

# **Xplorio – Terms and Conditions – Version 1.3, Last Updated – 21 May 2018**

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICES OFFERED BY XPLORIO SYSTEMS (PTY) LTD ("XPLORIO").

THERE ARE TWO PARTS TO THESE TERMS AND CONDITIONS: PART 1 (TERMS AND CONDITIONS ("T&Cs")) COVERS TERMS AND CONDITIONS APPLICABLE TO ALL PEOPLE AND ENTITIES USING XPLORIO. PART 2 (ADVERTISING TERMS AND CONDITIONS ("TERMS")) COVERS TERMS AND CONDITIONS APPLICABLE TO THOSE ENTITIES ADVERTISING ON XPLORIO.

## **PART 1: TERMS AND CONDITIONS ("T&Cs")**

### **1. Introduction**

- 1.1.** This document lays out legally binding terms Terms and Conditions ("T&Cs") for your use of the website at <https://xplorio.com/> (the "Site") and the services, features, Content and applications offered by Xplorio (collectively with the Site, the "Service"). Please read these T&Cs carefully before using the services offered by Xplorio.

### **2. Xplorio Overview & Company Information**

- 2.1.** Xplorio is a dynamic town website platform that offers current, comprehensive & authentic town related information by empowering all local establishments to represent and directly market themselves on their town website.
- 2.2.** Xplorio is a site operated by Xplorio Systems (Pty) Ltd ("We"). We are a company registered in South Africa and have our registered office at: 10 Voortrekker Street, Gansbaai, Western Cape.

### **3. Acceptance of Terms**

- 3.1.** By registering for and/or using the Service in any manner, including but not limited to visiting or browsing the Site, you agree to all of the Terms and Conditions contained herein ("T&Cs"), which also incorporate Xplorio's Privacy Policy (outlined below) and all other operating rules, policies and procedures that may be published from time to time on the Site by Xplorio, each of which is incorporated by reference and each of which may be updated by Xplorio from time to time without notice to you in accordance with the terms set out under the "Modification of Terms and Conditions" section below. In addition, some services offered through the Service may be subject to additional Terms and Conditions specified by Xplorio from time to time; your use of such services is subject to those additional Terms and Conditions, which are incorporated into these T&Cs by this reference. These T&Cs apply to all users of the Service, including, without limitation, users who are contributors of Content (as defined below), information, and other materials or services on the Site, individual users of the Service, venues that access the Service, and users that have a profile on the Service. For purposes of these Terms and Conditions, the term "Content" includes, without limitation, any location information, images / photographs, videos, blogs, specials, comments, information, data, text,

scripts, graphics, and interactive features generated, provided, or otherwise made accessible by Xplorio on or through the Service.

- 3.2.** It is important that you do not misuse our services and always follow the Terms and Conditions made available to you. Should you at any stage not comply with our Terms and Conditions we may suspend your use of the Site entirely. Please note that you do not have any ownership or any intellectual property rights in our Service by using it.

#### **4. Registration and Eligibility**

- 4.1.** An Xplorio Profile is provided free of charge.
- 4.2.** You may browse the Site and view Content without registering. Any business or other commercial, political, charitable, non-profit or community organization, endeavour or event may be a “Lister” on Xplorio and accordingly receive a free Xplorio profile. Contributions or submissions from a Lister are referred to as “Lister Submissions”. To be listed on Xplorio, you are required to register with Xplorio and represent, warrant and covenant that you provide Xplorio with accurate and complete registration information and to keep your registration information accurate and up-to-date. Failure to do so shall constitute a breach of these T&Cs, which may result in immediate termination of your Xplorio account. Moreover, you shall not create any account for any establishment other than your own without that establishment's permission.
- 4.3.** Xplorio may, in its sole discretion, refuse to offer the Service to any person or entity and change its eligibility criteria at any time. You are solely responsible for ensuring that these T&Cs are in compliance with all laws, rules and regulations applicable to you and the right to access the Service is revoked where these Terms and Conditions or use of the Service is prohibited and, in such circumstances, you agree not to use or access the Site or Services in any way.

