

Standard Terms and Conditions (Conditions)

1. DEFINITIONS

In these Conditions:

- 1.1 **"Authorised Personnel"** means employees or agents of the Company, or its sub-contractors, who are authorised by the Company to provide the Services, and who are directly involved in that Service provision.
- 1.2 **"Company"** means Opex Consulting Pty Ltd (ACN 159 081 866) and includes its officers, employees, agents and sub contractors;
- 1.3 **"Consequential Loss"** means loss of profits, loss of anticipated savings or for any indirect or consequential loss;
- 1.4 **"Contract"** means any contract for the supply of Services constituted by acceptance or execution by the Company of any written request for Services incorporating the terms set out in the Signing Page attached to these Conditions and any other terms specified by the Company in any other document or written quotation;
- 1.5 **"GST"** means the goods and services tax imposed by the "A New Tax System (Goods and Services Tax) Act 1999" and related legislation;
- 1.6 **"Hosting"** means the provision by the Company to the Subscriber of a web-server and related connectivity to enable the Subscriber to access a system related to the provision of the Services via an internet connection;
- 1.7 **"Intellectual Property"** and **"Intellectual Property Rights"** include property and rights in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, designs, inventions (including patents), semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights (including renewals and extensions) whether created before or on or after this Contract;
- 1.8 **"IRESS"** means IRESS Wealth Management Pty Ltd ACN 095 619 837 and includes its officers, employees, agents and sub contractors;
- 1.9 **"IRESS Services Agreement"** means any services agreement between the Subscriber and IRESS including but not limited to the services agreement attached to these Conditions;
- 1.10 **"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;

- 1.11 **"Services"** means any professional, consultancy services, hosting services or general advice supplied or arranged by the Company at the request of or for the benefit of the Subscriber;
- 1.12 **"Signing Page"** means the Signing Page attached to these Conditions;
- 1.13 **"Statement of Deliverables"** means a document so titled which relates to the Services, or part of them provided under a Contract;
- 1.14 **"Subscriber"** means the entity named in the Signing Page or any written request for Services. If there is no entity named, the **"Subscriber"** is the purchaser of the Services;
- 1.15 **"Tripartite Services Agreement"** means any tripartite services agreement between the Company, the Subscriber and IRESS including but not limited to the tripartite services agreement attached to these Conditions;
- 1.16 **"Term"** means the period stipulated in Statement of Deliverables or as extended by the Company and the Subscriber in writing;
- 1.17 **"XPLAN"** means the software system so titled, which is published and distributed by IRESS;
- 1.18 **"Power BI"** means the cloud-based suite of business analytics tools (developed by Microsoft) that lets anyone connect to, visualise, and analyse data.

2. APPLICATION

- 2.1 These Conditions apply to all Services supplied by the Company to the Subscriber from time to time and the Subscriber is deemed to have read and agreed to these Conditions prior to requesting Services.
- 2.2 These Conditions prevail over all inconsistent conditions of the Subscriber's request, unless the Company expressly agrees otherwise in writing.
- 2.3 No other terms and conditions or other documents are relevant unless expressly acknowledged or referred to in or attached to these Conditions.
- 2.4 No promise, representation or undertaking in relation to these Conditions binds the Company unless the Company expressly agrees otherwise in writing.

