

Xplor Service Terms and Conditions

1. Interpretation and precedence

1.1. Background

These Service Terms govern the supply by Xplor of Services to You. Together with the Xplor Customer Agreement, these Service Terms govern the use of the Services by You during the Term. By signing the Xplor Customer Agreement and registering to use the Platform, You are entering into a binding legal Agreement with Xplor. It is therefore important that you carefully read these Service Terms at the time of registering to use the Platform. By signing the Xplor Customer Agreement and registering to use the Platform You acknowledge that You have read and understood these Services Terms, and that You have the authority to enter this Agreement on Your own behalf and also on behalf of Your Invited User(s).

1.2. Definitions

In these Service Terms, these definitions apply:

Access Fee means a 0.3% fee for each transaction performed via the Platform where funds are successfully deposited into the relevant payee's nominated account.

Agreement means the agreement between Xplor and You made up of the:

- (a) Customer Agreement; and
- (b) Service Terms.

as amended from time to time.

Confidential Information means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, including Data, but excluding:

- (a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement; and
- (b) information developed independently by a party.

Data means:

- (a) any data concerning You or Your Invited Users Xplor reasonably requires to provide the Services;
- (b) any data that You or an Invited User or any person with Your authority inputs into the Platform via the Equipment, the Website or via any other means; and
- (c) any user ID, password, token, cryptographic key or private information used to access the Westpac Solution.

Date of Agreement means the date the parties execute the Xplor Customer Agreement as stipulated in Item 1 of the Xplor Customer Terms.

EULA means the terms of the Xplor end user licence agreement available at www.myxplor.com/wpagreement, or otherwise made available by Xplor, as amended from time to time.

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

Invited User means any person or entity other than You who uses the Services at Your request or with Your authorisation and includes a Family.

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

Minimum Monthly Fee means the fee stipulated in Item 7 of the Xplor Customer Terms or as otherwise notified by Xplor from time to time.

Personal Information has the meaning prescribed by section 6 of the *Privacy Act 1998* (Cth).

Platform means the software platform made available to You by Xplor via the Website or such other means as Xplor may determine from time to time.

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

Privacy Laws means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth), and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

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

School, You or Your means the party described in Item 2 of the Xplor Customer Terms.

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

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

Service Terms means the terms of these Xplor Service Terms and Conditions as amended from time to time.

Special Terms means the terms and conditions, if any, set out in Item 9 of the Xplor Customer Terms.

Term means from the Date of Agreement until the first to occur of the following:

- (a) the agreement between You and Westpac for the Westpac Solution ends for any reason;
- (b) You cease to pay the Access Fee in respect of the Services provided to You; or
- (c) this Agreement is terminated by a party in accordance with clause 9.

Usage Limits means the limits stipulated in Item 8 of the Xplor Customer Terms (if any), as amended from time to time.

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

Westpac means Westpac Banking Corporation ABN 33 007 457 141.

Westpac Solution means the payment solution that is eligible for use with the Platform and provided to You and/or Your Invited Users by Westpac pursuant to the Westpac Terms including any associated software/hardware provided by Westpac.

Westpac Terms means the terms and conditions pursuant to which Westpac makes the Westpac Solution available to You and/or Your Invited Users.

Xplor means MyXplor Pty Ltd ACN 604 322 910 or otherwise its related entities as You may be advised from time to time.

Xplor Customer Terms means the schedule of terms contained in the Xplor Customer Agreement and labelled as such.

Xplor Customer Agreement means the Agreement between You and Xplor.

1.3. Interpretation

In this Agreement:

- (a) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits them all jointly;
- (b) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for preparing this Agreement or including the provision in this Agreement;
- (c) all monetary amounts are expressed in Australian Dollars (\$AUD); and
- (d) parties must perform their obligations on the dates and times fixed by reference to Melbourne, Victoria.

1.4. Precedence

If there is any inconsistency between these Service Terms and the Xplor Customer Agreement, the Xplor Customer Agreement will prevail.

1.5. Interdependency

These Service Terms should be read in accordance with the terms of the Xplor Customer Agreement.

2. Term

This Agreement commences on the Date of Agreement and continues for the Term.

3. Rights to use the Platform

Subject to Your compliance with this Agreement, Xplor grants You a revocable, non-transferable, non-sublicensable (except as contemplated by clause 4, non-assignable, non-exclusive right to access and use the Platform during the Term via the Website using the user roles available to You according to Your subscription type.