#### **5. Usage and Rules**

- 5.1.** As a condition of use, you promise not to use the Service for any purpose that is prohibited by these Terms and Conditions. You are responsible for all of your activity in connection with the Service. Additionally, you shall abide by all applicable local, national and international laws and regulations and, if you represent a business, any advertising, marketing, privacy, or other self-regulatory code(s) applicable to your industry.
- 5.2.** By way of example, and not as a limitation, you shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Service, including without limitation any Lister Submission, that:
  - 5.2.1.** infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty;
  - 5.2.2.** you know is false, misleading, untruthful or inaccurate;

- 5.2.3.** is unlawful, threatening, abusive, harassing, defamatory, libellous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, promotes bigotry, discrimination or violence, or is otherwise inappropriate as determined by Xplorio in its sole discretion;
  - 5.2.4.** constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("traditional spamming"), involves commercial activities (whether or not for profit) and/or sales without Xplorio's prior written consent such as contests, sweepstakes, barter, advertising, or pyramid schemes;
  - 5.2.5.** contains software viruses or any other computer codes, files, worms, logic bombs or programs that are designed or intended to disrupt, disable, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of Xplorio or any third party;
  - 5.2.6.** impersonates any person or entity, including any employee or representative of Xplorio;
  - 5.2.7.** includes anyone's identification documents or sensitive financial information; or
  - 5.2.8.** breaches the Privacy Policy (Section 6 below) and/or any of the other policies and rules incorporated herein.
- 5.3.** You shall not (directly or indirectly):
- 5.3.1.** take any action that imposes or may impose (as determined by Xplorio in its sole discretion) an unreasonable or disproportionately large load on Xplorio's (or its third party providers') infrastructure;
  - 5.3.2.** interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service;
  - 5.3.3.** bypass any measures Xplorio may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service);
  - 5.3.4.** run any form of auto-responder or spam on the Service;
  - 5.3.5.** use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site;
  - 5.3.6.** harvest or scrape any Content from the Service;
  - 5.3.7.** modify, adapt, appropriate, reproduce, distribute, translate, create derivative works or adaptations of, publicly display, republish, repurpose, sell, trade, or in any way exploit the Service or Site Content (other than your own Lister Submissions), except as expressly authorized by Xplorio;
  - 5.3.8.** decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Service, except to the limited extent applicable laws specifically prohibit such restriction;
  - 5.3.9.** copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder;
  - 5.3.10.** otherwise take any action in violation of Xplorio's guidelines and policies.
- 5.4.** Attempting to place yourself into an incorrect category or listing can result in immediate suspension.

- 5.5.** Any malicious code that is put into your Xplorio profile can result in your immediate suspension and indefinite termination.
- 5.6.** Xplorio does not guarantee that any Content or Lister Submissions (as defined above) will be made available on the Site or through the Service. Xplorio has no obligation to monitor the Site, Service, Content, or Lister Submissions. However, Xplorio reserves the right to (i) remove, suspend, edit or modify any Content in its sole discretion, including without limitation any Lister Submissions at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if Xplorio is concerned that you may have violated these Terms and Conditions), or for no reason at all and (ii) to remove, suspend or block any Lister Submissions from the Service. Xplorio also reserves the right to access, read, preserve, and disclose any information as Xplorio reasonably believes is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms and Conditions, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Xplorio, its users and the public.
- 5.7.** Spamming the website could result in the immediate suspension of your account. “Spamming” can be defined as continually re-submitting Content (blogs, specials, images, videos, events or any other form of Content) that was previously not approved; submitting excessive or irrelevant comments on a blog post; or writing malicious things onto another community member’s input forms (testimonials, contact forms, blogs). This also includes, but is not limited to; bot (robot/program) generated Content or submissions that you may be directly or indirectly accountable for.
- 5.8.** Copying, duplicating, replicating, or using any Content, or part thereof, from Xplorio or from any other entity on the website is strictly prohibited and can result in permanent termination of your profile.
- 5.9.** You are accountable for any copyright infringements you might incur by uploading Content onto your Xplorio Profile. Xplorio will not be held liable for any copyright infringements on your behalf. Furthermore, Xplorio is indemnified against any claims of whatsoever nature due to such copyright infringements.
- 5.10.** Misleading data/information (e.g. contact details) resulting in unsatisfactory usage of the system by a website visitor can result in immediate suspension from the website until the data/information has been rectified or changed.
- 5.11.** Should the majority of Listers (more than 50%) listed on a respective Xplorio town website be in disagreement as to a certain piece of Content that was published on the website, it will be removed. A Lister can at any time report another Lister that is in contravention of any of the terms described in this document. Xplorio could then investigate the offender and if found guilty, could either suspend them or terminate their membership.

