# Xeppo Cloud Hosting Agreement

## Signing Page

Customer Name

ACN :                {{*ACN_es_:signer2}}

Related Party                           {{*Related Party_es_:signer1        }}

Setup Fees                        Outlined in Statement of Deliverable Fee Schedule Above
Xeppo Monthly Ongoing Fees        Outlined in Statement of Deliverable Fee Schedule Above

Notice Period                     90 Days

*Executed as a Deed*

### Executed for and on behalf of Customer:

Signed:        {{Sig_es_:signer2:signature}}                Signed:                {{Sig_es_:signer3:signature}}

Name:                                                       Name:

Title:                                                      Title:

Date:        {{Dte_es_:signer2:date}}                       Date:        {{Dte_es_:signer3:date}}

### Executed for and on behalf of Xeppo:

Signed:        {{Sig_es_:signer1:signature}}

Name:

Title:

Date:        {{Dte_es_:signer1:date}}

## Xeppo Cloud Hosting Agreement

### 1     DEFINED TERMS AND INTERPRETATION

**1.1**     **Defined Terms**

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

(a)     "**2-Factor Authentication (2FA)**" relates to the additional security measure applied to all Xeppo User logins;

(b)     "**Account**" means the Customer's account registered with Xeppo;

(c)     "**API Terms**" means the terms and conditions applying to the use of Xeppo's API connectors as set out in Schedule B and as amended from time to time;

(d)     "**Authorised Personnel**" means 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;

(e)     "**Active Xeppo User**" means any active login assigned by an employee, agent or sub-contractor of the **Customer**;

(f)     "**Conditions**" means this agreement and all schedules, appendices and other attachments to it;

(g)     "**Consequential Loss**" means loss of profits, loss of anticipated savings, or for any indirect or consequential loss;

(h)     "**Contract**" means any contract for the supply of Products constituted by Xeppo of any request for Products through an Order placed by the Customer incorporating the terms set out in the Order or these Conditions, and any other terms specified by Xeppo in any other document or written quotation;

(i)     "**Customer**" means the entity named in the Account or any written request for Products. If there is no entity named, the "**Customer**" is the purchaser of the Products;

(j)     "**Customer's Data**" means 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;

(k)     "**Data Source**" means 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;

(l)     "**Details**" means the details of the Customer's subscriptions, payments, Orders and other information which is available on the Website in the Customer's secure Account area;

(m)     "**Fair Use Policy**" means the policy set out in Schedule C, as amended by Xeppo from time to time;

(n)     "**GST**" means the goods and services tax imposed by the '*A New Tax System (Goods and Products Tax) Act 1999*' and related legislation;

(o)     "**Hosting**" means 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;

(p)     "**Intellectual Property Rights**" means 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;

(q)     "**Liability**" means 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;

(r)     "**Minimum Term**" means 90 days from the date of these Conditions or as extended by the Distributor and the Customer in writing;

(s)     "**Notice**" means the Notice Period stipulated in these Conditions , or as extended by the Distributor and the Customer in writing;

(t)     "**Order**" means any order for Products made by the Customer through the Website or otherwise;

(u)     "**Personal Information**" means the meaning given in the Privacy Act;

(v)     "**Privacy Act**" means the *Privacy Act 1988* (Cth);

(w)     "**Products**" mean the Products as described in the Order or the Customer's Account or as otherwise agreed in writing between the parties;

(x)     "**Related Body Corporate**" has the meaning given to that term in the *Corporations Act 2001*;

(y)     "**Related Party**" means the entity named on the signing page (if applicable);

(z)     "**Support Level Requirements**" means the support level requirements to be provided by Xeppo as they relate to the Products and as set out on the Website;

(aa)    "**Term**" means the Minimum Term and any Renewal Periods;

(bb)    "**Third Party Products**" mean the Products excluding those which comprise Xeppo Core Features and Xeppo Technology;

(cc)    "**Website**" means the Xeppo website or portal through which Customers place Orders;

(dd)    "**Xeppo**" means Xeppo Pty Ltd ACN 164 028 684;

(ee)    "**Xeppo Users**" means individuals users of Xeppo authorized through the Customer's Account;

(ff)    "**Xeppo Core Features**" means core components of the Xeppo Technology as set out on the Website.  For the avoidance of doubt, the parties agree that it excludes any app related components; and

(gg)    "**Xeppo Technology**" means 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 the Customer 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; and

(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   AGREEMENT OF CONDITIONS

(a)   By placing an Order, the Customer agrees to the Conditions.

