

# XEMOTE PORTAL TERMS OF USE

These Web Portal Terms of Use are intended to explain our obligations as provider of our Web Portal and your obligations as a User. Use of our Web Portal is subject to our Terms and Conditions of Sale and other terms referred to on this page.

These Web Portal Terms are binding on any use of the Web Portal and apply to you from the time that Xemote provides you with access to the Web Portal.

The Web Portal will evolve over time based on user feedback and changes in legislation. These Web Portal Terms are not intended to address every issue raised by the use of the Web Portal. Xemote reserves the right to change these Web Portal Terms at any time, effective upon the posting of modified terms. Xemote will make every effort to communicate these changes via email or notification via the Web Portal. It is likely the Web Portal Terms will change over time and it is your obligation to ensure that you have read, understood and agree to the most recent terms available on the Web Portal.

By logging onto the Web Portal you acknowledge that you have read and understood these Web Portal Terms and have the authority to act on behalf of any entity for whom you are using the Web Portal. You are deemed to have agreed to these Web Portal Terms on behalf of any entity for whom you use the Web Portal.

## 1 DEFINITIONS

- 1.1 In this Agreement, the words detailed hereunder will have the meanings assigned to them unless inconsistent with the context of this Agreement.
- 1.2 “the/this Agreement” means these Web Portal Terms.
- 1.3 “Confidential Information” includes all information exchanged between the Parties to this Agreement, whether in writing, electronically or orally, including the Web Portal but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other Party.
- 1.4 “Data” means any data inputted by you or with your authority into the Web Portal and data collected from sensors of the Customer.
- 1.5 “Web Portal” means the collective operation of the Xemote website at [cloud.xemote.co.za](https://cloud.xemote.co.za), the remote server that hosts various web services and stores data, and the web service application that monitors and generates alert notifications.
- 1.6 “Xemote” means Xemote (Pty) Ltd a service provider company duly incorporated in the Republic of South Africa with registration number 2012/225652/07.
- 1.7 “User” means any person or entity, other than the Customer, that uses the Web Portal with the authorisation of the Customer from time to time.
- 1.8 “Customer” means the entity who registers to use the Web Portal, and, where the context permits, includes any entity on whose behalf that person registers to use the Web Portal.
- 1.9 “You” means the Customer, and where the context permits, a User.
- 1.10 “Your” has a corresponding meaning.
- 1.11 “Party” or “Parties” means, individually each party hereto, and collectively all the parties to

this Agreement.

## **2 USE OF WEB PORTAL**

- 2.1 Xemote grants you the right to access and use the Web Portal with the particular user roles available to you. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Customer and the Users, or any other applicable laws:
- a) the Customer determines who is a User and what level of user role access to the relevant organisation and Web Portal that User has;
  - b) the Customer is responsible for all Users' use of the Web Portal;
  - c) the Customer controls each User's level of access;
  - d) if there is any dispute between a Customer and a User regarding access to the Web Portal, the Customer shall decide what access or level of access to the relevant Data or Web Portal that User shall have, if any.

## **3 YOUR OBLIGATIONS**

- 3.1 Access to the Web Portal is wholly dependent upon you meeting your financial obligations as set out in the Terms and Conditions of Sale. If you are not subject to current Terms and Conditions of Sale or such Terms and Conditions of Sale have been suspended or terminated, you must refrain from accessing the Web Portal unless authorised by us in writing.
- 3.2 You must only use the Web Portal for your own lawful internal business purposes, in accordance with these Web Portal Terms and any notice sent by Xemote or condition posted on the Web Portal.
- 3.3 You must ensure that all User id's and passwords required to access the Web Portal are kept secure and confidential. You must immediately notify Xemote of any unauthorised use of your passwords or any other breach of security and Xemote will reset your password and you must take all other actions that Xemote reasonably deems necessary to maintain or enhance the security of Xemote's computing systems and networks and your access to the Web Portal.
- 3.4 As a condition of these Web Portal Terms, when accessing and using the Web Portal, you must:
- a) not attempt to undermine the security or integrity of Xemote's computing systems or networks or, where the Web Portal is hosted by a third party, that third party's computing systems and networks;
  - b) not use, or misuse, the Web Portal in any way which may impair the functionality of the Web Portal, or other systems used to deliver the Web Portal or impair the ability of any other User to use the Web Portal;
  - c) not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Web Portal is hosted;
  - d) not transmit, or input into the Web Portal, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in

violation of any law (including Data or other material protected by copyright or trade secrets which you do not have the right to use); and

e) not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Web Portal or to operate the Web Portal except as is strictly necessary to use either of them for normal operation.

3.5 You indemnify Xemote against all claims, costs, damage and loss arising from your breach of any of these Web Portal Terms or any obligation you may have to Xemote.

