

IFF Cloud Hosting Agreement

Supplier	Opex Consulting Pty Ltd
Customer Name	As per sign up page
Fee Schedule	As per sign up page.
Related Party	If applicable
Notice Period	90 Days

Note: This document may be signed electronically by the Customer in the course of the sign up process on the IFF Sign Up page.

In this case, the document will be deemed to be signed electronically as an agreement without and instead of execution as a deed.

IFF 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 IFF User logins.
- (b) **"Account"** means the Customer's account registered with Opex;
- (c) **"API Terms"** means the terms and conditions applying to the use of IFF API connectors as disclosed to the Customer and as amended from time to time;
- (d) **"Authorised Personnel"** means employees or agents of Opex, or its sub-contractors, who are authorised by Opex to provide the Products, and who are directly involved in that Service provision;
- (e) **"Active IFF 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 Opex 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 Opex 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 Client"** means any entity or individual who is serviced by the Customer as a part of their practice.
- (k) **"Customer's Data"** means any data which is input, uploaded or otherwise integrated into the Products or IFF by or on behalf of the Customer (including through interface with the Customer's Data Sources), which the parties acknowledge may include Personal Information, but for the avoidance of doubt, does not include algorithms, modelling, or other Intellectual Property Rights incorporated in the Products or modelling or advice data generated by the use of IFF;
- (l) **"Data"** means the Customer Data and any other data or information made available through or which form part of or is supplied with IFF;
- (m) **"Data Source"** means any database or information source, including Xeppo Technology which the Products access, manipulate or otherwise interact with to facilitate the proper use of the Products by the Customer;
- (n) **"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;
- (o) **"Fair Use Policy"** means the policy set out in Schedule B, as amended by Opex from time to time;
- (p) **"Fee Schedule"** means the fee schedule agreed by the Customer during sign up for the Services and any fees notified by Opex to the Customer subsequently from time to time.
- (q) **"GST"** means the goods and services tax imposed by the *'A New Tax System (Goods and Products Tax) Act 1999* and related legislation;
- (r) **"Hosting"** means the provision by Opex to the Customer of IFF and related connectivity to enable the Customer to access a system related to the provision of the Products via an internet connection;

- (s) **"IFF Core Features"** means core components of the IFF as set out on the Website. For the avoidance of doubt, the parties agree that it excludes any app related components, which is any component not detailed on the Website; **"IFF Users"** means individuals users of IFF authorised through the Customer's Account.
- (t) **"Informed Financial Future ('IFF')"** means the Informed Financial Future 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;
- (u) **"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;
- (v) **"Liability"** means liabilities, losses, damages, actions, causes of action, arbitrations, claims, orders, judgments, outgoing, costs (including legal costs calculated on a solicitor and own client basis) and expenses, whether present or future, actual or contingent;
- (w) **"Minimum Term"** means the period commencing on the date of these Conditions and ending 90 days from the date of these Conditions, as extended by the Opex and the Customer in writing;
- (x) **"Notice"** means the Notice Period stipulated in these Conditions, or as extended by the Opex and the Customer in writing;
- (y) **"Order"** means any order for Products made by the Customer through the Website or otherwise;
- (z) **"Parties"** means Opex and the Customer.
- (aa) **"Personal Information"** means the meaning given in the Privacy Act;
- (bb) **"Permitted Purpose"** means use for the operation of the Customer's business, or as otherwise agreed between Opex and the Customer;
- (cc) **"Practice Add-Ons"** means the items so defined, and agreed by the Customer, during sign up for the Services or for subsequent Orders, and as notified by Opex to the Customer from time to time;
- (dd) **"Privacy Act"** means the *Privacy Act 1988* (Cth);
- (ee) **"Products"** mean the Products as described in the Order or the Customer's Account or as otherwise agreed in writing between the parties;
- (ff) **"Related Body Corporate"** has the meaning given to that term in the *Corporations Act 2001*;
- (gg) **"Related Party"** means the entity named on the signing page (if applicable);
- (hh) **"Services"** means the manipulation, analysis and delivery of data, through IFF, whether through integration into Customer templates or through any other means pursuant to these Conditions;
- (ii) **"Supplier"** refers to the entity or individual providing goods, services, or products under the terms of the agreement;
- (jj) **"Support Level Requirements"** means the support level requirements to be provided by Opex as they relate to the Products and as set out on the Website;
- (kk) **"Term"** means the Minimum Term and any Renewal Periods;
- (ll) **"Third Party Products"** mean the Products excluding those which comprise IFF Core Features and IFF;
- (mm) **"Trial period"** means the initial 30 days from date of this agreement
- (nn) **"Website"** means the Opex website or portal through which Customers place Orders for IFF services;
- (oo) **"Opex"** means Opex Consulting Pty Ltd ACN 159 081 866;