**5.12.** Xplorio may use Lister Submissions in a number of different ways in connection with the Site, Service and Xplorio's business as Xplorio may determine in its sole discretion, including but not limited to, publicly displaying it, reformatting it, incorporating it into marketing materials, advertisements and other works, creating derivative works from it, promoting it, distributing it, and allowing other users to do the same in connection with their own websites, media platforms, and applications ("Third Party Media"). By submitting Lister Submissions on the Site or otherwise through the Service, you hereby do and shall grant Xplorio a worldwide, non-exclusive, royalty-free, fully paid, sub-licensable and transferable license to use, copy, edit, modify, reproduce, distribute, prepare derivative works of, display, perform, and otherwise fully exploit the Lister Submissions in connection with the Site, the Service and Xplorio's (and its successors and assigns') business, including without limitation for promoting and redistributing part or all of the Site (and derivative works thereof) or the Service in any media formats and through any media channels (including, without limitation, third party websites and feeds). You also hereby do and shall grant each user of the Site and/or the Service, including Third Party Media, a non-exclusive license to access your Lister Submissions through the Site and the Service, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such Lister Submissions in connection with their use of the Site, Service and Third Party Media. For clarity, the foregoing license grant to Xplorio does not affect your other ownership or license rights in your Lister Submission(s), including the right to grant additional licenses to the material in your Lister Submission(s), unless otherwise agreed in writing with Xplorio.

You represent and warrant that you have all rights to grant such license to us without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.

When you delete your Lister Submissions, they will be removed from the Service. However, you understand that any removed Lister Submissions may persist in backup copies for a reasonable period of time (but following removal will not be shared with others) or may remain with users who have previously accessed or downloaded your Lister Submissions.

**5.13.** The Service may permit you to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Site. When you access third party websites, you do so at your own risk. These other websites are not under Xplorio's control, and you acknowledge that Xplorio is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply endorsement by Xplorio or any association with its operators. You further acknowledge and agree that Xplorio shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.

## **6. Privacy Policy**

- 6.1.** Xplorio is committed to protecting the privacy of personal information you might provide. This Privacy Policy (“Policy”) explains how we manage your information.
- 6.2.** Xplorio may at its sole discretion, amend this Policy from time to time at which time the amended Policy will immediately come into effect in respect of continued usage of this website.
- 6.3. Your Information**
- 6.3.1.** You acknowledge and agree that we may collect information about you. This may be provided voluntarily by you; obtained or derived from website usage information (whether through tracking your click behaviour or otherwise); obtained or derived from aggregated data not relating to you personally, such as the measuring the traffic to the Xplorio website; and/or provided by third parties.
- 6.3.2.** You may choose whether or not to provide any information we solicit from you. However, if you do not provide the requested information, we may not be able to provide services to you.
- 6.4. Usage and Sharing of Personal Information**
- 6.4.1.** We collect and use your information to generally manage our business; provide you with, and improve, our products and services; inform you of our products and services, including any changes or improvements thereof; promotions, surveys and other services; obtain your feedback or views about our products and services; respond to any queries, feedback or other correspondence from you; gain an understanding of your needs; prevent and detect any misuse of, or fraudulent activities involving, any Xplorio website, product or service; and/or maintain and develop our business systems and infrastructure, including testing and upgrading of these systems.
- 6.4.2.** Xplorio may hold the information and share it with its related companies, officers, employees, contractors, partners, joint ventures, agents and customers, and with any third party, in relation to the purposes described above and so as to provide information to others.
- 6.5. Links to other website**
- 6.5.1.** Our websites provide links to other websites. Please note that these websites may have different security and privacy policies. We do not accept any responsibility or liability for any information that you divulge to these websites and how the websites or the organizations that own and manage the websites collect, use or disclose your personal information or that of any person you provide on such websites.
- 6.6. Security**
- 6.6.1.** Although we use safeguards to protect your personal information against theft, loss or unauthorized access, use, modification, disclosure or disposal, as no data transmission over the internet can be guaranteed to be completely secure, we cannot ensure or warrant the security of information you transmit or receive through our websites. These activities are conducted at your own risk.

## **6.7. Use of Cookies**

**6.7.1.** To assist us in providing the best possible results on our websites, we may gather information about how people use the websites using online “cookies”. The information collected by cookies is on an entirely confidential basis, and includes details such as:

- How many computers connect to the website;
- Which pages are viewed; and/or
- Which internet browsers people use when visiting Xplorio.

The information collected by cookies will:

- Display Content more relevant to you; and/or
- Enable you to use more advanced features on our websites.

## **7. Communication**

**7.1.** Inherent with these Terms and Conditions is your agreement that our Service is offered on the understanding that we will send you profile or marketing related information via Email/SMS/Telephone periodically.

