



Pond Product Terms

LAST UPDATED: 15 April 2016

VERSION 2

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1 Overview

These terms allow use of Pond by Educators and Service Providers, whether they access Pond via the Pond Website or through an Integrated Application. Currently Pond is not open for use by students, other than as public view users. Public view users can only view specific content selected to be made public by the contributor.

This document forms part of our agreement with each customer using this Product. The General Terms and other documents that also form part of the agreement, are available on the [Legal and Policies](#) section of our website.

We've tried to ensure these terms are straightforward and fair, and in some cases have included notes to provide context. Please feel free to email us if you have any questions or suggestions.

2 Definitions

Terms defined in the General Terms have the same meaning in these Product Terms. In addition, unless the context requires otherwise:

- Any reference to **you** or **your** is reference to the person or organisation agreeing these Product Terms with us, being either an Educator or a Service Provider.
- **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 Pond as an Educational Organisation.
- **Educator** means any individual with an “educator” account in Pond.
- **Integrated Application** means an application that interacts with Pond using our Pond Integration Product or any other mechanism that we may allow. Some Integrated Applications (such as our Pond mobile application and Chrome extension) are provided by us, while others are provided by third parties.
- **Pond** means the web services through which we make functionality and data available to the Pond Website and Integrated Applications.
- **Pond Ecosystem** means:
 - the Pond Website; and
 - all Integrated Applications to the extent they display and/or interact with any User Content or Pond services.
- **Pond Website** means our online community application available at pond.co.nz (or replacement URL).
- **Pond User** means any individual with an account in Pond, including Educators, Service Provider staff, and our own staff.
- **Service Provider** means any individual or organisation with a “service provider” account in Pond.
- **User Content** is defined in clause 5 (User Content).
- **Your Content** is defined in clause 6 (Your Content).

3 Pond Accounts

3.1 Educator Accounts

Your Educator account in Pond may be related to any Educational Organisation that you are a staff member of. Each account is subject to our approval and each relationship with an



Educational Organisation is subject to the approval of the Educational Organisation's authorized approver (who may confirm your staff status with the principal, CEO or equivalent of the organisation concerned). You must notify us as soon as you stop working for an Educational Organisation, by using the feedback tool on the Pond Website or by contacting our helpdesk (see our website for details). If you move to another Educational Organisation, you should apply to have your account related to that Educational Organisation.

As an Educator:

- you may *only* use Pond in connection with improving educational outcomes in New Zealand; and
- you may not use Pond for advertising or offering to sell any goods or services for any commercial purpose - to do that you must be registered with us as a Service Provider.

School students may not have Educator accounts.

3.2 Service Provider Accounts

You may apply on the Pond Website for a Service Provider account if you supply educational goods or services in New Zealand. Your application is subject to our approval. In addition to your own account, you must establish an additional account for each individual Pond User who uses Pond under the "umbrella" of your account. You are responsible for all acts and omissions of your Pond Users in connection with Pond, as fully as if they were your own acts and omissions.

As a Service Provider you must not promote any product or service that competes with Pond.

3.3 Account Deactivation

Any Pond User may deactivate their own account at any time. In addition, if you have an umbrella account you can deactivate the accounts of any of your individual Pond Users or your entire umbrella account (which deactivates the accounts of all of your Pond Users).

We may deactivate your account (or any account under its umbrella):

- immediately if:
 - you breached these terms;
 - we believe the account has been compromised (eg password theft);
 - you are an Educator and:
 - you are no longer a staff member at any Educational Organisation; or
 - you are deregistered as a teacher; or
 - we believe it is desirable in the interests of other Pond Users; or
- on one month's written notice if we cease providing Pond generally.

If your account (or any account under its umbrella) is deactivated, you will not be able to access Pond via that account from anywhere in the Pond Ecosystem, but Your Content and profile for that account will still be visible to other Pond Users.

If you would also like us to remove Your Content or profile from view in the Pond Ecosystem for any account, you should request that of our helpdesk (see our website for details). We will fulfil all such requests, usually within 5 Business Days. However, although the material will be removed from view, the data will remain in our systems in accordance with clause 6.4 (System Retention).



