



# General Terms

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VERSION 2

**Auckland Head Office**  
Suite 306, Geyser Building  
100 Parnell Road  
Auckland 1052  
PO Box 37 118  
Parnell, Auckland 1151

**Wellington Office**  
Level 9, Bayleys Building  
36 Brandon Street  
Wellington 6011  
PO Box 11 487  
Wellington 6142

**P** 0800 LEARNING  
**P** +64 9 972 1679  
**W** [www.n4l.co.nz](http://www.n4l.co.nz)  
**E** [info@n4l.co.nz](mailto:info@n4l.co.nz)



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These General Terms apply to all of our Products and all of our customers.

## 1 Definitions and Interpretation

### 1.1 Definitions

In your Agreement, unless the context requires otherwise:

- Any references to **N4L**, **we**, **us** and **our** are references to The Network for Learning Limited.
- Any references to **you** or **your** are references to the person or organisation entering into your Agreement with us.
- **Agreement** means your agreement with us as described in clause 2.1 (Agreement Content).
- **Business Day** means any day of the week other than Saturday, Sunday and national public holidays in New Zealand.
- **Charges** means, at any specific time, the charges for a Product as set out in its Product Terms at that time, unless provided otherwise in your Order Form for that Product or any other written agreement signed by the parties. Our Charges may include one-off, regular and other types of charges.
- **Educational Organisation** means:
  - any “service provider” (ie early childhood), “registered school” or “tertiary education provider” as those terms are defined in the Education Act 1989; or
  - any other organisation that we allow to use our Products as an Educational Organisation.
- **Equipment** means any or all of the hardware and software that we provide, or have agreed to provide, to you, which may include network routers or telephone handsets and hardware and software owned by our suppliers or licensors.
- **Order Form** means a document that has been signed and submitted to us on your behalf, recording your order for a particular Product.
- **Policies**, at any specific time, means any policies, rules and requirements that are posted in the “Legal and Policies” section of our Website at that time.
- **Product Terms** means our contract terms for a particular Product, which apply in addition to these General Terms.
- **Products** means products that you agreed to receive from us on the terms of the applicable Product Terms.
- **User** means any individual using any of our Products.
- **Website** means the website at [www.n4l.co.nz](http://www.n4l.co.nz) (or any successor to that site).
- **Your Users** means Users who are:
  - if you are an Educational Organisation, your:
    - students enrolled at your Educational Organisation; and
    - teachers, staff, contractors and other personnel working for your Educational Organisation; or
  - if you are any other type of organisation, your employees, contractors and other individuals working for or with you; or
  - otherwise accessing any of our Products via your account or infrastructure (including unidentified Users accessing a Product via your infrastructure).

### 1.2 Interpretation

In your Agreement, unless the context otherwise requires:

- the singular includes the plural, and vice versa;
- any examples in your Agreement, and references to “including”, “for example” and similar words, are illustrative only and do not imply any limitations;
- clause and other headings are for ease of reading only and do not affect the interpretation



of your Agreement;

- words or phrases appearing in your Agreement with capitalised initial letters are defined terms and have the meanings given to them in your Agreement;
- reference to any document, Product or our Website includes reference to it as amended or replaced from time to time;
- reference to a person includes a corporation sole, a body of persons, whether corporate or unincorporated, and any national, state, regional or local government body or agency;
- where a word or expression is defined in your Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- reference to an enactment or any regulations is reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations, and any reference to an enactment includes all regulations made under that enactment;
- reference to “written” or “in writing” includes all modes of presenting or reproducing text in a form that is legible, permanently visible and capable of being retained and stored (which to avoid doubt may include email); and
- reference to a party is to you or us and includes your or our successors and permitted assigns.

## 2 Your Agreement

### 2.1 Agreement content

Your Agreement with us comprises the following:

- These General Terms.
- Any Product Terms agreed by you or updated in accordance with clause 2.2 (Amendments).
- Your request(s) for our Products in accordance with clause 3.1 (Ordering Products), whether online, via a signed Order Form, or by any other method permitted by us.
- All applicable Policies.

