g) Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of a Contract, remains in force after the expiration or termination of a Contract

14.2. Force Majeure

- (a) Xeppo will not be liable for any Liability caused by Xeppo's failure to supply Products as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, war or any other matter beyond Xeppo's reasonable control.
- (b) The Distributor will not be liable for any Liability caused by the Distributor's failure to supply Products as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, war, or any other matter beyond the Distributor's reasonable control.
- (c) If an event referred to in **clause 14.2(a)** continues for a period exceeding 90 days, then either party may terminate any Contract affected by it by written Notice.

14.3. Governing Law

Every Contract (wherever made) is governed by the laws of South Australia and subject to the non-exclusive jurisdiction of the courts of South Australia.

14.4. Dispute resolution

- (a) Before taking any Court action, the parties must attempt to resolve any disputes through mediation, provided that nothing will affect either party's right to seek urgent interlocutory and/or injunctive relief.

- (b) Any dispute relating to the fees payable to the Distributor by the Customer will be referred to an independent expert if the parties are unable to resolve the dispute through negotiation within a reasonable period.

14.5. Assignment and sub-contracting

- (a) Subject to paragraph (b), no party may assign or sub-license any of its rights, or transfer any of its obligations, under the Agreement without the written consent of each other party (not to be unreasonably withheld).
- (b) The Distributor may use subcontractors in its performance of the Services, on the strict condition that the Distributor ensures that any such subcontractors abide by the terms of this Agreement and that the Distributor takes full responsibility for their acts and omissions (without exception).

Support Levels

1. Service Availability

- Xeppo will provide the Customer with connectivity to the Xeppo Technology via the internet with an overall Service Availability Target of 99.9% in each calendar month during the Term (**Service Availability Target**).
- **Service Availability** is to be determined with respect to the Customer's monthly connectivity to the Xeppo Technology calculated as follows:

$$\text{Service Availability Percentage} = (\text{Total Monthly Minutes} - \text{Downtime}) / \text{Total Monthly Minutes} \times 100\%$$

Where:

- **Downtime** means the total number of minutes in the month that the Customer cannot access the Xeppo Technology, excluding any downtime which results from any one of the following events:
 - One or more system connectors has not run;
 - A function within the application is not working;
 - Overnight processing of data did not occur;
 - the Customer's act or omission; or
 - any event beyond the reasonable control of Xeppo, including a systemic internet failure or a force majeure event.
- The calculation of Service Availability will be determined by Xeppo by use of its monitoring system which checks in 1 minute intervals the services are running on the Xeppo Technology. The determination of Xeppo will be final and binding. The monitoring will need to be paused for Emergency Maintenance to ensure the monthly availability target is not affected by these excluded events.
- Application uptime is determined by:
 - The Xeppo portal website (<https://portal.xeppo.com.au>) is accessible; or
 - A user is able to log into the Xeppo Portal – login issues affecting specific users is not considered downtime; or
 - The Xeppo database is functional and accessible.

2. Service Availability Guarantee

For Products which have a Service Availability Guarantee, on the Customer's written request to be made within 14 days of the end of the relevant month, Xeppo will credit the following:

Service Availability Level	Service Credit
Less than 99.5% but more than 99.0%	5% of Xeppo Monthly Ongoing Fees
Less than 99.0% but more than 95.0%	10% of Xeppo Monthly Ongoing Fees
Less than 95.0%	20% of Xeppo Monthly Ongoing Fees

Downtime is calculated based on the number of business days in the respective month.

3. Maintenance

- **Preventative Maintenance and Planned Maintenance**, occurs such that:
 - Wherever possible, the time and date of the proposed maintenance is communicated to the Customer at least 4 hours in advance with notification within the Xeppo Support portal;
 - if scheduled for a Business Day, maintenance work will not be performed between 8.00 am and 6.00 pm AEST; or
- **Preventative Maintenance** includes maintenance when Xeppo detects an item in the environment that needs action to avoid emergency change controls in the future.
- **Planned Maintenance** includes maintenance being done to:
 - support on-going product and operational projects to ensure optimal performance;
 - ongoing maintenance and enhancements of Xeppo Core Features;
 - ongoing maintenance and enhancements of Xeppo apps (if applicable);
 - deploy non-critical service packs or patches; and
 - periodic redundancy testing; and
 - when Xeppo detects an item in the environment that needs action to avoid emergency change controls in the future.
- **Emergency Maintenance**

The Customer acknowledges and agrees that there may be instances where Xeppo needs to interrupt the Services without notice in order to protect the integrity of the Xeppo Technology due to security issues, virus attacks, spam issues or other unforeseen circumstances. Where **Emergency Maintenance** is required with no or minimal prior notice, a notification will be broadcast through the Xeppo support portal.

4. Support Services of Xeppo

- Xeppo's obligations with respect to support under this agreement (**Support Services**) relates to issues involving:
 - log in issues; and

- an error, defect, malfunction or non-conformity in the Xeppo Technology.
- Basic 1st level helpdesk type queries
- Except as described the above paragraph, Support Services do not extend to assistance with the implementation or use of:
 - training
 - upgrades to Xeppo Core Features;
 - expansions to Xeppo Core Features;
 - enhancements to Xeppo Core Features; or
 - improvements to Xeppo Core Features.
- Xeppo may charge for excessive helpdesk use:
 - Xeppo licensing packs allow for a reasonable number of hours per month for support
 - Xeppo reserves the right to charge for if excessive use occurs for successive months
 - Xeppo will notify the Customer in advance of any such action and attempt to remedy
 - Additional support hours are charged at an hourly rate of \$200 per hour
- The Support Services will be provided on Business Days during the following hours:
 - Email support:
 - monitored 9:00 am to 5:30 pm Monday to Friday AEST (or AEDST as relevant); and
 - emails received outside the above hours will be collected, however no action can be guaranteed until the next Business Day.
 - Phone support is only available to Premium subscriptions

On occasions, Xeppo may choose to extend the above hours but this is in Xeppo’s absolute discretion. Further, Xeppo does not generally operate on non-Business Days, except in the case of Emergency Maintenance where Xeppo will take immediate action.