- (pp) **Xeppo Technology** means the data warehousing environment known and marketed as "Xeppo" by Xeppo.
- (qq) **Xeppo** means Xeppo Pty Ltd of Level 4, 26 Flinders Street, Adelaide, SA,5000;
- (rr) **Xeppo Agreements** has the meaning ascribed to it in clause 7(a).

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) After providing 7 days' Notice to the Customer of the proposed modification of these Conditions, Opex reserves the right, at its reasonable discretion, to modify these Conditions, including any rules and policies at any time.
- (c) The Customer must review and become familiar with any such modifications notified to the Customer by Opex and upon such notification, all modifications are hereby incorporated into these Conditions by this reference and the Customers' continued use of the System and the API after the expiry of such 7 day period will indicate acceptance of such modifications.
- (d) If the Customer does not continue use of the System, subject to clause 16, the Customer may notify Opex of the Customer's non-acceptance of the amended Conditions and the Terms will automatically terminate 30 days from Opex's receipt of that Notice.
- (e) The parties agree that it will be reasonable for Opex to amend these Terms in circumstances where they are required to do so by a third party supplier, or a third party which is able to exert control over the Products or the System.

4 APPLICATION

- (a) These Conditions apply to all Products and Services (including IFF and Services provided through the use of IFF) supplied by Opex to the Customer and any updates to the Products from time to time and the Customer is deemed to have read and agreed to these Conditions prior to requesting Products or continuing to use the Products after an update or modification.
- (b) These Conditions prevail over all inconsistent conditions of the Customer's request, unless Opex 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 RESTRICTED USE

- (a) The Customer is only permitted to access and use the Products for the Permitted Use. The Customer may make the Products available to IFF Users. The Customer must not and must ensure that any IFF User does not:
 - (i) use the Products for any purpose other than the Permitted Use; or
 - (ii) resell or otherwise make the Products (including any Data) available to any person, entity or organisation whether directly or indirectly.
- (b) The Customer must not use the Products to transmit or disseminate any unlawful, harassing, offensive, defamatory or obscene information or any computer virus.

6 PRODUCTS

6.1 Term

- (a) Subject to these Conditions, Opex 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. Where the Customer operates under a Related Party's licence, the licence shall not include the use of those Products covered under the Related Party's licence.
- (b) Unless either Opex 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 Opex or the Customer notifies the other at least ninety (90) days before the expiration of that current Renewal Period that it wishes to terminate this agreement effective from the end of that Renewal Period.

6.2 Time for supply of Products

- (a) Placing an Order is deemed to be an authorisation for Opex to provide the Products.
- (b) Opex may accept or decline an Order from the Customer at its sole discretion.

6.3 Performance levels

- (a) Opex 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 Opex is required to provide.
- (b) Opex's obligation to supply Products is limited by the Support Level Requirements.
- (c) Opex is not responsible for the advice provided by the Customer to its clients, regardless of the fact that Opex may, as part of the Products, provide documents and or Products which the Customer uses in delivering that advice.

6.4 Hosting services

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

- (a) Opex is responsible for installation and maintenance of any software at the hosted site, including installation of upgrades and releases of that software;
- (b) Opex will implement and maintain a range of security measures to protect the Customer's Data, details of which are regularly updated on the Opex support portal.
- (c) Opex will implement appropriate back-up and disaster recovery procedures at the hosted site;
- (d) Opex will install and maintain equipment and communication infrastructure for the hosted site;
- (e) IFF 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 IFF;
- (f) Opex 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 3rd 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 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.