If there is any conflict or inconsistency between any of the above, they will be interpreted in the descending order of priority listed above (eg the General Terms have priority over any Order Forms).

### 2.2 Amendments

From time to time we may amend your Agreement, or our Charges, as they apply to our customers generally. If we amend any of the individual documents comprising your Agreement, we will use the “Last Updated” section at the top of the document to indicate when it came into effect.

We will give you prior written notice of each amendment to your Agreement or Charges that affects you, and the date on which it comes into effect. We may provide such notice by sending you an email advising that a new or updated version of a document forming part of your Agreement has been published on the Website, and your Agreement is amended accordingly by incorporating that new or updated document.

If you disagree with any such amendment, you may exercise your rights under clause 8.1 (Termination for Convenience). If you are unable to terminate any of our Products under that clause because the Product has a minimum term, you may still terminate that Product if:

- in the case of a change to our Charges, the change has been to increase the Charges for



- that Product;
- in the case of changes to your Agreement, the changes:
    - affect that Product; and
    - have a material detrimental effect on you;
  - within 10 Business Days of being notified of our changes to your Agreement, you notify us of the affected Product and your intention to terminate the Product (which notice must, if it relates to changes to your Agreement, describe the material detrimental effect the change will have on you);
  - we do not further amend our Charges or your Agreement (as applicable) to reduce the Charges back to their previous level or to avoid the material detrimental effect (respectively), within 20 Business Days of notifying you of those changes; and
  - after 20 Business Days but within 30 Business Days of being notified of those changes, you provide notice to us terminating the Product.

If you terminate the Product in these circumstances, we will waive any early termination fee payable in relation to that termination.

The only other way your Agreement may be amended is if the amendment is agreed in writing by authorised representatives of the affected parties.

## **3 Our Products**

### **3.1 Ordering Products**

You can order our Products in any manner we permit from time to time. For example, some of our Products can be ordered online while others may require a signed Order Form. No order by you for our Products is effective, and we will not be required to provide the applicable Product to you, until we accept the order in writing or start providing the Product to you.

### **3.2 Responsibility for Your Users**

If there are multiple Users of our Products under your Agreement, you are responsible for:

- all use of those Products by Your Users and all consequences of such use; and
- all acts and omissions of Your Users in connection with those Products, as fully as if they were your own acts and omissions.

### **3.3 Our commitments to you**

Our specific commitments to you in relation to Products under your Agreement are set out in our Product Terms. In addition we will:

- bring a good faith, open and constructive approach to our relationship with you;
- be proactive in identifying opportunities to implement new technologies that improve our Products; and
- keep you informed about new Products that may benefit you, subject to each individual's ability to unsubscribe from electronic communications.

### **3.4 What you must do**

You must:

- cooperate with us and bring a good faith, open and constructive approach to our your relationship with us;
- comply with all applicable Policies and all our reasonable directions and restrictions regarding your use of our Products and our Equipment;
- use our Products and our Equipment only for your own lawful purposes, and then only for



the purpose for which they were provided and never in a way that infringes or contravenes any laws or regulations or infringes ours or anyone else's rights;

- ensure that all information provided to us by you is current, correct and complete;
- notify us immediately upon becoming aware of any actual or potential breach of security or unauthorized access or use of any part of our Products;
- use our Products in a reasonable manner and take all reasonable steps to make sure that no viruses, corrupted files or other harmful or damaging things are ever introduced to, or distributed via, our Products, Equipment or any underlying networks or systems; and
- use our Products responsibly and with consideration for all Users.

### **3.5 What you must never do**

You must never:

- access (or attempt to access) our Products in a way that we have not expressly permitted or circumvent (or attempt to circumvent) any restrictions we place on our Products;
- use our Products in a way that damages or interferes with our Products, data or infrastructure (or those of anyone else) or the use of our Products by anyone else;
- resell, transfer, sub-license or otherwise make available to a third party all or any part of our Products without first obtaining our written approval;
- reproduce, modify, create derivative works from or commercially exploit all or any part of our Products without first obtaining our written approval;
- disassemble, decompile, reverse engineer or otherwise try to discover any source code from any of the software, files or systems in or underlying our Products, except to the extent expressly permitted by law (despite this limitation); or
- access or use any of our Products for the purpose of building a product or service which competes with any of our Products or has similar features or functionality.