## **8. Termination**

**8.1.** Xplorio may terminate your access to all or any part of the Service at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your membership. If you wish to terminate your account, you may do so by following the instructions on the Site. Any fees paid hereunder are non-refundable. All provisions of these Terms and Conditions which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## **9. Unsolicited Idea Submission & Feedback**

**9.1.** Xplorio System (Pty) Ltd ("Xplorio") or any of its employees do not accept or consider unsolicited ideas, including ideas for new advertising campaigns, new promotions, new or improved products or technologies, product enhancements, processes, materials, marketing plans or new product names. Please do not submit any unsolicited ideas, original creative artwork, suggestions or other works ("submissions") in any form to Xplorio or any of its employees. The sole purpose of this policy is to avoid potential misunderstandings or disputes when Xplorio's products or marketing strategies might seem similar to ideas submitted to Xplorio. If, despite our request that you not send us your ideas, you still submit them, then regardless of what your letter says, the following terms shall apply to your submissions.

- 9.1.1.** By sending us any submissions, you agree that (i) your submissions and their contents will automatically become the property of Xplorio and Xplorio shall be entitled to the unrestricted use of the submission for any purpose whatsoever, commercial or otherwise, without compensation or attribution to you, (ii) your submissions does not contain the confidential or proprietary information of third parties, (iii) Xplorio will consider the submissions to be non-confidential and non-proprietary, (iv) Xplorio may have something similar to the submissions already under consideration or in development, and (v) Xplorio will have no obligations concerning the submissions, contractual or otherwise (including but not limited to an obligation to keep the submissions confidential).
- 9.1.2.** Xplorio does, however, welcome your feedback regarding many areas of Xplorio's existing business. If you want to send us your feedback, and we hope you do, we simply request that you send it to us at [feedback@xplorio.com](mailto:feedback@xplorio.com). Please provide only specific feedback on Xplorio's existing products or marketing strategies; do not include any ideas that Xplorio's policy will not permit it to accept or consider. It's just one more way that Xplorio can learn how to best satisfy your needs. Any feedback you provide to Xplorio or any of its employees shall be deemed to be non-confidential. Xplorio shall be entitled to the unrestricted use of the feedback for any purpose whatsoever, commercial or otherwise, without compensation or attribution to you.

## **10. Changes to the Website**

- 10.1.** Xplorio reserves the right to change or discontinue at any time any Service or feature of the Site.

## **11. Intellectual Property Rights & Copyright**

- 11.1.** All of the Content on Xplorio, (including, but not limited to, text, graphics, logos, icons, designs, insignia, colours, layout, trademarks, functionalities, source code and innovations) are the intellectual property of Xplorio.
- 11.2.** You understand that all information publicly posted or privately transmitted through the Site is the sole responsibility of the person from which such Content originated; that Xplorio will not be liable for any errors or omissions in any Content; and that Xplorio cannot guarantee the identity of any other users with whom you may interact in the course of using the Service.
- 11.3.** Subject to these Terms and Conditions, Xplorio grants each user of the Site and/or Service a worldwide, non-exclusive, non-sub-licensable and non-transferable license to use, modify and reproduce the Content, solely for personal, non-commercial use. Use, reproduction, modification, distribution or storage of any Content for other than personal, non-commercial use is expressly prohibited without prior written permission from Xplorio, or from the copyright holder identified in such Content's copyright notice, as applicable. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial (whether or not for profit) use or in any way that violates any third party right.



## **12. Warranty Disclaimer and Limitation of Liability**

- 12.1.** Although Xplorio endeavours to provide accurate, up-to-date and truthful information on this Site, neither Xplorio nor any of its directors, employees, agents, suppliers, partners, representatives and associates make any representations or give any warranties, whether expressly, tacitly or implied, as to the operation of the Site, the information, Content, materials and products included and available from this Site.
- 12.2.** The Site, Service and Content are provided "as is", "as available" and are provided without any representations or warranties of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed, save to the extent required by law.
- 12.3.** Xplorio, and its directors, employees, agents, representatives, suppliers, partners and Content providers do not warrant that: (a) the Service will be secure or available at any particular time or location; (b) any defects or errors will be corrected; (c) any Content or software available at or through the Service is free of viruses or other harmful components; or (d) the results of using the Service will meet your requirements. Your use of the website, Service and Content is solely at your own risk
- 12.4.** All Content originated by a Lister, whether publicly posted or privately transmitted, is the sole responsibility of that Lister. Xplorio cannot guarantee the authenticity of any Content or data which Listers may provide about themselves. You acknowledge that all Content accessed by you using the Service is at your own risk and you will be solely responsible and liable for any damage or loss to you or any other party resulting therefrom. Content added, created, uploaded, submitted, distributed or posted through the Service by Listers, including Content that is added to the Service in connection with Listers linking their accounts to third party websites and services, is collectively referred to as, "Lister Submissions."
- 12.5.** You release Xplorio from all liability for you having acquired or not acquired Content through the Service. The Service may contain, or direct you to websites containing, information that some people may find offensive or inappropriate. Xplorio makes no representations concerning any Content contained in or accessed through the Service, and Xplorio will not be responsible or liable for the accuracy, copyright compliance, legality or decency of material contained in or accessed through the Service.
- 12.6.** Save to the extent required by law, Xplorio has no special relationship with or fiduciary duty to you. You acknowledge that Xplorio has no control over, and no duty to take any action regarding: which users gain access to the Service; what Content you access via the Service; what effects the Content may have on you; how you may interpret or use the Content; or what actions you may take as a result of having been exposed to the Content.
- 12.7.** You release us from all liability relating to your connections and relationships with other users. You understand that we do not, in any way, screen users, nor do we inquire into the