- 2.5 If any special conditions, including a Statement of Deliverables, are specified in any attachment to these Conditions, they form part of these Conditions and prevail over the balance of these Conditions to the extent of any inconsistency.
- 2.6 The Subscriber acknowledges that if the Services include an XPLAN component, the Subscriber is also bound by the terms set out in the IRESS Services Agreement and the Tripartite Services Agreement and the Subscriber is deemed to have read and agreed to the terms set out in those agreements in addition to these Conditions prior to requesting Services. The Subscriber shall be solely responsible for all obligations arising under the IRESS Services Agreement including but not limited to the payment of all accounts payable under that agreement.
- 2.7 If applicable, the Subscriber shall be deemed to be in breach of a Contract and these Conditions if the Subscriber is in breach any of the terms of the IRESS Services Agreement or the Tripartite Services Agreement.
- 2.8 The Subscriber acknowledges that if the Products or Services include a Xeppe component, the Subscriber is also bound by the terms set out in the Xeppe Cloud Hosting Agreement and the Subscriber is deemed to have read and agreed to the terms set out in the agreement in addition to these conditions prior to requesting Products/Services. The Subscriber shall be solely responsible for all obligations arising under the Xeppe Agreement including but not limited to the payment of all accounts payable under that agreement.
- 2.9 If applicable, the Subscriber shall be deemed to be in breach of a Contract and the Conditions if the Subscriber is in breach of any of the terms of the Xeppe Cloud Hosting Agreement.
- 2.10 The Subscriber acknowledges that if the Services include a Xeppe and/or Microsoft Power BI component, then the Subscriber consents to its confidential information being transferred into the Xeppe and/or Microsoft Power BI systems, stored there, manipulated and accessed by Xeppe and the Company for the purposes of delivering the Services.
- 3. TIMES FOR SUPPLY OF SERVICES**
- 3.1 The return of the attached signed Signing Page provided by the Company to the Subscriber and received by the Company is deemed to be an authorisation for the Company to provide the Services.
- 3.2 Any times for supply of the Services or other milestones advised by the Company to the Subscriber are estimates only and the Company is not liable for late performance.
- 3.3 No delay in supplying the Services or reaching other milestones relieves the Subscriber of its obligations to accept or pay for the Services.
- 4. PERFORMANCE LEVELS**
- 4.1 The Company warrants that the Services 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 the Company is required to provide.
- 4.2 The Company's obligation to supply Services is limited by the support level requirements set out in Schedule A.
- 4.3 The Company is not responsible for the advice provided by the Subscriber to its clients, regardless of the fact that the Company may, as part of the Services, provide documents which the Subscriber uses in delivering that advice.
- 5. INSURANCE**
- The Company warrants that the Company will maintain insurance against all the reasonable risks which a reasonable and prudent provider of similar Services might be expected to insure against including professional indemnity insurance and public liability insurance in respect of the supply of the Services with a reputable Australian insurer to a level of cover the Company determines appropriate.
- 6. ACCESS TO SITE AND OTHER OBLIGATIONS**
- 6.1 The Subscriber must permit and facilitate the Company to have access to its premises at such times and on such notice as the Company reasonably requires in connection with the supply of the Services.
- 6.2 The Subscriber agrees that at the request of the Company it shall provide any further assistance as required by the Company in connection with the supply of the Services.
- 6.3 The Subscriber shall ensure that:
- 6.3.1 any information or data which the Subscriber uses in connection with the Services or its use will not breach or infringe the rights, including any Intellectual Property Rights, of any person;
- 6.3.2 such information or data will not contain any harmful components, including viruses, trap doors, hidden sequences, hot keys or time bombs.

6.4 The Subscriber acknowledges that using a login control as the sole validation measure is an appropriate standard of validation to permit a user access to data, client data, or other information from any application provided as part of the Services.

6.5 The Subscriber acknowledges that information of the Subscriber, relating to the Subscriber or to its clients, must be disclosed to Authorised Personnel for the proper provision of the Services. The Subscriber consents to such disclosure provided that it is limited to disclosure which is reasonably necessary for the Company to provide the Services.

6.6 Whilst the Company cannot guarantee the absolute security and integrity of data held on its servers, or the servers of its sub-contractors, it will take, and where appropriate ensure that its sub-contractors take, reasonable measures to secure the data from malicious attacks, viruses, or physical theft.

7. ACCESS TO SECURE SITES AND NETWORKS

7.1 The Subscriber shall ensure that for the Term, and in accordance with clause 7.2, the Company shall be provided with access to and super user privileges for all instances of the Subscriber's instances of XPLAN, which the Company requires to be able to provide the Services.

7.2 If:

7.2.1 these Conditions are terminated, or the Term expires without being renewed, and

7.2.2 a further agreement between the Company and the Subscriber is not entered into for the ongoing provision of the Services;

then:

7.2.3 the Company may recover or delete all copies, adaptations, instances, or other form of the Company's Intellectual Property to which the Subscriber may otherwise have access; and

7.2.4 the Subscriber shall ensure that the Company has such access rights and privileges to enable it to exercise its rights under clause 7.2.3.

7.3 Without limiting the Company's rights under this clause, the Company may, but is not required to, grant a licence to the Subscriber

for the use of Intellectual Property after the end of the Term, with such licence to be on such conditions as the Company deems fit or as are otherwise agreed between the parties.

8. INTELLECTUAL PROPERTY

8.1 The Subscriber does not acquire any rights, title or Intellectual Property in relation to the Services provided by the Company under a Contract.

8.2 The Company retains all rights, title and Intellectual Property in relation to the Services under a Contract.

8.3 Subject to these Conditions, the Company grants the Subscriber a non-exclusive licence to use the Services for the purposes of the Subscriber's business as at the Commencement of a Contract but for no other purpose except as otherwise agreed by the parties acting reasonably.