### **3.6 Changes to our Products**

We aim to keep our Products compelling by modifying and improving them over time. Provided our Products remain as specified in your Agreement, we don't need to give you notice of any change to our Products and such change will not constitute an amendment to your Agreement. However, if we reasonably consider any such change will have a significant detrimental impact on you, we will always try to provide you with advance written notice of the change and the date it will come into effect.

### **3.7 Suspension**

We may suspend or restrict access to and use of any or all Products under your Agreement if we consider it necessary or reasonable to do so. The following are some examples of where it is reasonable for us to suspend or restrict access or use:

- to protect, maintain or repair any part of our Products;
- where we consider there is an emergency; or
- where we consider that you are in breach of your Agreement or using our Products in a way that puts us or anyone else at risk.

Where practicable, we will try to schedule any major outages of our Products for maintenance or repair work at times that are outside peak use hours for the affected Product.

Without limiting our rights above, we will normally give you prior notice before we suspend for breach a Product under your Agreement, to give you an opportunity to resolve the situation. We may not provide this advance notice if we reasonably consider that we need to suspend or restrict a Product earlier to protect our rights or interests or those of anyone else. We will not



suspend or restrict a Product for breach, and will lift any such suspension or restriction, if you have demonstrated to our reasonable satisfaction that the breach has been resolved and will not be repeated. However, these requirements on us do not apply if we are or become entitled to terminate or end a Product under your Agreement.

## 4 Pricing and Payment

This clause does not apply to Products that we provide free of Charge.

### 4.1 Charges

You must pay our Charges for Products under your Agreement, no matter who uses them. Our Charges are described without GST. You will also pay GST in respect of all taxable supplies made by us to you. Except as we agree otherwise in writing, all Charges are non-refundable.

### 4.2 Payment of invoices

We will send you invoices for our Charges. If you receive our invoice:

- by the 10th of a month, you will pay the invoice by the 20th of that month; or
- after the 10th of a month, you will pay the invoice by the 20th of the following month,

If you do not pay by that due date you will, if asked by us, pay interest, at the rate of 2% above the overdraft interest rate charged by our primary bank, on the amount due from the due date for payment until full payment has been made and pay all expenses (including legal costs on a solicitor-client basis) incurred by anyone in the recovery of the amounts owed to us.

### 4.3 Invoice errors

If you genuinely think there is an error with any of our invoices you must let us know why you think there is an error before the due date for payment. You don't have to pay the part of the invoice you think is in error while we investigate the situation, but the undisputed part of the invoice will remain payable by the due date for payment. This is the only time that you may withhold any of the Charges and you must never set-off any part of any amount you owe us. If there is an error we will make the necessary adjustment to your next invoice. If we find that there is no error we will tell you and you must pay the full amount by the due date or, if that date has passed, within 2 Business Days.

## 5 Our Intellectual Property

### 5.1 Ownership of our IP

All rights, title and interest, including all intellectual property rights, in and to our Products (including in our Equipment or any other underlying hardware, software, systems or files), and in any changes or improvements to them, are owned by us or our third party licensors ("Our IP"). Except to the extent that we specifically grant you a licence in your Agreement, we do not grant you any rights, title or interest in or to Our IP.

### 5.2 No use of our brand

We do not grant you any rights to any of our trademarks, logos, business names, product names, domain names or other brand features, or those of our suppliers or any third party, even if made available in any of our Products.





## 6 Confidentiality and Privacy

### 6.1 Confidential information

Except to the extent specifically permitted by your Agreement or approved in writing by the other party, each party will:

- keep confidential all information obtained from the other party, in any form, that is confidential in nature or expressed to be confidential (“**Confidential Information**”) and not disclose it to any third party; and
- use the other party’s Confidential Information solely for the purposes of performing or exercising rights under your Agreement or for the purposes for which it was disclosed (“**Permitted Purposes**”).