3.4 Account Reactivation

We may lift any deactivation of your account (or any account under its umbrella) if you demonstrate to our reasonable satisfaction that the reason for us deactivating the account has been resolved and will not be repeated.

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

3.5 Termination

To terminate these Product Terms you must deactivate your account (and all accounts under its umbrella) in the Pond Website. Terminating these Product Terms, but does not affect:

- clauses that are intended to survive termination (including clauses 3.4 (Account Reactivation), 5 (User Content), 6 (Your Content), 7 (Liability), and 8 (Use of Pond by Service Providers)) which will continue to operate; or
- any rights or remedies that have accrued beforehand.

4 Using the Pond Ecosystem

Note: We hope that the Pond Ecosystem will significantly improve educational outcomes in New Zealand. To help that happen, there are some things below that you need to commit to.

4.1 The Ecosystem

The Pond Ecosystem comprises the Pond Website together with Integrated Applications (specifically those parts of Integrated Applications that display and/or interact either with User Content or with Pond services). We only select an application for integration with Pond if we consider the application is suitable. We also require everyone integrating with Pond to agree to our [Pond Integration Product Terms](#).

Your Content will be made available throughout the entire Pond Ecosystem, including to all Integrated Applications. While you are unable to specify which particular Integrated Applications access Your Content:

- the only users who can see or interact with Your Content in an Integrated Application are those who could see and interact with that data on the Pond Website; and.
- Your Content will be subject to these Product Terms whether Your Content is displayed on the Pond Website or in an Integrated Application.

We will require each Integrated Application not to cache or store your User Content other than for reasonable periods in order to provide its services.

4.2 Passwords

As we need to know who does what in the Pond Ecosystem, each Pond User account is personal to a single individual. You must protect your password and not allow any other individual to access Pond via your account (or any account under its umbrella). You are solely and fully responsible for all activities that occur under your account(s).



4.3 Listing Catalogue Items

Pond Users may list user-generated content (**Catalogue Items**) in Pond for others to use, provide feedback, rate, etc. Catalogue Items include “learning ideas”, “buckets”, “resources” (ie descriptions of educational products or services), “discussions” and “groups”.

You must ensure that each Catalogue Item is appropriate for Pond. For example, each Catalogue Item must:

- use plain English that is intended for human interpretation (not phrases intended to influence search behavior);
- be meaningful to Pond Users as a standalone item;
- adequately identify the item;
- be named distinctively from other Catalogue Items; and
- not be offensive.

If you are a Service Provider you may:

- only list Catalogue Items that are relevant to the education sector;
- claim Catalogue Items that describe your own products and services, as being “owned” by you; and
- claim Catalogue Items that are related to your products or services (such as a learning idea that references your products or services), as being “associated” with your Catalogue Item for those products or services.

Where there are multiple providers of a similar product or service, each Service Provider must attribute themselves in the name they choose (eg Product X by Company Y or Product X by Company Z). Whenever you add, claim ownership of, claim association with or name a Catalogue Item, 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.

If you’d like to dispute the name, ownership or association of any Catalogue Item, you can contact us using the mechanisms provided in the Pond Website or by contacting our helpdesk. We will then follow a resolution process to resolve the matter.

In order to meet the above requirements we reserve the right, at our sole discretion, to:

- remove or rename any Catalogue Item;
- transfer the “ownership” of any Catalogue Item (to avoid doubt, this is a change in the item’s “owner” as described in Pond and is not a transfer of intellectual property rights); or
- amalgamate Catalogue Items together, where they reasonably represent the same product or service.

4.4 Your Obligations

In order to use Pond, you must:

- not impersonate any other person or engage in any other form of misleading or illegal conduct;
- not post or make available in the Pond Ecosystem any defamatory, infringing, obscene, indecent or unlawful content, material or information; or
- never use a robot, spider or any manual and/or automatic means to collect, track or index User Content in any manner.

4.5 Our Commitments

We will provide the Pond Website and any Integrated Applications that we control, using



reasonable care and skill. But we don't guarantee that they will be:

- completely secure or private or that any data will never be lost or damaged;
- free of errors, defects, malware or other harmful things;
- free of any harmful or inappropriate content; or
- uninterrupted, timely or always accessible, available or fully functioning.