4. Hardware requirements

- (a) Xplor is not responsible for providing, maintaining or servicing suitable equipment to access the Platform or use the Services. All equipment or hardware required by You to use the Services must be procured and is used at your sole risk and expense.
- (b) You acknowledge and agree that Xplor shall not be liable to You or Your Invited Users for any liability, claim, loss or damage of any kind (including consequential losses) arising directly or indirectly from or in connection with the failure of any equipment or hardware.

5. Invited Users

- (a) Subject to clause 5(d), You may sub-license Your right to access and use some or all of the Services to Invited Users for their non-commercial purposes and strictly on the condition that You ensure such Invited Users comply with the terms of this Agreement, the EULA and all laws in their use of the Platform.
- (b) You acknowledge and agree that:
 - (i) You determine who is an Invited User and what level of user role and access that Invited User has; and

- (ii) You can revoke or change an Invited User's access, or level of access, at any time and for any reason, so that person or entity will cease to be an Invited User or shall have a different level of access, as the case may be.
- (c) If there is any dispute between You and an Invited User regarding access to the Platform, You shall decide what access or level of access that Invited User shall have, if any.
- (d) For the avoidance of doubt, the use of any part of the Services and/or the Platform by an Invited User under a licence granted by You in accordance with clause 5(a), will be deemed to be Your use and You shall be responsible for that Invited User's compliance with the terms of this Agreement, EULA and all laws.
- (e) For the avoidance of doubt, You will be primarily responsible for the performance of all of Your obligations and responsibilities under this Agreement, irrespective of the failure by any Invited Users to undertake their obligations in relation to their sub-licence of the Services.

6. **Payment obligations**

- (a) In consideration of Xplor providing the Services to You, You agree to pay the Access Fee and any Minimum Monthly Fee to Xplor for Your use of the Services.
- (b) For the avoidance of doubt, the Access Fee is only payable for successful payments of invoices and is not payable for refund transactions or unsuccessful transactions, including any dishonoured direct debit.
- (c) You acknowledge and agree that Westpac may charge You a fee for:
 - (i) Your use of the Westpac Solution; and/or
 - (ii) other services provided to You by Westpac in relation to the Services and the Westpac Solution.
- (d) Xplor may pay a commission to Westpac in relation to your purchase and use of Xplor products and services.

7. **Usage Limitations**

Use of the Services is subject to the Usage Limits or 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. **Dispute resolution**

- (a) The parties must use their reasonable endeavours to resolve through negotiation all disputes, conflicts (including, without limitation, conflicts of interest) differences or questions between them arising out of or in connection with this Agreement.
- (b) If, within 14 calendar days, the dispute cannot be resolved following negotiation between the parties, either party may refer the dispute for arbitration. The dispute will be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.
- (c) The arbitration will be administered by the Australian Centre for International Commercial Arbitration (**ACICA**).
- (d) The appointing authority will be ACICA.
- (e) The number of arbitrators will be one.
- (f) The place of arbitration will be Melbourne, Australia.
- (g) The language to be used in the arbitral proceedings will be English.

9. Termination

- (a) A party may terminate this Agreement on 30 days' notice in writing to the other party.
- (b) Xplor may exercise any of its rights under clause 9(c) if:
 - (i) in relation to a breach of this Agreement that is capable of remedy, You fail to remedy such a breach within 14 days of notice of the breach;
 - (ii) You or Your Invited User commit a breach of this Agreement that is not capable of remedy; or
 - (iii) the agreement between You and Westpac for the provision and/or use of the Westpac Solution ends for any reason.
- (c) Upon the occurrence of any event in clause 9(b), Xplor may:
 - (i) immediately terminate this Agreement and use of the Services by You and Your Invited Users, if any;
 - (ii) suspend for any definite or indefinite period of time use of the Services by You and/or Your Invited Users; and/or
 - (iii) subject to law, including Privacy Laws, suspend or terminate access to the Data by You.
- (d) On termination of this Agreement, You must:
 - (i) immediately cease to use the Services; and
 - (ii) delete all copies of the Platform installed from Your and/or Your Invited Users' devices which were used to access the Platform.
- (e) 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.

10. Technical Problems

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:

- (a) telephone 1300 014 428;
- (b) email to support@myxplor.com;
- (c) web support accessible at <http://myxplor.com/support>; and
- (d) such other support channels as Xplor may advise from time to time.

11. 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 reasonably determine, information relating to any known significant outages or interruptions to the Services.

