



## EQUIPMENT AND FEE AGREEMENT

Welcome to MyXplor Pty Ltd ("Xplor"), an online management service designed especially for educational services and parents. These Terms of Use are intended to explain our obligations as a service provider and Your obligations as a customer. Please read them carefully. This Equipment and Fee Agreement ("EFA"), read in conjunction with the End User License Agreement located at [www.myxplor.com/terms](http://www.myxplor.com/terms) ("EULA"), constitute the agreement between Xplor and You (the "ELC") and are binding on any use of the Service and apply to You from the time that Xplor provides You with access to the Service. By registering to use the Service you acknowledge that You have read and understood this EFA and the EULA have the authority to act on behalf of any person for whom You are using the Products. You are deemed to have agreed to the Agreement on behalf of any ELC or entity for whom you use the Service.

### Definitions

**"Agreement"** means this EFA and the EULA. If there is any inconsistency between this document and the EULA, the terms of this EFA prevail.

**"Access Fee"** means the fee (excluding any taxes and duties) payable by the Subscriber in accordance with the fee schedule attached (which Xplor may change from time to time on notice to the Subscriber).

**"Equipment"** means any equipment supplied by Xplor to You or the ELC any time prior or during this agreement

**"ELC"** means the Early Learning Centre entity using any or all portions of the Service.

**"Product(s)"** means the software products made available (as may be changed or updated from time to time by Xplor) via the Website.

**"Website"** means the Internet site at the domain [www.myxplor.com](http://www.myxplor.com) or any other site operated by Xplor.

**"Invited User"** means any person or entity, other than the Subscriber, that uses the Service with the authorisation of the Subscriber from time to time.

**"Subscriber"** means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

**"Service"** means collectively the Products, Equipment and Website provided as a system to manage the affairs of the business.

**"You"** means the ELC. "Your" has a corresponding meaning.

### 1) Use of Software and Equipment

- a) Xplor grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your subscription type. 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 Subscriber and the Invited Users, or any other applicable laws:
  - i) the Subscriber determines who is an Invited User and what level of user role access to the relevant organisation and Service that Invited User has;
  - ii) the Subscriber is responsible for all Invited Users' use of the Service;
  - iii) the Subscriber controls each Invited User's level of access to the relevant organisation and Service at all times and 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; and
  - iv) if there is any dispute between a Subscriber and an Invited User regarding access to any organisation or Service, the Subscriber shall decide what access or level of access to the relevant Data or Service that Invited User shall have, if any.
- b) Xplor grants You the right to use the Equipment provided to you from time to time. You acknowledge and agree that:
  - i) The Equipment is on loan at all times and remains the property of Xplor;
  - ii) You must not tamper with or remove the Equipment from the address shown in the agreement without the permission of Xplor;
  - iii) You must not remove from the Equipment any identifying marks, labels or ownership identifications;
  - iv) You must not download or install software into the Equipment without written consent of Xplor;
  - v) You are responsible for the proper use, storage and safekeeping of the Equipment;
  - vi) You are responsible for all Invited Users' use of the Equipment;
  - vii) You must ensure that the Equipment is immediately returned to Xplor if there are any concerns or malfunctions with the Equipment;
  - viii) So long as You fulfil Your part of this Agreement, Xplor shall service the Equipment by maintaining it in good working order and condition and is necessary and, in such length of time as it deems expedient, replace the equipment with other

equipment of such type, The Equipment substituted shall be subject to the same terms and conditions as this Agreement.

- ix) The customer undertakes to operate the Equipment as follows:
  - (1) The Equipment shall at all times be operated in accordance with the manufacturer's instruction.
  - (2) Reasonable care is to be taken in operating the Equipment.
  - (3) Any default or damage to the Equipment is to be immediately notified to Xplor.
- x) To 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.
- xi) 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.
- xii) You shall 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 thereof.
- xiii) You hereby agree with and warrant to Xplor to 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 to pay to Xplor in the case of any such loss, 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. And shall on request provide Xplor proof of such insurance noting Xplor as the owner of the Equipment.
- xiv) If this Agreement is terminated, You must immediately return the Equipment to Xplor. You undertake to give Xplor reasonable assistance in collecting the Equipment. You expressly permit Xplor, its servants and agents, to enter upon any premises where it believes the Equipment on loan is located or any premises occupied by You for the purpose of repossessing, inspecting, repairing or making adjustments to the Equipment or service and notice or demand in relation to the Equipment subject to this Agreement.
- xv) You Indemnify Xplor against all liabilities relating to any default by the You. Without limiting this, You shall pay Xplor any cost relating to the repossession and repair of the Equipment if it is lost or damaged.

