

TERMS & CONDITIONS

This Equipment and Fee Agreement (EFA) governs the supply by Xplor of Services to You. Together with the EULA, this EFA also governs the use of the Services by You during the Term. By signing this EFA and registering to use the Products, You are entering into a binding legal Agreement with Xplor. It is therefore important that you carefully read this EFA, and also the associated EULA at the time of registering to use the Products. The EULA is available at www.ourxplor.com and You will be prompted to acknowledge Your acceptance of the EULA when You and/or Your Invited User(s) register to use the Products. By signing this EFA and registering to use the Products You acknowledge that You have read and understood this EFA and the EULA, and that You have the authority to enter this Agreement on Your own behalf and also on behalf of Your Invited User(s) and Centre(s).

Definitions

Agreement means the agreement between Xplor and You pursuant to the terms and conditions of the EFA and the EULA as amended from time to time. If there is any inconsistency between the EFA and the EULA, the terms of this EFA prevail.

Access Fee means the fee (excluding any taxes and duties) payable by You in accordance with the Fee Schedule as amended from time to time.

Billing Period means monthly by reference to the number of Fridays falling in any calendar month, unless otherwise agreed by Xplor and You in writing.

Centre means an ELC associated with You or otherwise under Your control, and which includes those You notify to Xplor from time to time.

Data means:

- a) any data concerning You, Your Invited Users, or any Family Xplor reasonably requires to provide the Services; and
- b) any data that You, an Invited User, Centre or Family or any person with Your authority inputs into the Products via the Equipment, the Website or via any other means.

ELC means an organisation providing, directly or indirectly, early childcare and associated services.

EFA means the terms of this equipment and fee agreement as amended from time to time.

EULA means the terms of the Xplor end user licence agreement available from the Website, or otherwise made available by Xplor, as amended from time to time.

Equipment means any equipment supplied to You by Xplor pursuant to, or in connection with, this Agreement and which may include such phones, tablets and/or beacons as Xplor may determine.

Family means a family unit associated with You or a Centre by or in respect of whom the EULA has been accepted by any means.

Fee Schedule means the fee information which Xplor makes available to You from time to time either in writing, via the Products or via the Website.

GST has the meaning defined in the *A New Tax System (Goods and Services Tax) Act 1999*.

Marks means any name, logo or trade mark owned by, or licensed to, Xplor.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

Privacy Policy means Xplor's privacy policy as published to and available from the Website from time to time.

Product(s) means the software products made available to You by Xplor via the Website, the Equipment or such other means as Xplor may determine from time to time.

Trial Period means 30 days from the date of this EFA or such other period as may be agreed in writing.

Website means the website accessible at the domain www.myxplor.com or such other site as Xplor may determine from time to time.

Invited User means any person or entity other than You who uses the Services at Your request or with Your authorisation, and may include a Centre and/or a Family.

Service Panel means the 'My Xplor' section accessible by You within the Products and which section contains details relating to You and/or Your Invited Users and/or Centres.

Services means any, or all, of the Equipment, Products, Website or associated goods and services Xplor makes available to You from time to time pursuant to this Agreement and includes reasonable set-up, training, and support relating to the Services.

Special Terms means the terms and conditions, if any, agreed between You and Xplor in writing.

Term means, from time to time, the period covered by the Access Fee paid or payable and, where the context permits and requires, a reference to Term shall be to the Term as renewed in accordance with this Agreement.

Xplor means MyXplor Pty Ltd ACN 604 322 910 or its advised related entities from time to time.

You means the ELC accepting this EFA by any means.

1) Rights to use the Products

- a) Xplor grants You the right to access and use the Products during the Term via the Website and/or the Equipment (where applicable) with the particular user roles available to You according to Your subscription type. The right granted to You is non-exclusive, non-transferable, and is limited by and subject to this Agreement.

2) Rights to use Equipment

- a) Xplor grants You the right to use during the Term the Equipment in

connection with the Products. The right granted to You is non-exclusive, non-transferable, and is limited by and subject to this Agreement.