In addition, the features of the Pond Website and any Integrated Applications that we provide may change over time. If we think any change of features will have a significant detrimental impact on Pond Users, we will give them advance notice of the change and the date it will come into effect (eg by notice in the Pond Website itself or via an email).

We are not responsible for any Integrated Applications that are controlled by third parties.

5 User Content

The Pond Ecosystem includes content that is posted or made available by Pond Users (**User Content**) including by our Pond Users. User Content may be posted via message boards, chat areas or other means, and may include Catalogue Items, profiles, blogs and comments in the form of text, images, videos and files. But User Content does not include:

- any search results that we display from third party search providers (as we have no control over that content); or
- any content to the extent it is on URLs other than the Pond Ecosystem (for example, any website that is linked to from the Pond Ecosystem).

Note: We want User Content to be used and re-mixed to help in the classroom, but only if intellectual property rights have been respected. So, where you are allowed to use content outside of the Pond Ecosystem, the terms on which you can use the content will be provided together with the content in the Pond Ecosystem. Where specific licence terms are not provided with particular content in the Pond Ecosystem, that content *may only be viewed* in the Pond Ecosystem (the N4L and Pond logos are an example of that).

5.1 Rights to Use

Whenever you want to do anything with User Content you must ensure you have all necessary rights to do those things (such as permission from the content owner or rights under the Copyright Act 1994 or other legislation) and comply with all terms on which Portal Content is made available to you.

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

5.2 Third Party Sites and Content

We do not endorse, approve or pre-screen any content that is made available in the Pond Ecosystem by others (including where we "frame" content in the Pond Website from elsewhere on the internet). We make no promises or guarantees in relation to that content, including as



to its adequacy, accuracy, completeness, non-infringement or freedom from anything harmful or inappropriate.

The Pond Ecosystem may let you use links to access content that is outside of the Pond Ecosystem. Links from the Pond Ecosystem 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 Pond Users. 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. 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 our terms.

5.3 Inappropriate Content

We have a [Takedown Policy](#) to help address any infringing, defamatory or other inappropriate User Content. Anyone may ask us to remove User Content in accordance with that policy. Regardless of whether we received a request under our Takedown Policy, we reserve the right (but have no obligation) to remove any User Content that we consider, in our sole discretion, is contrary to the Agreement or is otherwise inappropriate or exposes us or any Pond User to any risk.

6 Your Content

Whenever you post or make content available in the Pond Ecosystem (**Your Content**), you personally license that content on the terms below. If you are working for an Educational Provider, Service Provider or other organisation, its policies may apply to the material you post to or make available in the Pond Ecosystem and may limit the type of material that you are able to submit.

Note: Your Content may include teaching materials that you posted in the Pond Ecosystem, or your comments and feedback in the Pond Ecosystem on educational resources. You licence all of Your Content to us as below. In some cases, you may have the opportunity to licence Your Content to others to use outside the Pond Ecosystem – the available licensing options will be provided for you to select when you post the content in the Pond Ecosystem. In all cases you need to ensure that Your Content and the licensing options you select are not unlawful or infringing.

6.1 Licensing Your Content to Us

We do not own Your Content, but need rights to Your Content so that the Pond Ecosystem can operate effectively. However we recognise that electronic files that you upload to the Pond Ecosystem (**Your Files**) need more restrictive licence terms than other content. Accordingly, except in relation to Your Files, you grant us a non-exclusive, irrevocable, sub-licensable licence to:

- display Your Content in the Pond Ecosystem in accordance with the Pond Ecosystem'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 the Pond Ecosystem;



- use all ideas, comments or suggestions from you on changing or improving our services or the services of Service Providers in the Pond Ecosystem; and
- otherwise use, modify and distribute Your Content as reasonably required for the purpose for which it was provided.

In relation to Your Files, you grant us a non- exclusive, irrevocable, sub-licensable licence to host and store Your Files, index Your Files' content, and display Your Files in the Pond Ecosystem.

In addition, our [Privacy Policy](#) governs the way we collect, use and disclose your personal information.