Our Confidential Information includes all technical information we provide or make available to you that we do not make publicly available (for example, information relating to integration with our Product called Pond, or any network design protocols).

### 6.2 When these obligations do not apply

A party is not required to comply with clause 6.1 (Confidential Information) to the extent that the relevant Confidential Information is:

- already in its unrestricted possession, without an obligation of confidentiality, at the time of receipt of the Confidential Information;
- independently developed by that party;
- in the public domain through no fault of that party;
- disclosed to it by a third party, who has the right to make such disclosure, without an obligation of confidentiality; or
- subject to clause 6.4 (Disclosure under the Official Information Act), required to be disclosed by law, by an obligation to Parliament or a Minister of the Crown, or for the proper and effective conduct of any legal process, investigation or proceedings.

### 6.3 Disclosure to personnel

Each party may disclose the other party’s Confidential Information to its officers, employees, contractors, suppliers, advisors and agents that need to know that information for the Permitted Purposes, but must take all reasonable steps to ensure that they are informed of the confidential nature of the information and comply with obligations of confidentiality and use that are no less restrictive than your Agreement.

### 6.4 Disclosure under the Official Information Act

You acknowledge that we are subject to the Official Information Act 1982 and may disclose information under that Act. We will promptly advise you of any request received by us under that Act that relates to your Confidential Information and the extent of the requested disclosure of that Confidential Information, and will consult with you on our proposed response. If you are also subject to that Act, the same applies to you.

### 6.5 Return on termination

Upon termination of your Agreement each party will (as required by the other party) return or destroy any Confidential Information belonging to the other party, except for information:

- required by law to be retained;
- relating to any Product that we continue to provide to you;
- reasonably retained for archival purposes;
- contained in data backups;



- retained with your agreement; or
- which the disclosing party otherwise agrees in writing can be retained.

## **6.6 Privacy**

See our Privacy Policy for the way we collect, use and disclose personal information. Our Privacy Policy has been prepared in accordance with our obligations and your rights under the Privacy Act 1993, including the information privacy principles recorded in section 6 of the Privacy Act.

## **6.7 Product endorsements**

You may not claim that we endorse or approve any product or service that you sell or are associated with, without first obtaining our prior written approval.

# **7 Liability**

## **7.1 Warranties excluded**

Except as expressly set out in your Agreement, we exclude all warranties, representations or conditions (whether express or implied or however arising) to the fullest extent permitted by law. You agree that you are acquiring all goods and/or services under your Agreement for the purposes of a business and the provisions of the Consumers Guarantees Act 1993 will not apply to our Products or Equipment.

## **7.2 Exclusions of liability**

To the fullest extent permitted by law, we, and our officers, employees, and contract staff ("Our Personnel"), will not be liable to you or any third party for any loss or damage to information or data from any cause, any loss of business, revenue, profit, goodwill, opportunity or anticipated saving, or any incidental, indirect, special or consequential loss or damage.

## **7.3 Limitation of liability**

Except in relation to damage to tangible property:

- subject to the limitation below, the maximum amount that we and Our Personnel (together) will be liable to you in aggregate, for all events (connected or unconnected) in any 12 month period is \$5,000; and
- subject to the limitation above, the maximum amount that we and Our Personnel (together) will be liable to you in respect of any event or any series of related events is \$50,000 less the total amount for which we are also liable to third parties (including Your Users, our other customers, our stakeholders, other third parties and the public at large) in respect of that same event or series of related events. For example, if in respect of a single event our aggregate liability to third parties is \$47,000, our maximum liability to you in respect of that event is \$3,000.

In relation to damage to tangible property, the maximum liability of us and Our Personnel (together) to you, in respect of any single event or series of related events is limited to the total amount actually paid to us, in relation to that event or series of related events, under our Public Liability insurance, less the total amount for which we are also liable to third parties (including Your Users, our other customers, our stakeholders, other third parties and the public at large) for tangible property damage in respect of that same event or series of related events.