6.5 API Terms

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

6.6 Fair Use Policy

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

7 PRODUCT INTEGRATIONS. PRACTICE ADD-ONS

- (a) Where the Customer also Orders Xeppo Technology, and Xeppo Technology is acting as a Data Source for IFF, the Customer must execute all relevant agreements necessarily required by Xeppo for the use of Xeppo Technology ("**Xeppo Agreements**") and must comply with their obligations under those agreements.
- (b) The Customer may place Orders for any of the Practice Add-Ons.
- (c) Unless the Xeppo Agreements provide otherwise:
 - (i) monthly fees and, if applicable, setup and training fees of the Practice Add-Ons will be paid by the Customer;
 - (ii) Opex may change Practice Add-Ons, their fees, and/or their conditions at any time providing a Notice to the Customer in accordance with clause 3; and
 - (iii) in the event of such a change, the Customer may decide to discontinue the use of the Practice Add-On affected by the change in accordance with the procedure provided in clause 3 but this shall not otherwise affect the use of the System, any other Products or Services, or the application of the Contract.

8 CUSTOMER ACKNOWLEDGEMENTS AND OBLIGATIONS

- (a) The Customer agrees that at the request of Opex it must provide any further, reasonable assistance as required by Opex 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 IFF has access to all necessary Data Sources.
 - (d) The Customer acknowledges and agrees that the IFF Core Features are meant as a guide only and that the Customer will review and approve any strategy before implementing with any of the Customer's Client or any third party.
 - (e) The Customer acknowledges that all advice created through IFF and onforwarded to the Customer's Client is taken to be advice provided directly by the Customer to the Customer's Client and not by IFF, or Opex.
 - (f) The Customer acknowledges that the provision of the Services by Opex (including data comprising the Services and where applicable third party services) does not constitute and is not suitable to be acted upon as investment advice. The Customer acknowledges that it must exercise its own judgement in providing such information to the Customer's Client or using such information as the basis for the provision of advice to a Client in accordance with the Customer's obligations under any relevant Australian Financial Services Licence.
 - (g) The Customer acknowledges that the Customer is responsible for ensuring the accuracy of information contained within the Customer Data Sources.
 - (h) The Customer acknowledges that IFF obtains information from the Data Sources periodically. The Customer acknowledges that information within IFF is not a real-time reflection of the data contained within the Customer's Data Sources.
 - (i) 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.
 - (j) Unless otherwise approved by Opex, the Customer agrees that Active IFF User logins must not be shared between individuals. Opex is not responsible for any security breaches in relation to staff access.
 - (k) The Customer acknowledges that it is the responsibility of the Customer to manage the activation and deactivation of IFF Users, connectors and other features of the Products, including 3rd party access. Opex is not responsible for costs incurred by the Customer as a result of a feature being activated but not used.
 - (l) 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 Opex must provide the Related Party with access to all of the Customer's Data by a means which is determined by Opex 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 Opex 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.
 - (m) 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 Opex to provide the Products.

9 FEES AND PAYMENT

9.1 Fees and GST

Unless otherwise stated:

- (a) all fees quoted by Opex 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) Opex at its discretion may suspend the Customer's access to the Products at any time during a Contract until all overdue amounts payable to Opex by the Customer have been paid in full.