(b)   The Conditions are subject to change at any time. If the Conditions are amended they will be effective immediately.

## 4   APPLICATION

(a)   These Conditions apply to all Products supplied by Xeppo 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 Xeppo expressly agrees otherwise in writing or by accepting an Order placed on the Website through the Customer's Account.

(c)   No other terms and conditions or other documents are relevant unless expressly acknowledged or referred to in or attached to these Conditions.

## 5   PRODUCTS

### 5.1   Term

(a)   Subject to these Conditions, Xeppo 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 Xeppo or the Customer notifies the other at least ninety (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 (3) 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 Xeppo or the Customer notifies the other at least ninety (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.

### 5.2   Time for supply of Products

(a)   Placing an Order is deemed to be an authorisation for Xeppo to provide the Products.

(b)   Xeppo may accept or decline an Order from the Customer at its sole discretion.

### 5.3   Performance levels

(a)   Xeppo 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 Xeppo is required to provide.

(b)     Xeppo's obligation to supply Products is limited by the Support Level Requirements.

(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.

**5.4     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 for storage without the Customer's written consent. The Customer acknowledges that the use of 3$^{rd}$ Party Products (including Formstack Documents) will require the Customer's Data (or some portion of it) to be accessed by software potentially hosted outside of Australia.

(g)     the Customer is responsible for maintaining logins 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.

**5.5     API Terms**

In using the Products, the Customer must comply with the API Terms, as they are amended by Xeppo, with such amendments notified to the Customer from time to time.

**5.6     Fair Use Policy**

In using the Products, the Customer must comply with the Fair Use Policy, as it is amended by Xeppo, with such amendments notified to the Customer from time to time.

**6     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 2FA is a mandatory requirement for using the Products and that using 2FA 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)    Unless otherwise approved by Xeppo, the Customer agrees that Active Xeppo User logins must not be shared between individuals. Xeppo is not responsible for any security breaches in relation to staff access.

(h)    The Customer acknowledges that it is the responsibility of the Customer to manage the activation and deactivation of Xeppo Users, connectors and other features of the Products, including 3$^{rd}$ party access. Xeppo is not responsible for costs incurred by the Customer as a result of a feature being activated but not used.

(i)    The Customer acknowledges and agrees that where the Customer operates under a Related Party's licence or under some other authority on behalf of a Related Party, where the Related Party is not the Customer, the Customer agrees that Xeppo must provide the Related Party with access to all of the Customer's Data by a means which is determined by Xeppo and that the Related Party will be entitled to access such Customer's Data at any time which the Related Party see fit having regard to the requirements of the Related Party's licence or other arrangement with the Customer. If the Related Party of the Customer changes during the Term, then Xeppo must provide each Related Party with access to the Customer's Data which is required for the proper governance of the Related Party's Australian Financial Services Licence, or other relevant authority or arrangement.

(j)    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.

## 7    FEES, PAYMENT AND QUOTATIONS

### 7.1    Fees and GST

Unless otherwise stated:

(a)    all fees quoted by Xeppo 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)    Xeppo 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.

### 7.2    Price and payment

(a)    Unless otherwise agreed in writing, the agreed apportionment of charges for the Products is specified in the Signing 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 Xeppo under these Conditions remain valid and up to date while these Conditions are in force.

(c)    Xeppo Monthly Ongoing Fees, as stipulated on the signing page and as updated by the Customer and Xeppo, including through activation of Products and connectors, are invoiced one month in advance.

(d)    Unless the relevant amount is paid in accordance with clauses 7.2(a) or 7.2(b) as otherwise agreed in writing, the Customer must, within 7 days of receiving an invoice from Xeppo, pay the invoice in full in Australian dollars in any manner required by Xeppo in writing and in full without deduction or set-off. Any costs or charges incurred by Xeppo in collecting or attempting to collect overdue amounts must be paid by the Customer to Xeppo on demand.

(e)    Without limiting clauses 7.2(a) or 7.2(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 Xeppo.

(f)     The Customer must pay the reasonable costs incurred by 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 clauses 7.2(a) or 7.2(g) Xeppo may, by giving ninety (90) 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.