backgrounds of users or attempt to verify their backgrounds or statements. We make no representations or warranties as to the conduct of users or the veracity of any information users provide. In no event shall we be liable for any damages whatsoever, whether direct, indirect, general, special, compensatory, consequential, and/or incidental, arising out of or relating to the conduct of you or anyone else in connection with the Services, including, without limitation, bodily injury, emotional distress, and any damages resulting in any way from communications or meetings with users or persons you may otherwise meet through the Services. As such, you agree to take reasonable precautions and exercise the utmost personal care in all interactions with any individual you come into contact with through the Services, particularly if you decide to meet such individuals in person. For example, you should not, under any circumstances, provide your financial information (e.g., credit card or bank account numbers) to other individuals.

**12.8.** All liability of Xplorio, its directors, employees, agents, representatives, partners, suppliers or Content providers howsoever arising for any loss suffered as a result of your use the Site, Service, Content or Lister Submissions is expressly excluded to the fullest extent permitted by law, save that, if a court of competent jurisdiction determines that liability of Xplorio, its directors, employees, agents, representatives, partners, suppliers or Content providers (as applicable) has arisen, the total of such liability shall be limited in aggregate to one thousand rand (R1000).

**12.9.** To the maximum extent permitted by applicable law, in no event shall Xplorio, nor its directors, employees, agents, representatives, partners, suppliers or Content providers, be liable under contract, tort, strict liability, negligence or any other legal or equitable theory or otherwise (and whether or not Xplorio, its directors, employees, agents, representatives, partners, suppliers or Content providers had prior knowledge of the circumstances giving rise to such loss or damage) with respect to the Site, Service, Content, Lister Submissions or add-to link for:

- indirect or consequential losses or damages;
- loss of actual or anticipated profits;
- loss of revenue;
- loss of goodwill;
- loss of data;
- loss of anticipated savings;
- wasted expenditure; or
- cost of procurement of substitute goods or services.

Nothing in these Terms and Conditions shall be deemed to exclude or limit your liability in respect of any indemnity given by you under these Terms and Conditions. Applicable law may not allow the limitation or exclusion of liability or incidental or consequential damages, so the above limitation or exclusion may not apply to you. In such cases, Xplorio's liability will be limited to the fullest extent permitted by applicable law.

### **13. Indemnification**

**13.1.** You shall defend, indemnify, and hold harmless Xplorio, its affiliates and each of its and its affiliates' employees, contractors, directors, suppliers and representatives from all losses, costs, actions, claims, damages, expenses (including reasonable legal costs) or liabilities, that arise from or relate to your use or misuse of, or access to, the Site, Service, Content or otherwise from your Lister Submissions, violation of these Terms and Conditions, or infringement by you, or any third party using the your account, of any intellectual property or other right of any person or entity (save to the extent that a court of competent jurisdiction holds that such claim arose due to an act or omission of Xplorio). Xplorio reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with Xplorio in asserting any available defenses.

### **14. Modification of Terms and Conditions**

**14.1.** Xplorio reserves the right, at its sole discretion, to modify or replace any of these Terms and Conditions, or change, suspend, or discontinue the Service (including without limitation, the availability of any feature, database, or Content) at any time by posting a notice on the Site or by sending you notice through the Service or via email. Xplorio may also impose limits on certain features and services or restrict your access to parts or all of the Service without notice or liability. It is your responsibility to check these Terms and Conditions periodically for changes. Your continued use of the Service following the posting of any changes to these Terms and Conditions constitutes acceptance of those changes.

### **15. Governing Law**

**15.1.** This Site is created, maintained and controlled in the Republic of South Africa and as such, the laws of the Republic of South Africa and the jurisdiction of the South African Court govern these terms and conditions and the use or inability to use this Site.

### **16. Agreement**

**16.1.** Your use of this website signifies that you have read, understand and agree to be bound by the terms of this Agreement.