9.2 Price and payment

- (a) Unless otherwise agreed in writing, the agreed apportionment of charges for the Products is specified in the Fee Schedule and are payable upon the occurrence of the corresponding payment trigger and otherwise at the commencement of the billing period.
- (b) The Customer must ensure that the direct debit facility or credit card details held by Opex under these Conditions remains valid and up to date while these Conditions are in force.
- (c) No fees are charged in the Trial Period
- (d) IFF Monthly Ongoing Fees, as stipulated in the Fee Schedule and as updated by the Customer and Opex, including through activation of Products and connectors, are invoiced at the commencement of the billing period and will be based on the number of Clients of the Customer and the Customers use of the Products.
- (e) Unless the relevant amount is paid in accordance with clauses 9.2(a) or 9.2(b) as otherwise agreed in writing, the Customer must, within 7 days of receiving an invoice from Opex, pay the invoice in full in Australian dollars in any manner required by Opex in writing and in full without deduction or set-off. Any costs or charges incurred by Opex in collecting or attempting to collect overdue amounts must be paid by the Customer to Opex on demand.
- (f) Without limiting clauses 9.2(a) or 9.2(b) the Customer may enter into a payment plan arrangement with Opex for the payment of the charges for the Products subject to approval, and on such terms that are deemed appropriate by, Opex at its sole discretion.
- (g) The Customer must pay the reasonable costs incurred by Opex (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.
- (h) 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.
- (i) After the initial Minimum Term, without limiting clauses 9.2(a) or 9.2(h) Opex 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.

10 INTELLECTUAL PROPERTY

10.1 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 Opex and that the Customer acquires no ownership or title to or interest in such Intellectual Property Rights under this Agreement.
- (b) Opex acknowledges that all Intellectual Property Rights in the Customer's Data are and will remain the property of the Customer and that Opex does not acquire any ownership, title to or interest in such Intellectual Property Rights under this agreement.

10.2 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.

10.3 Warranty and indemnity

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

11 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 9.2(h);
- (c) will be safely and securely stored when not in use; and
- (d) will remain the absolute and exclusive property of the disclosing party.

12 PRIVACY

- (a) Opex 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 Opex's servers (or servers controlled by Opex) against unauthorised access or disclosure, viruses and other malicious or destructive code. The Customer hereby agrees that Opex has the right to reference the Customer's Data for statistical and benchmarking purposes but only in a manner that the privacy obligations under this agreement and the Privacy Act.
- (b) Subject to clause 8(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 Opex to the full extent permitted by Law against any Liabilities suffered by Opex in relation to a breach of the Customer's obligations under this Act.
- (c) Opex must only allow their staff to access Personal Information stored on, processed by or generated by Opex's servers (or servers controlled by Opex) where necessary for the purpose of Opex performing its obligations under this agreement and otherwise in order to enable Opex to comply with the Privacy Act (whether or not Opex is strictly required to comply under the terms of the Privacy Act);
- (d) Opex must take reasonable steps to protect the Personal Information that is stored on, processed by or generated by Opex's servers (or servers controlled by Opex) against misuse, loss and from unauthorised access, modification or disclosure; and
- (e) Opex must promptly notify the Customer of any breach of this clause 12 and any loss, unauthorised access to, or unauthorised disclosure of, any Personal Information that is stored on Opex's servers (or servers controlled by Opex).
- (f) Opex 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 Opex's servers (or servers controlled by Opex).

13 INSURANCE

Opex 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 Opex determines appropriate (acting reasonably and with regard to the level of cover that a reasonable and prudent provider of similar Products would maintain).

14 GENERAL LIMITATION ON LIABILITY

- (a) Opex 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 Opex. 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) Opex'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 Opex 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 Opex and the Data Source 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 Opex's obligations under any Contract or Implied Terms, and the Customer will keep Opex fully indemnified against any claim made against Opex by a third party for any claim or Consequential Loss.
- (e) IFF is provided on a 'as is' basis, and Opex and the Data Source will not be liable for any loss of profit, revenue, reputation, goodwill, business, use, corruption of data or any other indirect or consequential loss suffered by the Customer, IFF User, Active IFF User or Customer's Client or any other third party that arises out of and without limitation, the accuracy, reliability or completeness of any Data or advice generated.
- (f) Opex and the Data Source will not be liable for any loss of profit, revenue, reputation, goodwill, use, corruption of data or any other indirect or consequential loss suffered by the Customer, IFF User, Active IFF User or Customer's Client or any other third party that arises out of their use of IFF. Opex and the Data Source will not be liable for any loss of profit, revenue, reputation, goodwill, use, corruption of data or any other indirect or consequential loss suffered by the Customer, IFF User, Active IFF User or Customer's Client or any other third party arising out of or in connection with any fault, error, interruption, delay, omission or failure (Whether within or beyond Opex's control) or any inaccuracy, error, omission of the Data or any negligent act or omission of Opex.
- (g) To the extent permitted by law:
 - (i) the Customer acknowledges that it does not rely on any representations or warranties made by Opex 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 Opex in respect of all Liability related to such Intellectual Property;
 - (iii) the Customer indemnifies Opex 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 Opex 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.