8.4 The Company does not acquire any rights, title or Intellectual Property in relation to data provided by the Subscriber to the Company under a Contract.

8.5 The Subscriber retains all rights, title and Intellectual Property described in 8.4.

8.6 The Subscriber grants the Company a non-exclusive licence to use the Intellectual Property described in 8.4 in connection with providing the Services.

8.7 The Subscriber warrants that the use of any material provided to the Company by the Subscriber for the purposes of supplying the Services will not infringe the Intellectual Property Rights of any third party.

8.8 The Subscriber must not sub licence or otherwise deal with its rights under clause 8.3 without the prior written consent of the Company.

8.9 The parties acknowledge that the Company may enter into agreements with third parties to assist with providing the Services to the Subscriber. The Subscriber agrees to indemnify the Company from all claims, losses and expenses reasonably suffered or incurred by the Company as a result of or in connection with a claim brought by a third party in respect of the Subscriber's negligent, reckless or wilfully unlawful use of the Services in relation to those third parties. The Subscriber agrees to comply with reasonable requests of the Company in relation to use of the Services, including where such third party arrangements are in place.

9. CONFIDENTIALITY

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

- 9.1 will be kept strictly confidential;
- 9.2 will not without the other party's consent be disclosed or divulged to any third party, reproduced or used for any purpose or enterprise other than for the purpose of a Contract, including pursuant to clause 6.5;
- 9.3 will be safely and securely stored when not in use; and
- 9.4 will remain the absolute and exclusive property of the disclosing party.

10. GENERAL LIMITATION ON LIABILITY

- 10.1 The Company shall not be liable for any guarantee, warranty or representation as to the quality and fitness for purpose or otherwise of any Services or the Subscriber's use of the Services unless expressed in writing and signed on behalf of the Company and any such warranty or representation shall be limited to its express terms.
- 10.2 None of the guarantees, conditions, warranties or other terms implied
- 10.3 by Commonwealth, State or Territory laws ("**Implied Terms**") apply to any Contract except to the extent that the implied terms cannot be lawfully excluded.
- 10.4 The Company'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 the Company to re-supplying Services, or, paying the cost of re-supplying Services.
- 10.5 In no circumstance whatsoever shall the Company be liable to the Subscriber or to any third party for any Consequential Loss arising out of the supply or late supply of the Services or any failure to perform or observe the Company's obligations under any Contract or Implied Terms and the Subscriber will keep the Company fully indemnified against any claim made against the Company by a third party for any claim or Consequential Loss.
- 10.6 To the extent permitted by law,
 - 10.6.1 the Subscriber acknowledges that it does not rely on any representations or warranties made by the Company or any third party in relation to any Intellectual Property of a third party provided as part of or connected with the Services;

10.6.2 the Subscriber releases the Company and the third party licensor of such Intellectual Property in respect of all Liability related to such Intellectual Property;

10.6.3 the Subscriber indemnifies the Company in respect of all Liabilities suffered by the Subscriber related to the Subscriber's use of data or Intellectual Property of the Subscriber or a third party connected with the Services; and

10.6.4 the Subscriber releases the Company from any Liability suffered in connection with the Subscriber's, or a user's, access to or use of data which is stored on any system which is used to access the Services.

11. HOSTING SERVICES

- 11.1 Notwithstanding anything else contained in this Agreement, if we agree to provide you with Hosting as part of the Services:
 - 11.1.1 the Company is responsible for installation and maintenance of any software at the hosted site, including installation of upgrades and releases of that software;
 - 11.1.2 the Company will implement appropriate back-up and disaster recovery procedures at the hosted site;
 - 11.1.3 the Company will install and maintain equipment and communication infrastructure for the hosted site;
 - 11.1.4 the Subscriber is responsible for maintaining login and passwords for accessing data at the hosted site; and
 - 11.1.5 the Subscriber is responsible for all equipment and communication infrastructure necessary to access the hosted site.

12. FEES AND GST

Unless otherwise stated:

- 12.1 all fees quoted by the Company are exclusive of GST and the Subscriber is responsible for payment of any GST liability in respect of the provision of the Services which shall be payable at the same time as the GST exclusive consideration; and
- 12.2 the Company at its discretion may withdraw the Services at any time during a Contract until all amounts payable to the Company by the Subscriber have been paid in full.