## 7.3     Quotations

(a)     Subject to clauses 7.1 and 7.2(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 Xeppo has otherwise agreed, are subject to amendment by Xeppo 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)     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 7.3(e) or requiring urgent Products (including any overtime costs).

(d)     Xeppo will supply the Products on the basis of the Customer's written request for Products.  Xeppo 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 on the Website.  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.

## 8     INTELLECTUAL PROPERTY

### 8.1     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 that the Customer acquires no ownership or title to or interest in such Intellectual Property Rights under this Agreement.

(b)     Xeppo acknowledges that all Intellectual Property Rights in the Customer's Data are and will remain the property of the Customer and that Xeppo does not acquire any ownership, title to or interest in such Intellectual Property Rights under this agreement.

### 8.2     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.

### 8.3     Warranty and indemnity

Xeppo warrants that the Products will not infringe the Intellectual Property Rights of any person.  Xeppo 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.

## 9     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 7.2(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.

## 10     PRIVACY

(a)     Xeppo 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 6(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 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 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 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.

(e)     Xeppo must promptly notify the Customer of any breach of this clause 10 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 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).

## 11     INSURANCE

Xeppo 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).

## 12     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.

## 13     DEFAULT

### 13.1     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 against any Liability which the Customer may incur as a result of a termination under clause 13.1.

### 13.2     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 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; and

(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 may incur as a result of any breach by the Customer of its warranties or obligations under a Contract.

## 14     TERMINATION

### 14.1     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 7.2(h)(i) the Customer refuses to accept any service or price variations that are made strictly in accordance with a Contract.

**14.2    Termination by Customer**

(a)    Subject to clause 14.2(b) the Customer may terminate a Contract by providing Xeppo with at least ninety (90) days prior written notice.

(b)    The parties acknowledge that, except where a termination is pursuant to clause 14.2(c) the Customer agrees to pay Xeppo for the Products for at least the Minimum Term and any termination pursuant to clause 14.2(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.

**14.3    Consequences of Termination**

(a)    Except if terminated pursuant to clause 14.2, 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 Xeppo) effect the migration of the Customer's Data and associated materials in accordance with the format reasonably specified by the Customer no later than ten (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).

**15    SUSPENSION**

(a)    The Customer may request to suspend the service by providing no less than 14 days written notice of request to suspend the service, including the basis for the request.

(b)    Xeppo will review the request and may allow suspension of service for up to 6 months, at which time the service is restored, or the Customer needs to provide notice to Terminate. Xeppo reserves the right to refuse suspension requests.

(c)    The service will continue maintaining data as at the date of the commencement of suspension as well as up to 2 active connectors.

(d)    Suspension service incurs a minimum fee of $195.00 per month (excluding GST). This covers the cost of maintaining the instance and associated infrastructure, including security, backups and core licensing requirements.

(e)    The Customer will not have access to the service during the period of the suspension.

**16    MISCELLANEOUS**

**16.1    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 14.3(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.

## 16.2    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)    If an event referred to in clause 16.2(a) continues for a period exceeding ninety (90) days, then either party may terminate any Contract affected by it by written Notice.

## 16.3    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.

## 16.4    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.

## 16.5    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)    Xeppo may use subcontractors in its performance of the Services, on the strict condition that Xeppo ensures that any such subcontractors abide by the terms of this Agreement and that Xeppo takes full responsibility for their acts and omissions (without exception).

## Schedule A – 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:

   **Service Availability Percentage = (Total Monthly Minutes – Downtime) / Total Monthly Minutes x 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.

2. 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.

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; or

     - if scheduled for a Business Day, maintenance work will not be performed between 8.00 am and 6.00 pm AEST.

   - **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;

     - 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:
  - o log in issues;
  - o an error, defect, malfunction or non-conformity in the Xeppo Technology; and
  - o basic first level helpdesk type queries.

- Except as described in the above paragraph, Support Services do not extend to assistance with the implementation or use of:
  - o training;
  - o upgrades to Xeppo Core Features;
  - o expansions to Xeppo Core Features;
  - o enhancements to Xeppo Core Features; or
  - o improvements to Xeppo Core Features.