### **17. Integration and Severability**

**17.1.** These Terms and Conditions are the entire agreement between you and Xplorio with respect to the Service and use of the Site, Service, Content or Lister Submissions, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and Xplorio with respect to the Site. If any provision of these Terms and Conditions is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms and Conditions will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any

right provided for herein shall not be deemed a waiver of any further rights hereunder. Waiver of compliance in any particular instance does not mean that we will waive compliance in the future. In order for any waiver of compliance with these Terms and Conditions to be binding, Xplorio must provide you with written notice of such waiver through one of its authorized representatives.

## **PART 2: MEMBERSHIP TERMS AND CONDITIONS (“TERMS”)**

Each individual or entity (“Customer”) who places any order or who enters into any service agreement (each, a “Order”) with Xplorio Systems (Pty) Ltd (“Xplorio”) for the activation of one or more Xplorio memberships (“Membership Subscription”) enters into an Agreement with Xplorio, by virtue of placing such an Order, and agrees to abide by these Membership Terms and Conditions (“Terms”). For purposes of these Terms, all references to “Customer” includes any employee, independent contractor, agency or other third party agent of any entity that acts on behalf of such entity, as applicable.

### **1. General Membership Rules & Information**

- 1.1.** These Terms, together with any applicable Order(s) and all applicable Xplorio policies, including, without limitation, Xplorio’s Terms and Conditions which are incorporated herein by this reference, constitute a binding and enforceable agreement between Customer and Xplorio.
- 1.2.** Each Order and any information submitted (as modified by Customer, or if not modified, as initially posted) in connection with any Membership Subscription is deemed approved by Customer. Customer shall protect any Customer account information, including but not limited to passwords, and is solely responsible for its own use and any third party’s use of its accounts, including but not limited to any modifications made to its account(s) by its employees, independent contractors, agents, agencies or any other third parties allowed by Customer to access or use its account(s). Customer is also solely responsible for: (i) all content and promoted product information (“Creative”), (ii) if applicable, all click URLs, web sites, services and landing pages which Creative links or directs viewers to, and advertised services and products (collectively “Customer Services”); and (iii) communications directed by it to third parties.
- 1.3.** Xplorio may modify the services offered in the Membership Subscriptions at any time without liability. Should such a modification occur with or without notice, as Customer’s sole and exclusive remedy and Xplorio’s sole and entire liability for such change, Customer may elect to cancel the remainder of the affected placement, without penalty, in accordance with “Termination” Section below.
- 1.4.** A “Profile Optimisation” service fee may be charged for new memberships
- 1.5.** Prohibited Uses; License Grant; Representations and Warranties.
  - 1.5.1.** Customer shall not, and shall not authorize any party to: (a) generate automated, fraudulent or otherwise invalid impressions, inquiries, conversions, clicks, likes, blocks or other actions (collectively “User Actions”); (b) use any automated means or form of scraping or data extraction to access, query or otherwise collect Xplorio Membership Subscription or advertising related information from the Service except as expressly permitted by Xplorio; or (c) advertise anything illegal or engage in any illegal or fraudulent

business practice. Xplorio may modify either the entirety, or parts of a Customer's Creative, to comply with Xplorio's policies or this Agreement, provided, such modifications will only be in the form of deleting a Creative in its entirety, resizing, or reformatting solely in connection with an Xplorio Membership Subscription. Xplorio or its partners may reject or remove any Creative that does not comply with these Terms, including, without limitation, Xplorio's sole reasonable judgment, does not comply with applicable law, regulation, or other judicial or administrative order.

- 1.5.2.** Customer represents and warrants that it holds, and hereby grants Xplorio, all rights (including, without limitation, any copyright, trademark, patent, publicity or other proprietary or intellectual property rights) and licenses to use all Creative and Customer Services as necessary for Xplorio to operate the Xplorio Membership Subscription(s) on Customer's behalf (including, without limitation, any rights or licenses needed to use, host, cache, route, transmit, store, copy, modify, distribute, perform, display, reformat, excerpt, analyse, and create algorithms from or derivative works of Creative or to use, reproduce, display, distribute and disclose Customer's trademarks and other brand identifiers) in accordance with these Terms ("Use").
- 1.5.3.** Customer represents and warrants that: (i) all information provided by or on behalf of Customer to Xplorio in connection with Customer's participation in any of the Membership Subscriptions is complete, correct and current; and (ii) neither any of Customer's Creative or Customer Services, nor any authorized Use thereof by Xplorio, will violate or encourage or induce violation of any applicable laws, regulations, codes of conduct, or third party rights (including, without limitation, intellectual property rights). Violation of the foregoing may result in immediate termination of these Terms or Customer's Membership Subscription(s) without notice and may subject Customer to legal penalties and consequences.
- 1.6.** No false or misleading advertising is allowed. Only images or texts of Customer's establishment(s) are allowed.
- 1.7.** No contact details or overlaid texts are allowed in Customer's advertisement pictures submitted as part of Membership Subscription(s).
- 1.8.** Xplorio reserves the right to refuse any advertising images or texts submitted to the Site.