- b) You acknowledge and agree that:
 - i) Xplor may determine what Equipment, if any, is provided to You, and the timeframe for providing it, and this may depend on Your subscription type.
 - ii) the Equipment is on loan to You and at all times remains the property of Xplor;
 - iii) You must not tamper with or remove the Equipment from the address shown in the Agreement without the permission of Xplor;
 - iv) You must not remove from the Equipment any identifying marks, labels or ownership identifications;
 - v) You must not download or install software into the Equipment without written consent of Xplor;
 - vi) You are responsible for the proper use, storage and safekeeping of the Equipment;
 - vii) You are responsible for all Invited Users' use of the Equipment; and
 - viii) You must ensure that the Equipment is immediately returned to Xplor at Your cost if there are any concerns or malfunctions with it.
- c) Subject always to Your compliance with this Agreement, Xplor shall service the Equipment by using its reasonable endeavours to maintain it in such good working order and condition as is necessary for its proper use in connection with the Products.
- d) To the extent Xplor determines it necessary to do so, and subject always to Your compliance with this Agreement, Xplor shall replace the Equipment as and when reasonably necessary with other equipment that is appropriate for use in connection with the Products.
- e) You undertake to:
 - i) operate the Equipment only in accordance with the manufacturer's instructions;
 - ii) take reasonable care when operating the Equipment;
 - iii) notify Xplor as soon as reasonably practicable of any default with, or damage to, the Equipment; and
 - iv) pay any reasonable charges incurred in repairing or replacing the Equipment other than for reasonable wear and tear or defect in the Equipment existing at the time of delivery to You and not caused by improper use or failure to use the Equipment in accordance with the manufacturer's instructions.
- f) To the full extent permitted by law Xplor shall not be liable for any loss, damage, expense, injury or death sustained or incurred by You or any third party from the direct or indirect use of the Equipment, its supply by Xplor, or its performance.
- g) You must not sell, transfer or create any charge, lien or security over the Equipment nor allow the Equipment to go out of Your personal control and shall immediately notify Xplor of any seizure or attempted seizure of it.
- h) To secure the punctual payment of all amounts owed by You to Xplor or otherwise the performance of Your obligations under this Agreement, You hereby grant to Xplor:
 - i) a security interest (as defined under the PPSA) over all Your present and after-acquired property in relation to which You can be a grantor of a security interest under the PPSA, whether or not You have title to the property, including but not limited to all PPSA retention of title property; and
 - ii) a fixed and floating charge over all Your present and after-acquired property in relation to which You cannot be a grantor of a security interest under the PPSA.
- i) You agree to, and warrant to Xplor that you will, keep the Equipment insured at all times to its full replacement value against any loss including any loss by fire, burglary or theft and upon demand and, upon request, You agree to provide to Xplor evidence of such insurance which shall note the interests of Xplor as owner of the Equipment.
- j) In the case of any loss of or damage to the Equipment, You agree to pay to Xplor the value of the Equipment as assessed by Xplor or, in the case of damage, such value of the costs of repairs required, whichever is the lesser amount.
- k) If this Agreement is terminated, You must immediately return the Equipment to Xplor. You undertake to give Xplor reasonable assistance in