15 DEFAULT

15.1 Default by Opex

- (a) If Opex makes default in any obligation under a Contract or enters into liquidation whether voluntary or involuntary, the Customer may give Notice to Opex requiring Opex to remedy the breach within a reasonable period and, if the breach is not remedied, at its discretion and by written Notice to Opex cancel the relevant Contract so far as it remains unperformed without prejudice to its rights.
- (b) Opex must indemnify the Customer against any Liability which the Customer may incur as a result of a termination under clause 13.1.

15.2 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, Opex 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; and
 - (iii) delete any of the Customer's Data held on Opex's servers (or servers controlled by Opex), 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 Opex against any Liability which Opex may incur as a result of any breach by the Customer of its warranties or obligations under a Contract.

16 TERMINATION

16.1 Termination by Opex

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

- (a) the Customer commits any breach of this or any other Contract with Opex (including failure to make any payments on the due date), Opex 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) being an individual, the Customer dies or has a receiver appointed over his or her assets;
- (c) 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) the Customer is not capable of paying any of its payments due to Opex within 10 days of being required to do so by Opex;
- (e) when provided with written notice pursuant to clause 9.2(i)(i) the Customer refuses to accept any service or price variations that are made strictly in accordance with a Contract; or
- (f) where the Customer operates as a 'licensed practice' under the licence of a Related Party and/or another entity as approved by Opex, Opex issues a written notice of termination or suspends the supply of Products to a Related Party and/or another entity mentioned above, or the relevant agreement between Opex and a Related Party and/or another entity mentioned above is otherwise terminated.

16.2 Termination by Customer

- (a) Subject to clause 16.2(b) and 16.2(d) the Customer may terminate a Contract by providing Opex with at least ninety (90) days' prior written notice.
- (b) The parties acknowledge that, except where a termination is pursuant to clause 16.2(c) and 16.2(d) the Customer agrees to pay Opex for the Products for at least the Minimum Term and any termination pursuant to clause 16.2(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) Opex commits any material breach of this agreement and fails to remedy that breach (if such remedy is possible) within a reasonable period; or
 - (ii) Opex 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) The Customer may terminate within the Trial period without notice or fees.

16.3 Consequences of Termination

- (a) 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
 - (i) payable or
 - (ii) except if the Contract is terminated pursuant to clause 16.2(c), 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, Opex 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 Opex) 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, Opex must on the request of the Customer delete any of the Customer's Data held on Opex's servers (or servers controlled by Opex).

17 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) Opex 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. Opex reserves the right to refuse suspension requests.
- (c) Suspension service incurs a minimum fee of \$295.00 per month (excluding GST). This covers the cost of maintaining the instance and associated infrastructure, including security, backups and core licensing requirements.
- (d) The Customer will not have access to the service during the period of the suspension.

18 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 18.5, 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

18.2 Force Majeure

- (a) Opex will not be liable for any Liability caused by Opex'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 Opex's reasonable control.
- (b) If an event referred to in clause 18.2(a) continues for a period exceeding ninety (90) days, then either party may terminate any Contract affected by it by written Notice.

18.3 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.

18.4 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 Opex 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.

18.5 Assignment and sub-contracting

- (a) Subject to paragraphs (b) and (c), 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) Opex may assign its rights and/or transfer its obligations in whole or in part to a third party, providing prior written notice to the Customer of such assignment and/or transfer. In the case of transferring Opex's obligations to a third party, if the Customer has reasonable grounds to believe that the performance of the transferred obligations will be jeopardised due to the financial position of the third party transferee, the Customer may terminate the Contract by written notice to Opex. In the notice, the Customer must state the grounds on which it believes that the performance of the transferred obligations will be jeopardised, and the date of the termination cannot be earlier than the date on which the transfer of the obligations takes effect.
- (c) Opex may use subcontractors in its performance of the Services, on the strict condition that Opex ensures that any such subcontractors abide by the terms of this Agreement and that Opex takes full responsibility for their acts and omissions (without exception).