6.2 Licensing Your Content to Others

The Pond Ecosystem may give you the opportunity to license Your Content for use outside the Pond Ecosystem. The Pond Ecosystem identifies these opportunities by presenting licensing options for selection by you. Licensing options may include:

- making the content publically available under a Creative Commons licence;
- restricting use to within a particular Educational Provider only; or
- allowing you to specify bespoke licence terms.

If the wrong option was selected, you may ask us to remove the content under our [Takedown Policy](#), however anyone accessing Your Content before it is removed may continue to do so on the terms applying when they first accessed it. A default option will apply if you make no active selection of a licensing option. If your account is linked to an Educational Organisation or Service Provider, that organisation may specify the option(s) available to you.

You represent to us that use of Your Content in accordance with the above terms, does not contravene any laws or infringe anyone's rights.

6.3 Removing Content from the Pond Ecosystem

Removing Your Content from the Pond Ecosystem, means Your Content can no longer be seen by Pond Users. However Your Content will continue to be in our systems, and in systems supporting Integrated Applications, as described in clause 6.4 (System Retention).

You may remove certain items of Your Content from the Pond Ecosystem, by using the functionality available on the Pond Website. If you would like specific items or all of Your Content removed from the Pond Ecosystem, you should request that of our helpdesk (see our website for details). We will fulfil all such requests, usually within 5 Business Days.

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

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

In some cases the Pond Ecosystem may indicate where Your Content has been removed, in order to preserve an experience that is understandable by other Pond Users.

Your Content may have been copied or re-shared by other Pond Users. Where this occurs, you cannot remove the copied or re-shared content from the Pond Ecosystem. 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.

6.4 System Retention

When Your Content is removed from the Pond Ecosystem, it will not necessarily be deleted from our systems, or from systems supporting Integrated Applications, as the data may still exist in repository files, backup files and/or log files.

In relation to Integrated Applications, Your Content may only be cached or stored in Integrated Applications as specified in clause 4.1 (The Ecosystem).

In relation to our own systems, we may permanently delete your Pond profile and/or all or any of Your Content from our own systems in accordance with our file retention practices where that data has been removed from view in the Pond Ecosystem. 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 Pond Users.

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

7 Liability

7.1 Our Liability to You

Clause 7 (Liability) of the General Terms do not apply to these Product Terms. Instead:

- You agree that your access to the Pond Ecosystem is for the purposes of a business (in terms of the Consumers Guarantees Act 1993) and that the provisions of that Act do not apply to your use of Pond or the Pond Ecosystem.
- To the maximum extent permitted by law, we and our employees, agents, consultants, directors, shareholders, and any other person or entity that directly or indirectly controls us, have no direct or indirect liability of any kind to you or any third party for any claim under or in connection with these terms or relating to Pond or the Pond Ecosystem.
- To the extent the above limitation is ineffective, our total liability (however arising, including in negligence) to you and all third parties (in aggregate) for each act or omission under or in connection with these terms or relating to Pond or the Pond Ecosystem (and all related acts and omissions) is limited to \$100.

7.2 Crown Entity Content

Some User Content is provided by Crown Entities or Government departments. To the maximum extent permitted by law, those entities will have no direct or indirect liability of any kind to you in connection with any error or omission in their content. This clause is intended to be for the benefit of and enforceable by those entities, but the Agreement may be amended without their consent.

7.3 Third Party Services

The Pond Ecosystem enables you to browse, locate, rate, list and access the products and services (**Third Party Services**) of third parties (**Third Parties**). Whenever you engage with a Third Party, or use Third Party Service, it is at your own risk and may require you to enter into a separate agreement with the Third Party. We are not responsible or liable in any way for any Third Party or Third Party Services (even if we have promoted a Third Party Service). We



are also not a party to any agreement or arrangement for Third Party Services, and do not act on behalf of you, any Educational Provider, or the Third Party. It is not our responsibility to make sure that any Third Party Service you use, and any related terms and conditions, are fit for purpose and adequately protect your interests and those of your Educational Provider.