5. Service Requests

- The Customer must report any issues and request support via Xeppo’s support portal using the following protocol:

Category Level	Criteria	Contact Method
1	Unplanned interruption rendering the Xeppo Technology un-available; no work-around	Email
2	Unplanned interruption rendering the Xeppo Technology un-available; work-around available	Email
3	Xeppo Technology is un-available for a small percentage of Users	Email
4	Intermittent problem	Email

- Once Xeppo receives a service request, Xeppo will use its reasonable endeavours to provide a proposed resolution time to the service request as soon as practicable thereafter.

6. Fault Rating and corresponding Service Credits

6.1. Determining existence of a Fault

A Fault will occur when the SaaS Service is affected by a fault of any Fault Rating as outlined in the following table:

Fault Rating	Definition of Fault
Critical	Complete outage to the Online Services, or performance issue that completely prevents all users from using the Online Services; there is no work around available
High	Outage of service or critical function in the Online Services that materially prevents a large proportion or group of users from using the Online Services or significantly degraded performance that prevents users from effectively using the Online Services; no workaround available
Medium	Key function not working for some users of non-critical business functions. Online Services do not work as designed. Service is usable but a non-critical function not operating properly; acceptable workaround deployed
Low	Minor issue causing limited inconvenience, cosmetic issue
Request	No active Fault, customer is requesting documentation, general information, enhancement request etc.

The Customer must report any Fault or suspected Fault to Xeppo. When reporting a Fault or suspected Fault, The Customer must provide any information that is reasonably requested by the Xeppo representative.

6.2. Fault Ratings

- (a) The severity of a Fault will be classified using non-exhaustive criteria to be agreed by The Customer and Xeppo, which will be based upon the Fault Ratings outlined the table in paragraph 6.1 of this Appendix, adjusted as appropriate to suit the SaaS Service.

6.3. Fault Resolution Criteria

- (a) A Fault will be resolved where the criteria in the following table (**Fault Resolution Criteria**) corresponding to the Fault Rating of that Fault are satisfied:

Fault Rating	Fault Resolution Criteria
Critical	(a) Xeppo is unable to reproduce the Fault after the patch has been implemented; or (b) the parties agree on a course of action to resolve the Fault.
High	(a) Xeppo is unable to reproduce the Fault after the patch has been implemented; (b) a 'workaround' is provided by Xeppo that is accepted by The Customer; or (c) the parties agree on a course of action to resolve the Fault.
Medium	(a) Xeppo is unable to reproduce the Fault after the patch has been implemented;

	(b) a 'workaround' is provided by Xeppo that is accepted by The Customer; (c) a 'fix' for the Fault has been incorporated into the next scheduled release; or (d) the parties agree on a course of action to resolve the Fault.
Low	(a) Xeppo is unable to reproduce the Fault after the patch has been implemented; (b) a 'workaround' is provided by Xeppo that is accepted by The Customer; or (c) a 'fix' for the Fault has been incorporated into the next scheduled release.

7. Response Times

The Response Time Targets and Restoration Time Targets for each Fault Rating are as follows, calculated from the time the Fault is either identified by, or reported to Xeppo:

Fault Rating	Response Time Target	Restoration Time Target
Critical	1 Business Hour	4 Business Hours
High	2 Business Hours	1 Business Day
Medium	4 Business Hours	2 Business Days
Low	2 Business Days	10 Business Days
Request	5 Business Days	Not applicable

8. Fault Response Criteria

Xeppo will respond and resolve a Fault in accordance with the following table:

Fault Rating	Response
Critical	When a Critical Fault Report is logged, Xeppo will work continuously during Business Hours to resolve the incident until the fault has been resolved. As this is not a business critical system, it is not expected that Xeppo will work to resolve a fault outside of business hours.
High	When a High Fault Report is logged, Xeppo will work continuously during Business Hours to resolve the incident until the fault has been resolved.
Medium	When a Medium Fault Report is logged, Xeppo will work during Business Hours to resolve the Fault as part of the normal software development cycle.
Low	When a Low Fault Report is logged, Xeppo will work to resolve the Fault as part of the normal software development cycle.
Request	When a Request is logged, Xeppo will use its best endeavours to respond to the Customer in the specified Response Time Target.

The Restoration Time Target for Critical and High Fault Ratings exclude:

- Catastrophic event, such as a disaster at the primary Data Centre
- Incidents on 3rd party providers that are out of Xeppo's control (e.g. DoS attack on a DNS hosting provider)

9. Reporting

Limited reporting is available to the Customer upon request

Reporting may include:

- Uptime of the Xeppo Technology for a specified period;
- Statistics relating to the Customers instance of Xeppo;
- Service and support reports.

The report is to be requested via the Xeppo support desk.

The report will be provided within 14 days of request (unless stated otherwise in writing).

Custom reporting can be requested.

Custom reporting may require a scope of works to be completed and may be applicable to time and material charges.