13. PRICE AND PAYMENT

- 13.1 Unless otherwise agreed in writing, the agreed apportionment of charges for the Services is specified in the Signing Page and Statement of Deliverables and are payable upon the occurrence of the corresponding payment trigger.
- 13.2 Unless otherwise agreed in writing, the Subscriber consents to the Company charging any amounts owing under these Conditions to the direct debit facility or credit card facility which the Subscriber has provided to the Company in the Payment Authorisation Form.
- 13.3 The Subscriber must ensure that the direct debit facility or credit card details held by the Company under these Conditions remains valid and up to date while these Conditions are in force.
- 13.4 Unless the relevant amount is paid in accordance with clauses 13.1 or 13.2 or as otherwise agreed in writing, the Subscriber must, within 21 days of receiving an invoice from the Company, pay the invoice in full in Australian dollars in any manner required by the Company in writing and in full without deduction or set-off. Any costs or charges incurred by the Company in collecting or attempting to collect overdue amounts must be paid by the Subscriber to the Company on demand.
- 13.5 Without limiting clauses 13.1 and 13.2 the Subscriber may enter into a payment plan arrangement with the Company for the payment of the charges for the Services on such terms that are deemed appropriate by the Company.
- 13.6 Payment will not be taken to occur until all cheques tendered in discharge of amounts owing to the Company have been presented and cleared in full.
- 13.7 The Subscriber must pay the reasonable costs incurred by the Company (including change fees cancellation fees and unrecoverable deposits) if the Subscriber changes a previously agreed date for the supply of any Services, including training or site visits.
- 13.8 Where the Company incorporates third party software or services in the provision of the Services, including Microsoft CRM, then the fee charged by the Company to the Subscriber is subject to change if the price charged to the Company by the supplier is changed and, if so, then in a proportional amount.
- 13.9 All fees and rates specified in a Contract or in any other correspondence shall 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, provided that the first such adjustment shall occur no earlier than 12 months after the Company first started supplying Services to the Subscriber.

- 13.10 Without limiting clause 13.9, the Company may, by giving 90 days' written notice to the Subscriber, adjust the fees and rates charged for the Services by a reasonable amount.

14. QUOTATIONS

- 14.1 Subject to clause 13.1 all fees quoted for Services are valid quotes for 21 days from the date of quotation.
- 14.2 Quotations are based on the current costs of supplying the Services and unless the Company has otherwise agreed, are subject to amendment by the Company 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 Services.
- 14.3 The Company reserves the right to charge the Subscriber for any work undertaken and/or costs incurred as a result of the Subscriber varying its request for Services, correcting any errors or omissions referred to in clause 14.4, or requiring urgent Services (including any overtime costs).
- 14.4 The Company will supply the Services on the basis of the Subscriber's request for Services (whether written or oral). The Company will not be responsible for any errors or omissions in relation to the Services where those errors or omissions result wholly or partially from incomplete or unclear instructions in the Subscriber's request for Services.
- 14.5 The Company's current costs for a variety of Services is included in the Statement of Deliverables. The Company may update or alter this document by notice to the Subscriber.

15. DEFAULT BY THE SUBSCRIBER

- 15.1 If the Subscriber commits any act of bankruptcy or enters into liquidation whether voluntary or involuntary, the Company may at its discretion and without notice terminate any credit arrangement with the Subscriber, suspend provision of Services or cancel any Contract so far as it remains unperformed without prejudice to its rights.
- 15.2 The Subscriber must indemnify the Company against any Liability which the Company may incur as a result of any breach by the Subscriber of its warranties or obligations under a Contract.

- 15.3 In the event that the Subscriber fails to make any payment by the specified due date, a default interest rate of 4.50% per annum above the RBA cash rate published during the persistence of the default shall be applied to the outstanding amount from the due date until the date of full payment. Such interest shall accrue daily and be compounded monthly/quarterly/annually, at the discretion of the Subscription Provider.

16. TERMINATION BY COMPANY

Without prejudice to any of its other rights, the Company may without liability and notice terminate a Contract or suspend the supply of Services:

- 16.1 if the Subscriber commits any breach of this or any other Contract with the Company including failure to make any payments on the due date and fails to remedy that breach (if such remedy is possible) within a reasonable period;
- 16.2 if being an individual, the Subscriber dies or has a receiver appointed over his or her assets;
- 16.3 if being a Company, the Subscriber 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; or
- 16.4 if, in the opinion of the Company, the Subscriber is not capable of paying any of its payments due to the Company.

17. TERMINATION BY SUBSCRIBER

- 17.1 Subject to clause 17.2 the Subscriber may terminate a Contract by providing the Company with written notice. The Notice period is as per the Statement of Deliverables.
- 17.2 The parties acknowledge that the Subscriber agrees to pay the Company for the Services for at least the Minimum Term and any termination pursuant to this clause cannot be effective until after the Minimum Term has expired.
- 17.3 Without prejudice to any of its other rights, the Subscriber may without liability terminate a Contract by written notice:
- 17.3.1 if the Company commits any breach of this Contract and fails to remedy that breach (if such remedy is possible) within a reasonable period; or
- 17.3.2 the Company has a receiver of all or any of its assets appointed or enters into liquidation or becomes subject to a winding up order of the Court.