- Xeppo may charge for excessive helpdesk use:
  - o Xeppo licensing packs allow for a reasonable number of hours per month for support;
  - o Xeppo reserves the right to charge for if excessive use occurs for successive months;
  - o Xeppo will notify the Customer in advance of any such action and attempt to remedy; and
  - o Additional support hours are charged at an hourly rate of $250 per hour.

- The Support Services will be provided on Business Days during the following hours:
  - o monitored 9:00 am to 5:30 pm Monday to Friday AEST (or AEDST as relevant); and
  - o emails received outside the above hours will be collected, however no action can be guaranteed until the next Business Day.

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 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**

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 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<br>(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;<br>(b) a 'workaround' is provided by Xeppo that is accepted by The Customer; or<br>(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 | (e) | Xeppo is unable to reproduce the Fault after the patch has been implemented; |
| | (f) | a 'workaround' is provided by Xeppo that is accepted by The Customer; or |
| | (g) | 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).

## Schedule B – API Terms

**1. Background**

1.1 Xeppo owns and operates the System.

1.2 You wish to access the System and use the API and, by your use of the API, you agree to the terms and conditions set out in this Agreement, as amended by Xeppo and notified to you from time to time.

1.3 Xeppo has agreed to permit You to access the System and use the do so on the terms and conditions of these Terms.

**2. Relationship between the Parties**

The parties acknowledge that nothing in these Terms operates to create any legal partnership, employment or agency relationship between them, except as explicitly set out in these Terms.

**3. Term and Termination**

3.1 These Terms commence on the date it is last signed by a party and continues until terminated in accordance with its terms.

3.2 If a party breaches these Terms and does not remedy such breach within a reasonable period (being not less than 7 days) after being required to do so by the other party, the other party may terminate these Terms immediately.

3.3 Either party may terminate these Terms by giving 60 days' notice to the other party.

3.4 Subject to clause 3.5, if these Terms are terminated, Xeppo may, in addition to any other rights it may have, prevent your access to the System and the API and You must, if required by Xeppo, destroy all copies of the API, or any Confidential Information within its control.

3.5 You may retain Confidential Information if:

3.5.1 required by any law, rule, regulation, professional standard, or for record keeping purposes;

3.5.2 the Confidential Information is contained in board or committee minutes or papers, or forms part of any legal advice; or

3.5.3 the Confidential Information is contained in an electronic record created as part of routine information technology back-up processes, provided that such information remains subject to the confidentiality obligations set out in this Agreement.

**4. Access to the API**

4.1 If, and for so long as You comply with Your obligations under these Terms, Xeppo agrees to provide You with access to the System and the API, but only for the limited purpose of using the API to develop, test, and support any software application, website, or product, and to integrate the API with an application or software owned by you.

4.2 If You breach these Terms, then Xeppo may suspend Your access to the System or the API, or both, and may terminate these Terms in accordance with their terms.

**5. Restrictions on Use**

5.1 Information made available through or that forms part of a service supplied by an API may only be transferred to and from Xeppo if it:

5.1.1 is used to consolidate information in a way consistent with the purpose for which Xeppo is implemented;

5.1.2 does not facilitate the re-purposing of that information in a way that breaches any third party's rights, including without limitation, the consolidation, aggregation or anonymisation of data for commercial purposes; and

5.1.3 is consistent with Xeppo's obligations under any partnering, API or other relevant agreement of which Xeppo has made you aware in any way.

**6. Confidential Information**

6.1 As a person with access to the System and the API, You may have access to Confidential Information.

6.2     You may only use Confidential Information for the purposes of these Terms and for the development and creation of apps and connectors for use within the System and must keep confidential all Confidential Information except:

       6.2.1     for disclosures to Your employees, officers and professional advisers who need to know for the purposes of these Terms (and only to the extent that each needs to know); and

       6.2.2     where disclosure is required by law, regulation, rule or requirement of any stock exchange, regulator or governmental agency, or order of any court, tribunal or judicial body.

6.3     You must take reasonable precautions to prevent any unauthorised use, disclosure, publication, or dissemination of Confidential Information.

6.4     You acknowledge that unauthorised disclosure or use of Confidential Information could cause harm and damage to Xeppo and that damages will not be an adequate remedy.

6.5     You agree that Xeppo will have the right to seek immediate injunctive relief to enforce its rights and Your obligations under these Terms in addition to any other rights and remedies it may have.