19 COUNTERPARTS

- (a) This Deed may be executed in any number of counterparts, including by way of Adobe Sign (or by similar electronic execution software) and including acceptance of these Conditions by way of an online portal on the Website. All counterparts will constitute one instrument.

Schedule A – Support Levels

1. Service Availability

- Opex will provide the Customer with connectivity to Informed Financial Future 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 Informed Financial Future 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 Informed Financial Future, 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 Opex, including a systemic internet failure or a force majeure event.
- The calculation of Service Availability will be determined by Opex by use of its monitoring system which checks in 1 minute intervals the services are running on Informed Financial Future. The determination of Opex 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:
 - a user is able to log into the Opex portal – login issues affecting specific users is not considered downtime; or

- the Opex database is functional and accessible.

2. 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 Opex 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 Opex 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 IFF Core Features;
 - ongoing maintenance and enhancements of Opex apps (if applicable);
 - deploy non-critical service packs or patches; and
 - periodic redundancy testing; and
 - when Opex 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 Opex needs to interrupt the Services without notice in order to protect the integrity of the Informed Financial Future 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 Opex support portal.

3. Support Services of Opex

- Opex's obligations with respect to support under this agreement (**Support Services**) relates to issues involving:
 - log in issues;
 - an error, defect, malfunction or non-conformity in Informed Financial Future; and
 - basic first 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 IFF Features;
 - expansions to IFF Features;
 - enhancements to IFF Features; or
 - improvements to IFF Features.
- Opex may charge for excessive helpdesk use:
 - Opex licensing packs allow for a reasonable number of hours per month for support;

- Opex reserves the right to charge for if excessive use occurs for successive months;
- Opex will notify the Customer in advance of any such action and attempt to remedy; and
- 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:
 - 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; ~~and~~

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

4. Service Requests

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

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

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

5. Fault Rating and corresponding Service Credits

5.1. *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 Opex. When reporting a Fault or suspected Fault, The Customer must provide any information that is reasonably requested by the Opex representative.

5.2. **Fault Ratings**

The severity of a Fault will be classified using non-exhaustive criteria to be agreed by The Customer and Opex, which will be based upon the Fault Ratings outlined the table in paragraph 5.1 of this Appendix, adjusted as appropriate to suit the SaaS Service.

5.3. **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	<ul style="list-style-type: none"> (a) Opex 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	<ul style="list-style-type: none"> (a) Opex is unable to reproduce the Fault after the patch has been implemented; (b) a 'workaround' is provided by Opex that is accepted by The Customer; or (c) the parties agree on a course of action to resolve the Fault.
Medium	<ul style="list-style-type: none"> (a) Opex is unable to reproduce the Fault after the patch has been implemented; (b) a 'workaround' is provided by Opex 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	<ul style="list-style-type: none"> (e) Opex is unable to reproduce the Fault after the patch has been implemented;

	<p>(f) a 'workaround' is provided by Opex that is accepted by The Customer; or</p> <p>(g) a 'fix' for the Fault has been incorporated into the next scheduled release.</p>
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6. 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 Opex:

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

7. Fault Response Criteria

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

Fault Rating	Response
Critical	When a Critical Fault Report is logged, Opex 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 Opex will work to resolve a fault outside of business hours.
High	When a High Fault Report is logged, Opex will work continuously during Business Hours to resolve the incident until the fault has been resolved.
Medium	When a Medium Fault Report is logged, Opex 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, Opex will work to resolve the Fault as part of the normal software development cycle.
Request	When a Request is logged, Opex 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 Opex's control (e.g. DoS attack on a DNS hosting provider) .

Schedule B – 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:

Helpdesk Services – No more than 2 hours of helpdesk support per Customer per calendar month

Modelling requests – No more than 200 modelling requests per day. A modelling request relates to each strategy constructed through the Strategy Builder.