



Provider Additional Terms for Pond

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VERSION ~~2-03~~

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These Additional Terms ~~apply to all Providers using Pond~~ allow Provider staff to use Pond. Terms defined in the Provider General Terms have the same meaning in these Additional Terms.

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1 Access to Pond

1.1 Access Rights

We grant you a non-transferable right for Your Users to access and use, in accordance with the Agreement **and in connection with improving educational outcomes in New Zealand**:

- Pond;
- those Pond Features **that are** applicable to your Engagement Level; and
- any additional Pond Features that you have paid for.

Comment [A1]:
Comment: Access is not given for any other purpose.



In using Pond, you (and Your Users) must not:

- post or make available in Pond any defamatory, infringing, obscene, indecent or unlawful content, material or information;
- impersonate any other person, misrepresent Your Services or engage in any other form of misleading or illegal conduct; or
- promote any product or service that competes with Pond.

1.2 Pond Features

The particular Pond Features that you can access is set by your Engagement Level. You may change your Engagement Level in accordance with the process set out on our Website. We reserve the right to accept or decline your registration at any Engagement Level for any or no reason.

Comment [A2]:
Comment: For context.

We may change the Pond Features that are available to your Engagement Level over time. If we think any such change will have a significant detrimental impact on you, we will give you advance notice of the change and the date it will come into effect (eg by notice in Pond itself).

Comment [A3]:
Comment: To clarify how we will change Pond features.

1.3 Separate Logins

If Pond provides the ability for Your Users to have separate logins under your account, you must ensure that each of Your Users uses his/her own login when accessing Pond.

Comment [A4]:
Comment: We expect to introduce this feature in a few weeks.

2 Claiming Listing Items in Pond

Users may list Items in Pond for the purpose of User others to use, provide feedback, comments, ratings rate, etc. Items include learning ideas and descriptions of Provider products or services.

Comment [A5]:
Comment: Re-word.

You and Your Users may:

- list your own products or services in Pond as Items that you “own”, provided those products and services are:
 - relevant to the education sector; and
 - not already listed as Items;
- if any of your products and services Your Services are already listed as Items, claim them as being “owned” by you; and
- if any Item is related to any of your products or services (such as a learning idea that references your service Your Services), you may claim them as being “associated” with your Item describing those products or services.

Comment [A6]:
Comment: Used defined term.

The name of

You must ensure that the details provided by Your Users for each Item must be appropriate for Pond. For example, the name details must:

- use plain English intended for human interpretation (not phrases intended to influence search behavior);
- adequately identify the product or service, be distinctive Item;
- name the Item distinctively from other names Items in Pond; and
- not be offensive.

Comment [A7]:
Comment: Clarification.

Where there are multiple Providers of a similar product or service, each Provider must attribute themselves in the name they choose (eg Product X by Company Y or Product X by Company Z).

If any Provider or User wishes to dispute the name, ownership or association of any Item, they must contact us using the mechanisms provided in Pond. We will then follow a resolution process to resolve the matter.

Whenever you or Your Users add, claim ownership of, claim association with or name an Item in Pond, you represent and warrant to us that you have, and will continue to have, all of the necessary rights and approvals to do so in compliance with all applicable laws.

In order to better meet the requirements of the Agreement we reserve the right, at our sole discretion, to:

- remove or rename any Item;
- transfer the “ownership” of any Item (to any other Provider (but, for the avoidance of avoid doubt, any such transfer will be limited to this is a change of in the item’s “owner” of the Item as described in Pond and will not



~~involve a transfer of any intellectual property rights from one Provider to another); or~~

- amalgamate Items together, where they reasonably represent the same product or service.

Comment [A8]:
Comment: Clarification.

3 Ratings and Comments

Pond enables Users to rate and comment on Your Services, some or all of which you may or may not agree with. We will not be liable to you for or in connection with any negative or adverse User ratings or comments on Your Services published or made available via Pond.

Pond may also make available to Users information about Your Services, including their availability and performance. We may use this information, along with the ratings and comments, to determine the placement or marketing of Your Services. However, we reserve the right to determine this in our sole discretion.

~~You must not try to manipulate the ratings for Your Service, whether by you (or Your Users) "self rating" or otherwise.~~

4 Your Right to Use Pond Content

~~Whenever a User (which includes Your Users) wants to do anything with anyone else's Pond Content they must first obtain all of the necessary rights and permissions authorisation to do those things (we do not obtain those rights such as permission from the content owner or permissions for Users) and must also comply with any terms on which that Pond Content is made available. Users may also have additional rights to use Pond Content rights under the Copyright Act 1994 and/or other legislation-) and comply with the terms of that authorisation.~~

Comment [A9]:
Comment: Clarification.