12. Data

- (a) Your Data remains your property.
- (b) You hereby grant to Xplor a non-exclusive licence to use, copy, transmit, store and back-up the Data to the extent necessary for the purposes of providing You the Services and performing its obligations under this Agreement.
- (c) To the extent that Your Data comprises Personal Information:
 - (i) each party must comply with all Privacy Laws;
 - (ii) each party must not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause the other party to breach or be taken to breach any Privacy Law; and
 - (iii) Xplor will deal with Your Data in accordance with its Privacy Policy.

13. Confidentiality

- (a) A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- (b) A party may:
 - (i) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
 - (ii) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- (c) Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the request or on termination of this Agreement for any reason.

14. Intellectual property

- (a) Xplor owns all right, title and interest in and to the Services and all intellectual property rights related to the Services.
- (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.

15. Warranties

- (a) 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.
- (b) Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**) or any equivalent Act of any State or Territory of Australia except to the extent permitted by such Acts. You warrant to Xplor that:
 - (i) You have all licences, permits and other regulatory consents required or necessary to enter into, and perform Your obligations and rights under, this Agreement;

- (ii) You have the authority to grant the licence pursuant to 12(b) of this Agreement;
 - (iii) You have the authority to enter into, perform and observe Your obligation under the terms and conditions of this Agreement;
 - (iv) You are using the Services for the commercial purposes contemplated by this Agreement only;
 - (v) You have attended to all backups, and have maintained copies of, the Data and You acknowledge that Xplor is not responsible for maintaining or storing the Data; and
 - (vi) the use by Xplor of the Data will not result in any unauthorised use of the rights of any person.
- (c) Xplor provides no warranty:
- (i) that any result or objective can or will be achieved or attained at all by You or Your Invited Users by termination of this Agreement or by any other date; and
 - (ii) that the Services will be fit for purpose, continuous, uninterrupted, accurate, fault-free, virus-free, secure or accessible at all times.

16. Liability

- (a) To the absolute extent permitted by law, Xplor will not be liable to You or Your Invited Users for any liability, claim, loss or damage of any kind (including consequential losses which may be, but is not limited to any loss of actual or anticipated profits, revenue, savings, business, opportunity, access to markets, goodwill, reputation, publicity use or loss of data) arising from or in connection with this Agreement or the use of the Services by You or Your Invited Users except to the extent that the liability, claim, loss or damage is directly attributable to the negligence or wrongful act or omission of Xplor.
- (b) To the fullest extent permitted by law, Xplor's total aggregate liability for all claims relating to this Agreement is limited to the fees payable under this Agreement.
- (c) Pursuant to s64A of the Australian Consumer Law, this clause 16(c) applies in respect of any services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss51 to 53 of the Australian Consumer Law) is limited to any of the following as determined by Xplor:
 - (i) the re-supply of the Services; or
 - (ii) the payment of the cost of re-supplying the Services.
- (d) You hereby acknowledge and agree that Xplor shall not be liable to You or Your Invited Users for any liability, claim, loss or damage of any kind (including consequential losses which may be, but is not limited to any loss of actual or anticipated profits, revenue, savings, business, opportunity, access to markets, goodwill, reputation, publicity, or use) arising directly or indirectly from or in connection with the failure by any means of the Westpac Solution.

17. Indemnity

You are liable for and must indemnify Xplor, its directors, employees, contractors and agents (together, the **Indemnified Party**) from and against all damages, losses, claims and expenses incurred or suffered by the Indemnified Party arising as a direct result of:

- (a) breach by You or Your Invited Users of this Agreement; and
- (b) any unlawful or negligent act or omission by You or Your Invited User.

18. Entire agreement

The 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.

19. Waiver

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.

20. Delays

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 20 does not apply to any obligation to pay money.

21. 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 under this Agreement to any other person without Xplor's prior written consent.

22. Governing law and jurisdiction

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

23. Severability

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.

24. Survival

Any clause of this Agreement that is by its nature intended to survive termination does so, including clauses 9(e), 13, 13(c), 15, 16, 17, 22, 23 and 24.

25. Notices

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.

26. Rights of Third Parties

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.

27. 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 amend these Service Terms in whole or part in its sole discretion without notice to You.
- (c) Any amendments to this Agreement will be effective immediately upon the posting of the revised Service Terms on the Website, Platform and/or Equipment. Depending on the nature of the amendment, Xplor may announce the change on the Website home page or by email. However, in any event, by continuing to use the Services following any amendments, You will be deemed to have agreed to such amendments.

28. **Special Terms**

The parties acknowledge and agree that any Special Terms set out in the Customer Terms form part of this Agreement.