## **2. Membership Subscription Pricing**

- 2.1.** Membership Subscription pricing is specified in Customer's Xplorio Management System. Xplorio reserves the right to vary prices for Membership Subscriptions between and within different Xplorio categories, subcategories and towns. Pricing of different Membership Subscriptions is under the sole discretion of Xplorio.
- 2.2.** Xplorio reserves the right to change the Membership Subscription pricing whenever it sees fit. Xplorio always strive to maintain a fair pricing model that will ensure a great return on investment for all Customers. Customers will be given at least 30 days' notice of a change in Membership Subscription prices.

- 2.3.** Once a Membership Subscription has been activated and paid for, Xplorio will under no circumstances, or for whatever variety of reasons refund the Customer. At Xplorio's discretion, this clause might be waived on a case by case basis.

### **3. Payment**

- 3.1.** Customer shall be responsible for all charges incurred in connection with an Order in immediately available funds or as otherwise approved by Xplorio, within a reasonable time period specified by Xplorio and shall pay all charges in ZAR or in such other currency as agreed to in writing by the parties. Charges are inclusive of VAT. Customer is responsible for paying all (i) taxes and other government charges, and (ii) reasonable expenses and attorneys and collection fees Xplorio incurs collecting late amounts. Nothing in these Terms or an Order may obligate Xplorio to extend credit to any party.
- 3.2.** Customer acknowledges and agrees that any billing and payment information that Customer provides to Xplorio may be shared by Xplorio with companies who work on Xplorio's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Xplorio and servicing Customer's account. Xplorio may also provide such information in response to legal process, such as subpoenas, search warrants and court orders, or to establish or exercise its legal rights, to protect itself or third parties, or defend against legal claims. Xplorio shall not be liable for any use or disclosure of such information by such third parties. Xplorio will use commercially reasonable efforts to provide regular monthly reports to Customer which will set forth the actual charges assessed for such month.
- 3.3. Payment means**
- 3.3.1. Debit Order**
- 3.3.1.1.** If Xplorio does not receive a Customer's signed Debit Order Mandate ("Mandate") to [accounts@xplorio.com](mailto:accounts@xplorio.com) within seven days of Membership Subscription activation, this will result in Customer's Membership Subscription being suspended.
- 3.3.1.2.** Once a Membership Subscription is suspended, a re-activation fee will apply (see Suspended Membership Subscription section below)
- 3.3.2. EFT/Cash**
- 3.3.2.1.** EFT/Cash payments may only be made for annual Membership Subscriptions.
- 3.3.2.2.** If a Customer's EFT/Cash transaction has not cleared/been received within seven days of Membership Subscription activation, this will result in Customer's Membership Subscription being suspended.
- 3.3.2.3.** Once a Membership Subscription is suspended, a re-activation fee will apply (see Suspended Membership Subscription section below)
- 3.3.3. Card Payments**
- 3.3.3.1.** Payment for Membership Subscriptions on Xplorio may be made using your credit card ("Card services"). Xplorio uses a third-party payment processor (the "Payment Processor") to link your credit card account to the Services (your "Card Account") for use of the Card Services. The processing of payments or credits, as applicable, in connection with the Card Services will be subject to the terms, conditions and

privacy policies of the Payment Processor and your credit card issuer in addition to this Agreement. Xplorio is not responsible for any error that occurs during any purchasing of a service, including any error by the Payment Processor.

**3.3.3.2.** If the Customer seeks to chargeback or recover any Card Payment, Customer shall be responsible for any fees incurred by Xplorio as a result of the same.

## **4. Billing**

### **4.1. General Information**

**4.1.1.** Customer billing will work on a calendar month cycle.

**4.1.2.** Billing will be executed on the first day ("payment day") of each and every month. In the event that the payment day falls on a Saturday, Sunday or recognized South African public holiday, the payment day will automatically be the very next ordinary business day. In some instances the payment day may not be the first day of the month. Further, if there are insufficient funds in the nominated account to meet the obligation, you are entitled to track my account and re-present the instruction for payment as soon as sufficient funds are available in my account

### **4.2. Billing Collections**

**4.2.1.** Two collections of outstanding payment are processed per month.

**4.2.2.** Collection A - This collection will be processed on the first day ("payment day") of each and every applicable month. In the event that the payment day falls on a Saturday, Sunday or recognized South African public holiday, the payment day will automatically be the very next ordinary business day. The following type of transaction will be processed in this collection: (a) Normal monthly Membership Subscription billing, (b) Subscription sign-ups that have been processed after the 26th day of the applicable month

**4.2.3.** Collection B - This collection will be processed on the 26th day of the applicable month. In the event that the 26th falls on a Saturday, Sunday or recognized South African public holiday, the payment day will automatically be the very next ordinary business day. The following types of transactions will be processed in this collection: (a) Customers that sign up in the middle of the month. These Customers are charged a prorated fee for that month, (b) Any failed payments from Collection A, (c) Customers who upgrade their Membership Subscription and have an additional amount outstanding

### **4.3. Transaction Failure**

**4.3.1.** In the case of a transaction failing, the following stages will be executed after sending Customer a notification.