~~You and Your Users can't do anything with Pond Content (including sharing the content in Pond or using the content outside Pond) unless doing that has been specifically authorised. That authorisation may be given in Pond (for example by way of a licensing note accompanying the content) or you may have to contact the owner of the Pond Content directly for their authorisation. If no specific authorisation is given in relation to particular Pond Content, that content is only available to view in Pond.~~

Comment [A10]:
Comment: To explain how authorisation is provided via Pond.

Use of Pond Content is at your, and Your Users', own risk. We do not endorse, approve or pre-screen any Pond Content (including where we "frame" content in Pond from elsewhere on the internet) and make no promises or guarantees in relation to Pond Content, including as to its adequacy, accuracy, or completeness, or that its use will not infringe any third party rights. You agree that we are not responsible or liable in any way for any Pond Content or the consequences of you or Your Users using or relying on any Pond Content.

You must never use a robot, spider or any manual and/or automatic means to collect, track or index Pond Content in any manner, and you must ensure that Your Users do not either.

5 Dealing with Your Content

This clause applies to all Pond Content that was posted or made available in Pond by you or Your Users.

5.1 Licensing Your Content to us

We need rights to Your Content so that we can operate our Services effectively. Accordingly, you grant us a non-exclusive, irrevocable, sub-licensable licence to:

- display Your Content in Pond ~~in accordance with Pond's functionality;~~
- use, host, store, modify, adapt, copy, publish, display, distribute and create derivative works of Your Content for the purposes of providing, supporting, improving and operating our Services, including by using thumbnails or otherwise re-sizing or reformatting Your Content to optimize the manner in which Your Content is displayed in Pond;
- use all ideas, comments or suggestions from Your Users on changing or improving our Services; and
- otherwise use, modify and distribute Your Content as reasonably required for the purpose for which it was provided.

Comment [A11]:
Comment: We will not take your content from one part of Pond and display it in another, unless that is how Pond ordinarily functions.



5.2 Licensing Your Content to Others

Pond may give Users and other parties (eg Providers or Schools) the opportunity to license Pond Content for use outside Pond. Pond identifies these opportunities by presenting licensing options for selection by the User or Provider. Licensing options may include:

- making the content publically available under a Creative Commons licence; or
- allowing the User or Provider to specify bespoke licence terms.

Whenever Your Users submit material to Pond under a licensing option, you license that material on the terms of that option. If the wrong option was selected, you may ask us to remove the submitted Pond Content under our Takedown Policy. A default option will apply if Your User makes no active selection of a licensing option. You may specify the default option that applies to Your Users.

For the avoidance of doubt, no licensing option selected will in any way affect the licences granted to us in clause ~~4.4~~5.1 (Licensing Your Content to us).

5.3 Taking Responsibility for Your Content

If anyone using Your Content, including us, any school or any User (each a “Your Licensee”) is subject to a claim by a third party that Your Licensee’s publication, use or possession of Your Content infringes that third party’s rights, defames that third party or breaches any other laws (“Claim”), then regardless of anything to the contrary in the terms on which Your Content was licensed:

- you may on written notice require us to promptly take the applicable content off Pond;
- if the Claim relates to infringement of intellectual property rights, you must either:
 - take all reasonable steps to either secure the necessary licence rights for Your Licensee;
 - provide Your Licensee with a non-infringing alternative that is substantially similar to the infringing Pond Content (“Replacement Content”); or
 - if possible, terminate the licence in accordance with its terms; and
- you must in any event:
 - indemnify Your Licensee against any liability, losses, damages, costs or expenses incurred in connection with the Claim; and
 - provide reasonable assistance to Your Licensee in defending the Claim (at your expense).

However, you are not required to:

- do any of these things to the extent that the Claim arises from Your Licensee’s unauthorized modification of Your Content or failure to comply with the terms on which Your Content was licensed to Your Licensee; or
- indemnify Your Licensee in respect of any liability, losses, damages, costs or expenses incurred to the extent that they have arisen as a result of a failure by Your Licensee to implement any Replacement Content.

Were a Claim is brought against us, we will ensure that we notify you promptly following us becoming aware of the Claim and that it relates to Your Content.

This clause is for the benefit of, and enforceable by, all of Your Licensees. However, the Agreement may be varied by you and us without obtaining the consent of any other of Your Licensees.

5.4 Removing Your Content from Pond

Removing Your Content from Pond, means Your Content can no longer be seen by Users. However, although Your Content may have been removed from Pond, it will continue to be in our systems as described in clause ~~6.5~~~~4.5~~5.5(Retaining Your Content in our Systems) until permanently deleted in accordance with clause ~~9.2~~3.1 (~~What happens if your account is~~ [How are Accounts/Logins](#) Deactivated).

Your Users may be able to remove certain items of Your Content from Pond themselves, by using the functionality available within Pond. If you would like specific items or all of Your Content removed from Pond, you should request that of our Service Desk. We will fulfil all such requests, usually within 5 Business Days.