## 7.    Intellectual Property Rights

7.1     Nothing in these Terms operates to transfer any ownership or rights which are held by Xeppo in the System or the API to You except as set out in this clause.

7.2     For the term of these Terms, Xeppo grants you a limited, non-exclusive, non- assignable, non-transferable licence to use the API to develop, test, and support any software application, website, or product, and to integrate the API with an application or software owned or developed by You.

## 8.    Indemnity

8.1     You must indemnify Xeppo and its employees, officers and consultants against all claims, demands, expenses, loss or damage in respect of loss or damage to any property as a direct result of Your gross negligence, wilful misconduct, breach of these terms or illegal conduct. This indemnity is reduced by the extent to which Xeppo contributes to the event giving rise to the claim for the indemnity.

8.2     Xeppo indemnifies You and Your employees, officers and consultants against all claims, demands, expenses, losses or damage to any property as a direct result of Xeppo's gross negligence, wilful misconduct or illegal conduct. This indemnity is reduced by the extent to which You directly contribute to the event giving rise to the claim for the indemnity.

## 9.    Amendment

9.1     Xeppo reserves the right, at its reasonable discretion, to modify these Terms, including any rules and policies at any time.

9.2     You must review and become familiar with any such modifications notified to You by Xeppo and upon such notification, all modifications are hereby incorporated into these Terms by this reference and Your continued use of the System and the API will indicate acceptance of such modifications.

## 10.    Xeppo Development

Nothing in these Terms will impair Xeppo's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with, any other products, software or technologies that You create or develop.

## 11.    Customer Warranties

11.1     You acknowledge and agree that you have read, understood and accepted the terms of the agreements of any solution, program or application that connects to Xeppo, which can be found at the following URL, https://portal.xeppo.com.au, to which you are a party or which you use, and that you will comply with such terms as they relate to that solution, program or application.

11.2     You acknowledge and agree to not use or permit the use of any data from API solutions connected to Xeppo, or any third party data from any data suppliers connected directly or indirectly to Xeppo for any unlawful purpose.

11.3     If you are using the XPLAN API you agree that you will comply with their terms, and in particular note the following terms:

11.3.1    you will not utilise Xeppo or any connected API software to assist in migrating data off that connected API Software; and

11.3.2    you will not advertise, promote or otherwise endorse Xeppo as a platform that can consolidate the use of other API agreements licenses or otherwise minimise the other API licenses to which a Customer Subscribes.

11.4    If you are using the CLASS API you agree that you will comply with their terms, and in particular note the following terms:

11.4.1    you will not reverse engineer, disassemble, decompile, re-disseminate, redistribute or publish the whole or any part of any data made available to you through the use of the API solution connected to Xeppo or any information made available to you via direct electronic interface, email, website or any other such manner as agreed between you and the connected API solution; and

11.4.2    you will not reverse engineer, disassemble, decompile, re-disseminate, redistribute or publish the whole or any part of any third party data, from any data suppliers connected directly or indirectly to Xeppo through another API solution.

## 12.    No Warranty

12.1    Xeppo does not warrant that the System or the API, or any Confidential Information (including, functionality or features of the foregoing) will be accurate, reliable, timely, secure, error free or uninterrupted, or that any defects will be corrected.

12.2    The System and the API are provided on an "as-is" and "as-available" basis and the System and the API are subject to change without notice.

12.3    Xeppo cannot ensure that any content (including files, information or other data) you access or download from the System will be free of viruses, contamination or destructive features.

12.4    To the full extent permitted by law, Xeppo disclaims all warranties, express or implied, including any warranties of accuracy, noninfringement, merchantability and fitness for a particular purpose.

12.5    Your sole remedy against Xeppo for dissatisfaction with the System or the API is to terminate these Terms and cease using the System and the API.

12.6    Xeppo is under no obligation to provide updates, enhancements, or corrections, or to notify You of any product or services changes that Xeppo may make to the System or the API, or to publicly announce or introduce the product(s) or service at any time in the future.

## 13.    Disclaimer of Liability

13.1    To the extent not prohibited by law, in no event will Xeppo be liable any incidental, special, indirect, consequential or punitive damages whatsoever, including, without limitation, damages resulting from delay of delivery, for loss of profits, data, business or goodwill, for business interruption or any other commercial damages or losses, arising out of or related to these Terms or Your use or inability to use the System or the API or your breach of any agreement to which you are a party, however caused, whether under a theory of contract, warranty, tort (including negligence), products liability, or otherwise, even if Xeppo has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any remedy.