**4.3.2.** The transaction will be re-executed in Collection B.

**4.3.2.1.** In the case of the transaction failing again in Collection B the customer's Membership Subscription will be suspended (see Suspended Membership Subscription below)

## **5. Suspended Membership Subscription**



**5.1.** To reactivate a suspended Membership Subscription an administration fee of R300 will be charged in addition to all outstanding payments.

**5.2.** After the complete payment was received the account will be reactivated.

## **6. Membership Subscription changes**

### **6.1. Membership Subscription Downgrades**

#### **6.1.1. Monthly Membership Subscription downgrades**

**6.1.1.1.** Monthly Membership Subscription downgrades are effective from the next calendar month if the downgrade request has been submitted before the 26th day of the current month.

**6.1.1.2.** If a downgrade request has been submitted on or after the 26th day of the current month the Membership Subscription downgrade will be effective at the end of the following month.

#### **6.1.2. Annual Membership Subscription downgrades**

**6.1.2.1.** Annual Membership Subscription downgrade requests must have been submitted before the 26th day of the last month in the annual cycle.

**6.1.2.2.** Annual Membership Subscription downgrade requests will be effective at the end of the last month in the annual cycle.

### **6.2. Membership Subscription Upgrades**

**6.2.1.** In case of a Membership Subscription upgrade the prices of the old and new Membership Subscription will be prorated resulting in an adjusted price.

**6.2.1.1.** If this results in outstanding payments the collection will be executed in Collection B

**6.2.1.2.** The Membership Subscription upgrade will be effective immediately.

#### **6.2.2. Exceptions for annual Membership Subscription upgrades**

**6.2.2.1.** For outstanding payments the collection will be executed in Collection B if the upgrade was requested before the 26th day of the applicable month.

**6.2.2.1.1.** If it was requested after the 26th day of the applicable month the collection will be executed in Collection A of the following month.

## **7. Termination**

**7.1.** This Agreement is effective until terminated. Unless specified otherwise in the applicable Order, either party may terminate this Agreement by providing thirty (30) days' written notice. Xplorio may reject or remove any part of a customer's Membership Subscription(s) for any reason. Xplorio may also cancel any Order, any or all Membership Subscriptions, or these Terms at any time immediately upon notice. In the event of any cancellation of any Order, Membership Subscriptions or these Terms by Xplorio, Customer will still be responsible for payments on any Membership Subscriptions already running up to and including the effective date of any such cancellation. Sections 1.1, 1.2, 3.1, 3.2, 8, 9 and the last two sentences of this Section 7 will survive any expiration or termination of these Terms.

**7.2.** Xplorio may apply a cancellation fee equal to 1 months membership fee should the Customer wish to cancel their membership. The cancellation fee may be adjusted from time to time.

## **8. Indemnification**

- 8.1.** Customer will indemnify and defend Xplorio, our partners, agents, affiliates, and licensors from any third party claim or liability, arising out of Customer's promotions, Creative or Customer Service under the Membership Subscriptions, Customer's use of the Membership Subscriptions and Customer's breach of this Agreement. Partners will be third party beneficiaries of the above partner indemnity.

## **9. Miscellaneous**

- 9.1.** These Terms will be construed as if both parties jointly wrote them.
- 9.2.** These Terms, including any Xplorio policies and Orders expressly incorporated herein, constitute the entire and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any other agreements, terms and conditions applicable to the subject matter hereof except for those which are expressly incorporated by reference. In the event of a conflict between these Terms and any Order, terms in an Order shall prevail over any conflicting or additional terms in these Terms.
- 9.3.** Any notices to Xplorio must be sent via courier to Xplorio Systems (Pty) Ltd, 10 Voortrekker Road, Gansbaai 7220, ATTN: Sanja Lutzeyer, and are deemed given upon receipt. Notice to Customer may be effected by sending an email to the email address specified in Customer's account, and is deemed received when sent (for email).
- 9.4.** In the event that these Terms expire or are terminated, Xplorio shall not be obligated to return any advertising materials to Customer.