- its recovery of the Equipment.
- l) You expressly permit Xplor, its employees, contractors and agents to enter upon any premises where it believes the Equipment is located or any premises occupied by You for the purposes of repossessing, inspecting, repairing or making adjustments to the Equipment or serving any notice or demand in relation to the Equipment.
- m) You hereby Indemnify Xplor and its employees, contractors and agents against all liabilities relating to any breach of this Agreement by You and, without limitation, You agree to pay to Xplor on demand its costs relating to the repossession and repair of the Equipment if it is lost or damaged.
- 3) Invited Users**
- a) Subject always to compliance with this Agreement, you may invite Invited Users to use some or all of the Services.
- b) You acknowledge and agree that, subject always to this Agreement:
- i) You determine who is an Invited User and what level of user role and access that Invited User has. You can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be. If there is any dispute between You and an Invited User regarding access to any Product, You shall decide what access or level of access that Invited User shall have, if any.
- ii) You are responsible for all Invited Users' use of the Services.
- 4) Payment obligations**
- a) Xplor may issue You with an invoice for the Access Fee in respect of each Billing Period during the Term.
- b) All Xplor invoices will be sent to You, or to a Billing Contact whose details are provided by You, by email or via such other means as Xplor may determine from time to time. Without prejudice to any other rights that Xplor may have, Xplor reserves the right to suspend or terminate use of Services by You, Your Invited Users, or any Centre, in the event that any invoices are not paid in full by the due date for payment.
- c) You must pay or arrange payment of all amounts specified in any invoice issued to You by Xplor by the due date for payment which Xplor may reasonably determine from time to time. You hereby agree to make payment to Xplor by way of a direct debit arrangement upon the request of Xplor.
- d) You are responsible for payment of all taxes and duties, including but not limited to GST, in addition to the Access Fee, and Xplor may invoice these amounts to You.
- e) You must not withhold, make deductions from, or set-off, payment of any money owed to Xplor for any reason.
- f) Subject always to this Agreement, and at Your request, Xplor may issue an invoice for the Access Fee (or any part thereof) to such third parties as You may reasonably request, including but not limited to any Centre and/or Invited User, save always that Xplor retains the absolute right to determine to whom to issue invoices for the Access Fee (or any part of it) and notwithstanding the party to whom an invoice is issued You remain liable for the payment of all Access Fee properly due and payable under this Agreement.
- g) You warrant to Xplor that, if you make a request pursuant to clause 4)f), you have the consent of the third party to whom You have requested the invoice be issued.
- h) Unless indicated otherwise, the Access Fee is expressed exclusive of GST.
- 5) Preferential pricing or discounts**
- a) You may from time to time be offered preferential pricing or discounts to the standard Access Fee based on the number of Centres using the Services at Your request. Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Access Fee in relation to all of Your Centres. Without prejudice to any other rights that Xplor may have, Xplor reserves the right to render invoices for the full (non-discounted) Access Fee due, or to suspend or terminate Your use of the Services in respect of any or all of Your Centres in the event that any invoices for those Access Fees are not paid in full by the due date for payment.
- 6) Automated Bank transaction data delivered into Your Xplor account**
- a) Where available, automated bank account transaction data feeds are generally provided to You free of charge. However, Xplor reserves the right to pass on any charges related to the provision of bank feed data on a case-by-case basis at Xplor's sole discretion. In the event that Xplor proposes to pass on such charges to You, Xplor will notify You of the charges. If You wish to discontinue the bank feeds and avoid the proposed charges, You must notify Xplor of your decision whereupon Xplor will use its reasonable endeavours to arrange for such feeds to be terminated in accordance with the providing bank's usual practices.
- 7) Usage Limitations**
- a) Use of the Services may be subject to such limitations as Xplor may advise from time to time, including but not limited to monthly transaction volumes and the number of calls You are permitted to make using the Services.
- 8) Termination**
- a) Xplor may exercise any of its rights under clause 8)b) if You:
- i) in relation to a breach capable of remedy (including by non-payment of the Access Fee), fail to remedy such a breach of this Agreement by You, Your Invited User or Centre within 14 days of notice of the breach;
- ii) Your Invited User or Centre commit a breach that is not capable of remedy (which includes by non-payment of any Access Fees that are more than 30 days overdue or a breach of clause 5);
- iii) You or any Centre operated by or associated with You become insolvent or any steps are taken by You or in relation to You in connection with insolvency including but not limited to the entering of any arrangement with creditors, the appointment of receivers or managers, administrators and/or liquidators.
- b) Upon the occurrence of any event in clause 8)a), Xplor may:
- i) terminate this Agreement and use of the Services by You, Your Invited Users and/or Centres;
- ii) suspend for any definite or indefinite period of time use of the Services by You, Your Invited Users and/or Centres; and/or
- iii) subject to law and to the Privacy Policy, suspend or terminate access to the Data by You.
- c) Termination of this Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement, You will remain liable for any accrued charges and amounts which become due for payment before or after termination.
- d) On termination of this Agreement, You must:
- i) immediately cease to use the Services;
- ii) delete all copies of the Products installed on any device You own or use; and
- iii) return the Equipment to Xplor at Your cost.
- 9) Trial Policy**
- a) Unless Xplor otherwise determines in writing at the commencement of this Agreement, You may use the Services without charge during the Trial Period with no obligation to continue use on expiration of the Trial Period.
- b) At any time during the Trial Period You may by notice in writing to Xplor choose not to continue using the Services after the Trial Period, in which case You must, at Your own cost and before the expiration of the Trial Period, return the Equipment to Xplor at Level 7, 1 Collins Street, Melbourne VIC 3000 or such other address as Xplor may reasonably direct, and this Agreement shall expire on receipt of the Equipment by Xplor.
- c) If You give notice to Xplor pursuant to clause 9)b) but do not return the Equipment to Xplor on or before expiration of the Trial Period, You will be liable for the Access Fee from the day immediately following expiration of the Trial Period.
- 10) Prepaid Subscriptions**
- a) To the extent permitted by law Xplor will not provide a refund for any remaining prepaid period for a prepaid Access Fee subscription.
- 11) Term**
- a) This Agreement commences on the date of this Agreement and continues for the Term. Unless and until a party gives notice pursuant to clause 11)b), at the end of each Billing Period this Agreement will automatically renew for a further term of the same duration as the initial term, provided You continue to pay the prescribed Access Fee when due.
- b) Either party may prevent a renewal of any Term by giving the other 30 days' written notice.
- c) If You elect not to renew the Term at any time You shall be liable to pay all relevant Access Fees on a pro-rata basis for each day of the then current period up to and including the day of expiration of this Agreement.
- 12) Technical Problems**
- a) In the case of technical problems with the Services You must make all reasonable efforts to investigate and diagnose problems before contacting Xplor. If, after taking steps to resolve the issue, You still require assistance, you may contact Xplor via one of the following means:
- i) telephone 1300 014 428;
- ii) email to support@myxplor.com;
- iii) web support accessible at <http://myxplor.com/support>; and
- iv) such other support channels as Xplor may advise from time to time.
- 13) Service availability**
- a) Whilst Xplor intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable, including to permit maintenance or other development activity to take place.
- b) Xplor will use its reasonable endeavours to publish in advance on the Website or by other means as Xplor may determine details of any known significant outages or interruptions to the Services.
- 14) Entire agreement**
- a) This Agreement constitutes the entire agreement between You and Xplor relating to the Services and it supersedes all prior agreements,

representations (whether oral or written), and understandings between Xplor and You relating to the same.