As we are not a party to any contract between you and a Third Party. You agree:

- not to involve, or attempt to involve, us or any of Our Personnel in any dispute or in the resolution of disputes that arise between you and a Third Party; and
- to release, and procure the release of, us and our personnel from any and all claims or demands arising out of or in any way connected with such disputes.

8 Use of Pond by Service Providers

This clause 8 (Use of Pond by Service Providers) only applies to Service Providers. In this clause, a Service Provider's Customer means any person or organisation entering into a contract with the Service Provider for its products or services.

8.1 Ratings and Comments

Pond enables Pond Users to rate and comment on products or 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 Pond User ratings or comments on your products or services published or made available via the Pond Ecosystem.

Pond may also make information available to Pond Users about your products or 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 products or services. However, we reserve the right to determine this in our sole discretion.

8.2 Responsibility for Your Content

If anyone using your Content, including us, any Educational Provider or any Pond User (each 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 the Pond Ecosystem;
- 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 User 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:
 - clause 7.2 (Crown Entity Content) applies to you; or
 - 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.

8.3 Responsibility for your Services

You (and not us) are responsible for your products or services and for any consequences of your providing, promoting or making available your products or services and for collecting your fees. You must:

- not misrepresent your products or services in the Pond Ecosystem;
- comply with your agreements for the provision of your products or services to your Customers;
- ensure that your products or services comply with all applicable laws and regulations; and
- maintain at all times all necessary rights, consents and clearances necessary to provide your products or services.

You indemnify us and our officers, employees, and contract staff against any liability, losses, damages, costs or expenses we or they incur in connection with any claim by a third party to the extent the claim relates to your products or services and arises as a result of your own act or omission (in particular you are not required to indemnify us to the extent the liability, loss, damage or expense arises as a result of our own breach or unlawful conduct). We will promptly notify you of any claim, use reasonable endeavours to mitigate the amount payable by you under this clause and co-operate with you in defending or settling the claim. You will provide reasonable assistance in defending or settling the claim (at your expense). You can (at your own cost) be represented at all negotiations and proceedings related to the claim.

8.4 Responsibility for your Customers

Your engagement with your Customers is at your own risk. Unless we expressly agree otherwise, we do not act on behalf of you or your Customers and it is your responsibility to contract with or license your Customers in relation to your products or services. We are not a party to any arrangement between you and your Customers and those arrangements are not affected by the term or termination of the Agreement we have with you.

However, you must make sure that any licence or agreement between you and your Customers for your products or services does not conflict with the Agreement we have with you.

We are not responsible or liable in any way for anything your Customers do or do not do in



relation to you or your products or services (including any failure to pay your fees or failure to comply with any licence or agreement). If any problems or claims arise in relation to your products or services, this is between you and your Customers, and is not for us to resolve. However, this does not in any way prevent us from exercising any of our rights in relation to the Agreement.

8.5 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 Service Providers (**Our Brand Features**), other than the right to reasonably use our logo(s) as supplied by us to use for linking to our Website or the Pond Website. In all other cases you must obtain our written permission to use Our Brand Features, by contacting our Marketing Manager at info@n4l.co.nz. In most cases, a decision on your requested use will be given within 3 Business Days.

8.6 Use of your brand

In using Pond you may supply us with trademarks, names, logos, icons, titles, product descriptions, screenshots and other brand features related to you or your products or services (**Your Brand Features**). You license Your Brand Features to us as follows:

- To the extent that you post or make available Your Brand Features in the Pond Ecosystem, it will constitute Your Content and be licensed by you to us in accordance with these terms.
- In all other cases you grant, and warrant that you have the right to grant, us a non-exclusive, sub-licensable and transferable licence to use, duplicate and display Your Brand Features for the purpose for which they were supplied (where you use the Pond Ecosystem, this includes for the purpose of any related marketing, customer lists or presentations).

In respect of any of our Products, the above licenses will cease upon termination of your use of Pond. Subject to our rights under these terms in respect of Pond User ratings and comments, we will not knowingly use Your Brand Features in a manner that is prejudicial to your reputation.

8.7 IP in your Services and Brand Features

Except for any rights that you grant to us under the Agreement, we do not obtain under the Agreement any rights, title or interest in or to any intellectual property rights in your products or services or Your Brand Features.