## **4 CONFIDENTIALITY AND PRIVACY**

4.1 Unless the relevant Party has the prior written consent of the other or unless required to do so by law:

4.2 Each Party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Web Portal Terms. Neither Party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Web Portal Terms.

4.3 Each Party's obligations under this clause will survive termination of these Web Portal Terms.

4.4 The provisions of clauses 4.1.1 and 4.1.2 shall not apply to any information which:

- a) is or becomes public knowledge other than by a breach of this clause;
- b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- c) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or
- d) is independently developed without access to the Confidential Information.

4.5 Xemote maintains a privacy policy that sets out the Parties' obligations in respect of personal information. You should read that policy at [cloud.xemote.co.za/privacy-policy](http://cloud.xemote.co.za/privacy-policy) and you will be taken to have accepted that policy when you accept these Terms.

## **5 INTELLECTUAL PROPERTY**

5.1 Title to, and all Intellectual Property Rights in the Web Portal and any documentation relating to the Web Portal remain the property of Xemote.

5.2 Title to, and all Intellectual Property Rights in, the Data remain your property. However, your access to the Data is contingent on full payment of the fees set out in the Terms and Conditions of Sale when due. You grant Xemote a licence to use, copy, transmit, store, and back-up your information and Data for the purposes of enabling you to access and use the Web Portal and for any other purpose related to provision of Web Portal to You.

5.3 Xemote adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. Xemote expressly excludes liability for any loss of Data no matter how caused.

## **6 WARRANTIES AND ACKNOWLEDGEMENTS**

6.1 You warrant that where you have registered to use the Web Portal on behalf of another person, you have the authority to agree to these Web Portal Terms on behalf of that person

and agree that by registering to use the Web Portal you bind the person on whose behalf you act to the performance of any and all obligations that you become subject to by virtue of these Web Portal Terms, without limiting your own personal obligations under these Web Portal Terms.

- 6.2 You are authorised to use the Web Portal and to access the Data, including any information input into the Web Portal by any person you have authorised to use the Web Portal. You are also authorised to access the processed information and Data that is made available to you through your use of the Web Portal (whether that information and Data is your own or that of anyone else).
- 6.3 Xemote has no responsibility to any person other than you and nothing in this Agreement confers, or purports to confer, a benefit on any person other than you. If You use or access the Web Portal on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:
- a) You are responsible for ensuring that you have the right to do so;
  - b) You are responsible for authorising any person who is given access to information or Data, and you agree that Xemote has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and
  - c) You will indemnify Xemote against any claims or loss relating to (i) Xemote's refusal to provide any person access to your information or Data in accordance with these Terms and (ii) Xemote's making available information or Data to any person with your authorisation.
- 6.4 The provision of, access to, and use of, the Web Portal is on an "as is" basis and at your own risk.
- 6.5 Xemote does not warrant that the use of the Web Portal will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Web Portal, computer networks and the internet, can be unpredictable and may from time to time interfere with or prevent access to the Web Portal. Xemote is not in any way responsible for any such interference or prevention of your access or use of the Web Portal.
- 6.6 It is your sole responsibility to determine that the Web Portal meet the needs of your business and is suitable for the purposes for which they are used.
- 6.7 You remain solely responsible for complying with all applicable accounting, tax and other laws. It is your responsibility to check that storage of and access to your Data via the Web Portal will comply with laws applicable to you (including any laws requiring you to retain records).
- 6.8 Xemote gives no warranty about the Web Portal. Without limiting the foregoing, Xemote does not warrant that the Web Portal will meet your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.
- 6.9 You warrant and represent that you are acquiring the right to access and use the Web Portal for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Web Portal or these Terms.

## **7 LIMITATION OF LIABILITY**

- 7.1 To the maximum extent permitted by law, Xemote excludes all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Web Portal.
- 7.2 If you are not satisfied with the Web Portal, your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

## **8 TERMINATION**

- 8.1 These Terms will continue for the period covered by any Terms and Conditions of Sale between us and your rights of termination as set out within the Terms and Conditions of Sale.

## **9 GOVERNING LAW AND JURISDICTION**

- 9.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and the Parties hereby submit to the non-exclusive jurisdiction of the courts.
- 9.2 Any dispute arising from or in connection with this Agreement shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.

## **10 GENERAL**

- 10.1 Whilst Xemote intends that the Web Portal should be available 24 hours a day, seven days a week, it is possible that on occasions the Web Portal may be unavailable to permit maintenance or other development activity to take place. If for any reason Xemote has to interrupt the Web Portal for longer periods than Xemote would normally expect, Xemote will use reasonable endeavours to publish in advance details of such activity on the Web Portal.
- 10.2 The headings to the Clauses and paragraphs of the Agreement are for guidance only and shall not affect the interpretation thereof.
- 10.3 All notices and claims in connection with the Agreement must be in writing.
- 10.4 Each paragraph or clause in this Agreement is severable, the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force or effect.