15) Confidentiality, licence and reservation of IP rights

- a) To the extent that it comprises personal information, Xplor will deal with the Data in accordance with the Privacy Policy and will otherwise treat the information as confidential unless it is publicly available information otherwise than by a breach of this Agreement.
- b) Nothing in this Agreement operates to grant You any intellectual property rights in the Services or any part thereof.
- c) You must not use any Marks without the prior written consent of Xplor or register or attempt to register rights in relation to the Marks, any derivative of the Marks, or anything similar to them.
- d) You hereby grant to Xplor a non-exclusive licence to use the Data to the extent necessary for Xplor to provide the Services.

16) Warranties

- a) Xplor does not warrant that the Services are fit for any purpose whether or not made known by You.
- b) Xplor hereby excludes all express and implied conditions and warranties in relation to the Services and this Agreement except those conditions or warranties that cannot be excluded by law.
- c) Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or any equivalent Act of any State or Territory of Australia except to the extent permitted by such Acts.
- d) You warrant to Xplor that:
 - i) You have all licences, permits and other regulatory consents required or necessary to enter into this Agreement and perform Your obligations hereunder;
 - ii) You have the authority to grant the licenses pursuant to 15)d) of this Agreement;
 - iii) You are using the Services for the commercial purposes contemplated by this Agreement only;
 - iv) You have attended to all backups, and have maintained copies of, the Data and You acknowledge that Xplor is not responsible for attending to any such backup obligations; and
 - v) the use by Xplor of the Data will not result in any unauthorised use of the rights of any person.

17) Liability

- a) To the absolute extent permitted by law, Xplor will not be liable to You, Your Invited Users, Centres or any other person for any liability, loss or damage of any kind (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) arising directly or indirectly from or in connection with this Agreement or use of the Services by You, Your Invited Users and/or and Centre.
- b) In the event that Xplor's liability cannot be wholly excluded, and to the extent permitted by law, its liability under this Agreement shall be limited to:
 - i) the replacement of the Services;
 - ii) the cost of having the Services replaced.

18) Waiver

- a) The failure by Xplor to exercise any of its rights arising under this Agreement will not operate as a waiver of the right and the express waiving of any particular right, including a right in respect of a breach of this Agreement by You, will not operate as a waiver of any other right.

19) Delays

- a) Neither party will be liable for any delay or failure in performance of its obligations under this Agreement if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

20) Assignment

- a) Xplor may assign its rights under, and/or novate, this Agreement at any time by notice in writing to You.
- b) You may not assign any rights to under this Agreement to any other person without Xplor's prior written consent.

21) Governing law and jurisdiction

- a) This Agreement is governed by and is to be construed in accordance with the laws in force in the Commonwealth of Australia and the state of Victoria therein. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

22) Severability

- a) If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as is possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

23) Notices

- a) Any notice given under or pursuant to this Agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Xplor must be sent to support@myxplor.com or to any other email address notified by email to You by Xplor. Notices to You will be sent to the email address you have provided via the Service Panel.

24) Rights of Third Parties

- a) Unless expressly indicated otherwise in this Agreement, a person who is not a party to this Agreement has no right to benefit under, or to enforce, any term of this Agreement.

25) Updates and amendments

- a) You acknowledge that from time to time and as Xplor determines it necessary or desirable to do so Xplor may update any aspect of the Services.
- b) You acknowledge that, in the event of an update of any aspect of the Services or for such other reasons as Xplor may determine, Xplor may make reasonable amendments to this Agreement (or any part of it) to give effect to, or properly accord with, the Services from time to time and You hereby agree to accept such amendments.
- c) Any amendments by Xplor pursuant to this clause may be advised to You in writing including via the Website, the Products and/or the Equipment and shall take effect 14 days from the date of such notice unless You communicate to Xplor an objection to the amendments.

26) Special Terms

- a) The parties acknowledge and agree that the Special Terms form part of this Agreement.

FEE SCHEDULE (refer clause 4 of EFA) Fees current as at 1 November 2017	
PLAN	FEE (exc. GST)
Core	\$2.49 per month per family for which any child attends or is booked to attend the Centre
Essential	\$7.99 per month per family for which any child attends or is booked to attend the Centre
Professional	\$9.99 per month per family for which any child attends or is booked to attend the Centre