In addition, Your Content may be removed from Pond by us:

- under our Takedown Policy or Privacy Policy;
- if Your Content does not comply with the Agreement you have with us; or
- if we consider Your Content is unsuitable for Pond.

In some cases Pond may indicate where Your Content has been removed from Pond, in order to preserve an



experience that is understandable by other Users.

Your Content may have been copied or re-shared by other Users. -Where this occurs, you cannot remove the copied or re-shared content from Pond. You may request that we “take down” the copied or re-shared content under our Takedown Policy, however we will assess each request on its merits and will not automatically remove such content solely because you requested it.

5.5 Retaining Your Content in our Systems

When Your Content is removed from Pond, it will not necessarily be deleted from our systems. ~~Your Content, as it may still exist in Pond repository files, backup files and/or log files, until such files are deleted in accordance with clause.~~

~~9.2 (What happens if your account is Deactivated?)~~

Comment [A12]:
Comment: Simplification.

~~7~~ **Content outside Pond**

~~We may permanently delete your Pond profile and/or all or any of Your Content from our systems that has been removed from view in Pond, in accordance with our file retention practices. Unless required otherwise by law, we expect to hold Your Content in our Pond repository files for at least 7 years for audit and investigation purposes. However we may continue to hold Your Content indefinitely if it remains of value to Users.~~

Comment [A13]:
Comment: This is our standard content restriction policy.

~~We are not a content storage provider. Except as required by law, we have no obligation to return Your Content to you.~~

Comment [A14]:
Comment: If your content is important, you should retain your own copies outside Pond.

6 Content Outside Pond

In addition to content that is available in Pond, Users may also be able to use links to access content that is outside of Pond. Links from Pond to other websites or services (including text or image based links or website framing) do not constitute our endorsement of those websites or services, or their content, whether those links have been posted by us or another User. We do not control such sites or services, and are not responsible or liable in any way for their content or availability or any problems with any links to those sites or services. It is - your and Your Users' responsibility to evaluate the content and usefulness of the information obtained from other websites or services.

The use of any website or services controlled, owned or operated by third parties is governed by the terms and conditions of use and privacy policies for those websites or services, and not by the Agreement or Privacy Policy.

67 Dealing with Inappropriate Pond Content

We have a Takedown Policy to help address any infringing, defamatory or other inappropriate Pond Content. Anyone may ask us to remove Pond Content in accordance with the Takedown Policy.

Regardless of whether we received a request under our Takedown Policy, we reserve the right (but have no obligation) to remove any Pond Content that we consider, in our sole discretion, is contrary to the Agreement or is otherwise inappropriate or exposes us or any User to any risk.

~~8~~ **Deactivating and reactivating your account**

~~How is your account is Deactivated?~~

~~Your Pond account will be deactivated if your Pond Service is terminated or suspended, by us or you.~~

8 Account/Login Deactivation

8.1 How are Accounts/Logins Deactivated?

You may deactivate your account or any of Your Users' logins at any time, by closing the account or login in Pond.

We may deactivate your account or any of Your Users' logins:

- immediately if:



- o you are in breach of the Agreement;
- o we believe your account or the deactivated login may have been compromised (eg password theft); or
- o we believe it is necessary in the interests of other Users; or
- on one month's written notice if we cease providing Pond generally.

We may lift any deactivation if you demonstrate to our reasonable satisfaction that the reason for us deactivating has been resolved and will not be repeated.

6-18.2 ~~What happens if your account is~~ **Happens when Account/Logins are Deactivated?**

If your account is deactivated ~~you~~, Your Users will not be able to access Pond, but Your Content and ~~Pond~~ profile will still be visible to other Users ~~unless removed from view as follows~~.

~~After deactivation of your Pond account:~~

If you would ~~also~~ like us to remove Your Content or ~~Pond~~ profile from view in Pond, you should request that of our Service Desk. We will fulfil all such requests, usually within 5 Business Days. ~~If we remove your Pond account~~ However, although the material will be removed from view, the data ~~held in your Pond account~~ will remain in our systems in accordance with clause ~~6-55.5~~ (Retaining Your Content in ~~our~~Our Systems).

- ~~We may permanently delete your Pond profile and/or all or any of Your Content from our systems as we think fit, in accordance with our file retention practices. Unless required otherwise by law, we expect to hold Your Content in our Pond repository files for at least 7 years for audit and investigation purposes. However we may continue to how Your Content indefinitely if it remains of value to Users.~~

6-28.3 ~~What Happens if your Account is~~ **Reactivated?**

If your Pond account is reactivated after being removed from view in Pond, the state of Your Content and profile will revert back to the state they were in before your account was deactivated, subject to the removal or deletion of Your Content as described above.

~~If~~ **But if** your account has been permanently deleted from our systems, it cannot be reactivated.

Comment [A15]:
Comment: Clarified deactivation process.

Comment [A16]:
Comment: Clarified effect of deactivation.