For the term of your Agreement we will maintain Public Liability insurance covering liability of up to at least \$10,000,000 per event.



#### **7.4 When the limitations and exclusions apply**

The limitation and exclusions of liability in your Agreement (including under clauses 7.2 (Exclusions of liability) and 7.3 (Limitation of liability)) apply to all liability arising under or in connection with your Agreement or its subject matter, whether in contract, in tort (including negligence), for breach of statutory duty or otherwise and even if we knew or should have known about the possibility of loss or damages. The limitations and exclusions of liability in this clause 7 (Liability) are also intended to be for the benefit of and enforceable by Our Personnel, but your Agreement may be amended without their consent.

## **8 Termination**

### **8.1 Termination for convenience**

Unless a Product under your Agreement has a minimum term or may only be terminated at the end of a certain period, as specified in its Product Terms or its Order Form, either party may terminate that Product for convenience, at any time and for any reason, by telling the other in writing at least one month beforehand.

### **8.2 Termination for cause**

Either party may terminate your Agreement or any Product under your Agreement, by written notice to the other party, if the other party:

- commits a material breach of your Agreement that is incapable of being remedied;
- commits a material breach of your Agreement that is capable of being remedied, and has failed to remedy that breach within 10 Business Days of receiving notice from the terminating party requiring that breach to be remedied; or
- is placed in receivership, or wound up, or goes or is put into voluntary administration, liquidation or any other form of insolvency administration (other than for solvent amalgamation or reconstruction).

### **8.3 Ending a Product**

We may also end the provision of all or any part of a Product if:

- we are replacing the Product or withdrawing it from general availability;
- the Product is no longer commercially viable; or
- our ability or right to provide the Product has been stopped or restricted.

Where we end any Product under your Agreement, we will notify you in accordance with clause 2.2 (Amendments).

### **8.4 Effect of termination**

Terminating your Agreement does not affect:

- clauses that are intended to survive termination (including clauses 1 (Definitions and Interpretation), 4 (Pricing and Payment), 5 (Intellectual Property Rights), 6 (Confidentiality and Privacy), 7 (Liability), 8 (Termination), 9 (Resolving Disputes) and 10 (General)), which will continue to operate;
- any rights or remedies that have accrued beforehand; or
- our rights to retain data as agreed by you.



## 9 Resolving Disputes

If you have a concern with our Products, please consider if it can be addressed in accordance with our Complaints Policy. If your concern is more serious, or is not resolved by our complaints process, the following may apply.

### 9.1 Step one: Dispute notice

If at any time you or we consider that a dispute or claim has arisen in connection with your Agreement or its formation (a “**Dispute**”), the disputing party may give written notice to the other party of the Dispute (“**Dispute Notice**”). This triggers the dispute process set out below. All Disputes will be resolved in accordance with this clause 9 (Resolving Disputes), although nothing in this clause prevents either party from seeking or obtaining urgent interlocutory relief.

### 9.2 Step two: Negotiation

Following a Dispute Notice, you and/or your representative (eg if you are a school, your Principal or his/her delegate) and our representative, must promptly enter into negotiations with a view to promptly resolving the Dispute. If you are an Educational Organisation, either party may ask the Ministry of Education to facilitate these negotiations and, if that request is made, the other party must provide reasonable cooperation with the Ministry’s facilitation.

### 9.3 Step three: Mediation

If the Dispute has not been resolved within 10 Business Days of the Dispute Notice (or such further time as you and we may agree) then either party may refer the Dispute to mediation by written notice to the other (“**Mediation Notice**”). Promptly following the Mediation Notice, the parties will attempt to agree the appointment of a mediator approved by LEADR New Zealand Incorporated (“**LEADR**”) and attempt to resolve the Dispute by mediation in Auckland, applying the then current LEADR mediation agreement or rules (as the case may be), subject to any variation agreed by the parties. If the parties are unable to agree on a mediator within 5 Business Days of the Mediation Notice, a mediator may be appointed by LEADR. The mediation will be discontinued if either party gives an Arbitration Notice as set out below.