18. CONSEQUENCES OF TERMINATION

- 18.1 If a Contract is terminated for any reason prior to the end of the Term, the Subscriber shall be liable to pay any portion of the fees for the Services which are unpaid but which are payable, or (if terminated pursuant to clauses 16 or 17.1) would have become payable during the Term if the termination had not occurred. Such amount shall be due as a debt owing immediately upon termination.
- 18.2 Upon termination, the Company shall, if requested by the Subscriber and at the cost of the Subscriber (calculated in accordance with clause 14), effect the migration of the Subscriber's data and associated materials.
- 18.3 Following termination, the Company shall on the request of the Subscriber delete any of the Subscriber's data held on the Company's servers (or servers controlled by the Company).

19. PRIVACY

- 19.1 Subject to clause 19.2 and to the extent that the Subscriber has obligations under the *Privacy Act 1989* (Cth), it remains fully responsible for those obligations and ensuring that the Services will comply with those obligations. The Subscriber shall indemnify the Company to the full extent permitted by Law against any Liabilities suffered by the Company in relation to the Subscriber's obligations under this Act.
- 19.2 The Company shall take commercially reasonable precautions to protect the Subscriber's data which is within its control and to not disclose such data except in accordance with law.

20. FORCE MAJEURE

The Company shall not be liable for any Liability caused by the Company's failure to supply Services as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, war, interruption or failure of electricity or telecommunication service or any other matter beyond the Company's reasonable control including but not limited to any breach by IRESS under the IRESS Services Agreement or the Tripartite Services Agreement.

21. SUB-CONTRACTING

The Company may sub-contract the supply of Services under a Contract. In the event of such sub-contract, the Company will not be relieved of responsibility and will remain responsible for the due performance of its obligations under a Contract.

22. GOVERNING LAW AND JURISDICTION

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

23. MISCELLANEOUS

- 23.1 A Contract may be altered in writing signed by each party.
- 23.2 Except as expressly provided otherwise in a Contract, a party must not assign or otherwise deal with a Contract or any right under it without the written consent of the other party.
- 23.3 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.
- 23.4 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.
- 23.5 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.
- 23.6 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.
- 23.7 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.

Schedule A – Support

GENERAL SUPPORT

Support will be provided as part of the Services only to the extent set out in the Statement of Deliverables, subject to the qualifications set out in this Schedule A.

ERROR CORRECTION SERVICE

(a) If you detect, or believe you have detected, any error, defect or non-conformity in the Software such that the Software does not operate in substantial conformity with the specifications for the Software (“Fault”), you may request us to provide the Error Correction Service.

(b) On reporting the Fault it will be classified and actioned by the Company.

(c) The Company will provide assistance in the form of off-site telephone and email consultation and advice.

(d) On reporting each Fault the Subscriber must provide the Company a listing of the output and all such other data which we may reasonably request in order to reproduce or simulate operating conditions similar to those present at the time the Fault occurred.

(e) The Company may implement temporary workaround procedures in relation to Faults as considered practicable by the Company.

EXCLUDED OCCURRENCES

Support does not include repair of damaged data, investigation of problems, or other user Support Services which:

(a) arise from additions or modifications to the Software by a person other than the Company (and such additions or modifications are prohibited);

(b) arise from misuse of the Software;

(c) arise due to the failure by the Subscriber to provide appropriately qualified and adequately trained operating and programming staff for the operation of the Software;

(d) the Company is unable to replicate after beginning our investigations;

(e) are caused by the failure of electricity, air-conditioning, humidity control or any environmental factor including an act of God, flood or fire;

(f) are caused by operation of the Software other than in accordance with standard operation as determined by the Company;

(g) arise directly or indirectly out of the Subscriber’s failure to comply with these conditions;

(h) are caused by any hardware or software other than the Software;

(i) occur in versions of the Software which are more than 2 software issues (releases or upgrades) behind the then current version of the Software;

(j) are caused by network failure or error, hardware failure, hardware operating system failure or incorrect operation of the hardware or network; or

(k) in the Company's reasonable opinion represent excessive consultation which is primarily due to lack of training by the Subscriber of the Subscriber's employees or contractors. At the Company's option, Support may be provided in respect of any of the above excluded occurrences at our normal time and materials rates.