## 14.    Reverse Engineering

You must not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the System, the API or any Intellectual Property Rights of Xeppo.

## 15.    Waiver

15.1    A party may, conditionally or unconditionally, waive compliance by the other party with the whole or any part of the party's past or future obligations under these Terms.

15.2    To be effective, a waiver must be in writing.

15.3    The failure, delay, relaxation or indulgence by a party in exercising a power or right under these Terms is not a waiver of that power or right.

15.4    An exercise of a power or right under these Terms does not preclude a further exercise of it or the exercise of

another right or power.

### 16. Severance

Where a clause or part of a clause in these Terms would, but for this clause, be unenforceable:

16.1   the clause or part of the clause shall be read down to the extent necessary to avoid that result; or

16.2   where the clause or part of the clause cannot be read down, it may be severed from these Terms and the remainder of the clause or of these Terms shall continue in force, unless this would result in a material change to the intended effect of the Agreement.

### 17. Governing Law

These Terms are governed by the law in South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia and the Adelaide registries of the federal courts of Australia.

### 18. Notices

18.1   A Notice must be in writing, be signed by the party issuing the Notice, and be hand delivered or sent by pre-paid post to the recipient's address as stated in these Terms, or as last notified.

18.2   A Notice is deemed to be received:

18.2.1   if hand delivered, on delivery; and

18.2.2   if sent by pre-paid post, two business days after posting.

18.3   If two or more people comprise a party, providing a Notice to one is effective as notice to all.

### 19. Definitions and Interpretation

19.1   The parties acknowledge that the matters set out in the Background to these Terms are true and accurate and agree that they form part of these Terms.

19.2   In these Terms:

19.2.1   **API** means the application programming interface, which facilitates access to, and manipulation of, information within the System.

19.2.2   **Confidential Information** means all information:

19.2.2.1   treated by Xeppo as confidential, including, without limitation, the API; and

19.2.2.2   disclosed by Xeppo to You or of which You become aware after the date of these Terms, except information;

19.2.2.3   You create (alone or jointly with a third person) independently of Xeppo; or

19.2.2.4   that is public knowledge (otherwise than as a result of a breach of confidentiality by You or any of its permitted discloses).

19.2.3   **Intellectual Property Rights** means copyright, trade mark, design, patent, semiconductor, circuit layout rights or any similar right.

19.2.4   **Notice** means a notice, demand, consent, approval or communication issued under these Terms.

19.2.5   **System** means the data warehousing environment known and marketed as 'Xeppo' by Xeppo.

19.2.6   **Terms** means the terms and conditions set out in this document, as amended by Xeppo and notified to You from time to time.

19.2.7   **Xeppo** means Xeppo Pty Ltd of Level 4, 26 Flinders Street, Adelaide, SA,5000.

19.2.8   **You** means the person accessing the API and, where applicable, includes any other person, or entity on whose behalf that person accesses the API.

19.3   In these Terms unless the context otherwise requires:

19.3.1 a term which is defined in the Background or in clause <u>17</u> has the meaning there defined;

19.3.2 headings do not affect interpretation;

19.3.3 the term "person" includes a corporate body, partnership, association, government body or other entity;

19.3.4 a reference to a party includes its executors, administrators, successors and permitted assigns;

19.3.5 singular includes plural and plural includes singular;

19.3.6 where two or more persons are bound by these Terms to observe or perform any obligation or agreement whether express or implied then they shall be bound jointly and also severally; and

19.3.7 a reference to any statute or subordinate legislation includes all statutes and subordinate legislation amending, consolidating or replacing the statute or subordinate legislation referred to.

## Schedule C – Fair Use Policy

The Customer acknowledges that its use of the Products must at all times be reasonable and complying with normal fair use requirements. Without limiting this, the Customer must comply with the following requirements:

**Connection Services** – each Connector service includes provision for up to 3 active connections (e.g. 3 x Xero Blue Services). Additional connections will attract an additional fee of $100 per connection per month.

**API Calls** – No more than 1,000 per hour, up to a limit of 10,000 per day.

**Document Storage Allowance** – 10 gigabytes.