### 9.4 Step four: Arbitration

If the Dispute has not been resolved within 30 Business Days of the Dispute Notice (or such further time as you and we may agree) then either party may refer the Dispute to arbitration by written notice to the other (“**Arbitration Notice**”). The arbitration will be determined by a sole arbitrator as soon as possible in Auckland. If the parties cannot agree on an arbitrator within 10 Business Days of the giving of the Arbitration Notice, the arbitrator will be appointed by the President for the time being, or his or her nominee, of the Arbitrators’ and Mediators’ Institute of New Zealand Inc. The arbitration will be conducted in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule to that Act). The award in the arbitration will be final and binding.

## 10 General

### 10.1 Non-exclusive

Except to the extent expressly agreed otherwise in writing, your Agreement is non-exclusive and neither party is in any way restricted from entering into similar agreements with any other person.



### **10.2 Further assurances**

You must sign all documents, and do all acts and things, that may be reasonably required to give effect to your Agreement according to its true intent.

### **10.3 Causes beyond our control**

We have no liability for any failure to comply with your Agreement that is caused by any event or circumstance beyond our reasonable control (an Excusable Event). If we are affected by an Excusable Event, we will promptly notify you of the event and how long we think it will last. We will take all reasonable steps to remedy or mitigate each Excusable Event and resume performance as soon as reasonably possible after the event has ended.

### **10.4 Other rights**

Unless expressly provided otherwise in your Agreement, each right and/or remedy of a party under your Agreement is cumulative and does not limit any other rights or remedies provided under your Agreement or at law.

### **10.5 Legal nature of the relationship**

No agency, partnership or joint venture relationship is intended or created by your Agreement.

### **10.6 No waivers**

No failure, delay or indulgence by any party in exercising any power or right conferred on that party by your Agreement will operate as a waiver of that power or right. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights under your Agreement.

### **10.7 Entire Agreement**

Your Agreement constitutes the entire agreement between you and us with respect to its subject matter and replaces all previous understandings and representations relating to that subject matter and any additional or different terms that you may provide to us.

### **10.8 Severability**

If any provision of your Agreement is found to be invalid or unenforceable, the remaining provisions will be enforced to the fullest extent possible, and the remaining provisions will remain in full force and effect.

### **10.9 The benefit of your Agreement**

Except as expressly provided in your Agreement, only you and us have any benefit under your Agreement and any right to enforce your Agreement.

### **10.10 Notices**

Any notice or other communication required under your Agreement (a "Notice") will be deemed to have been duly served if it is in writing and sent by email, hand delivery or post in accordance with this clause. When we send you a Notice we will send it to the relevant address for notices provided by you. All Notices you send to us must be sent to one of the following addresses, to the attention of our Chief Financial Officer:

#### **Physical Address**

Network for Learning Limited Suite 306, Geyser Building 100 Pamell Road  
Pamell Auckland 1052

**Postal Address**

Network for Learning Limited PO Box 37 118  
Pamell Auckland 1151

**Email Address**

Email: notices@N4L.co.nz

Any Notice is deemed to be received in the case of:

- delivery by hand, at the time it is actually delivered to the recipient's address;
- posting within New Zealand, 3 Business Days after posting; and
- international posting, 10 days after posting; and
- email, at the time the email was sent (unless the sender receives a delivery failure notification).

However, if a Notice is received or deemed to have been received after 5.00 pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

**10.11 Subcontracting**

We may subcontract any of our obligations under your Agreement, in which case we will remain responsible to you for meeting those obligations.

**10.12 Assignment**

You may transfer or assign any of your rights or obligations under your Agreement provided that you have obtained our prior written consent. We may transfer or assign all or any part of our rights or obligations under your Agreement, without your consent, to a Government department or Crown Entity that takes over our responsibility for the transferred or assigned part of your Agreement.

**10.13 Law and jurisdiction**

Your Agreement is governed by the laws of New Zealand (excluding the UN Convention for the International Sale of Goods). Subject to clause 9 (Resolving Disputes), you submit to the non-exclusive jurisdiction of the Courts of New Zealand.