### Your Obligations

#### 2) Payment obligations:

- a) An invoice for the Access Fee will be issued as per the attached Fee Schedule.
- b) All Xplor invoices will be sent to You, or to a Billing Contact whose details are provided by You, by email. You must pay or arrange payment of all amounts specified in any invoice by the due date for payment. You are responsible for payment of all taxes and duties in addition to the Access Fee.

#### 3) Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for the Access Fees as a result of the number of organisations that You have added to the Service or that have been added with Your authority or as a result of Your use of the Service ('Organisations'). Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Access Fees in relation to all of Your Organisations. Without prejudice to any other rights that Xplor may have under these Terms or at law, Xplor reserves the right to render invoices for the full (non-discounted) Access Fees due or suspend or terminate Your use of the Service in respect of any or all of Your Organisations in the event that any invoices for those Access Fees are not paid in full by the due date for payment.



#### 4) Automated Bank transaction data delivered into Your Xplor account:

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. Xplor would first inform You via email to indicate what those charges are likely to be (as such charges may vary depending on Your bank and Your volume of bank feeds). You have the option to decide to discontinue use of automated bank feeds at any time. To exercise this option, you must give Xplor sufficient prior notice of which automated bank account transaction data feeds you want to discontinue. Upon receiving such notice Xplor will arrange for such feeds to be terminated in accordance with each bank's usual practices.

#### 5) Usage Limitations:

Use of the Service may be subject to limitations, including but not limited to monthly transaction volumes and the number of calls You are permitted to make against Xplor's application programming interface. Any such limitations will be advised.

#### 6) Termination

- a) If You:
  - i) breach any of these Terms (including, without limitation, by non-payment of any Access Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
  - ii) breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3 or any payment of Access Fees that are more than 30 days overdue); or
  - iii) You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

Xplor may take any or all of the following actions, at its sole discretion:

- iv) Terminate this Agreement and Your use of the Services and the Website;
  - v) Suspend for any definite or indefinite period of time, Your use of the Services and the Website; or
  - vi) Suspend or terminate access to all or any Data.
- b) For the avoidance of doubt, if payment of any invoice for Access Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organisations is not made in full by the relevant due date, Xplor may suspend or terminate:
    - i) Your use of the Service,
    - ii) the authority for all or any of Your Organisations to use the Service, or
    - iii) Your rights of access to all or any Data.
  - c) Termination of these Terms 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; and immediately cease to use the Services and the Website.
  - d) Without prejudice to any other rights, XPLOR may terminate this Agreement if you fail to comply with the terms and conditions of this Agreement. In such event, you must destroy all copies of the Product(s) and all of its component parts and you will not be entitled to a refund of the Access Fees already paid by you.

#### 7) Termination Trial Policy

When You first sign up for access to the Services You can evaluate the Services under the defined trial usage conditions, with no obligation to continue to use the Services. If You choose to continue using the Services thereafter, You will be billed from the day You first added Your billing details into the Services. If You choose not to continue using the Services, You may delete Your organisation in the 'My Xplor' section of the Services.

#### 8) Prepaid Subscriptions

Xplor will not provide any refund for any remaining prepaid period for a prepaid Access Fee subscription.

#### 9) No-fault termination:

These Terms will continue for the period covered by the Access Fee paid or

payable. At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Access Fee when due, unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period. If You terminate these Terms 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 termination of these Terms.

#### Help Desk

##### 10) Technical Problems:

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Xplor. If You still need technical help, please check the support provided online by Xplor on the Website or failing that email us at support@myxplor.com.

##### 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 to permit maintenance or other development activity to take place.
- b) If for any reason Xplor has to interrupt the Services for longer periods than Xplor would normally expect, Xplor will use reasonable endeavours to publish in advance details of such activity on the Website.

##### 12) Entire agreement:

This EFA, together with the EULA and Xplor Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Xplor relating to the Products and the other matters dealt with in this agreement.

##### 13) Waiver:

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

##### 14) Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms 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.

##### 15) No Assignment:

You may not assign or transfer any rights to any other person without Xplor's prior written consent.

##### 16) Governing law and jurisdiction:

- a) this Agreement are governed by and are to be construed in accordance with the laws in force in Victoria. 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

##### 17) Severability:

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

##### 18) Notices:

Any notice given under these Terms 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 which You provided when setting up Your access to the Service.

##### 19) Rights of Third Parties:

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.



Signed by MyXplor Pty Ltd by those  
persons authorised to sign on its behalf:

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Signed by the ELC by those persons  
authorised to sign on its behalf:

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Full Name:

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Capacity:

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Date:

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