

## Terms of Use – Pairwise Pty Ltd t/a Brightpath Assessment

These terms of use (“**Terms**”) are an agreement between you and Pairwise Pty Ltd t/a Brightpath Assessment (“**Brightpath**”), a company incorporated in Australia.

These terms govern your access to and use of Brightpath software, services and/or products (known collectively as “**the Products**”) and any information, content, text, graphics, photos or other materials uploaded, downloaded, purchased or appearing on or through the Products.

These Terms apply to all visitors, users and others who access the software (“**Users**”).

By accessing or using the Products, you agree to be bound by these Terms.

In spite of the foregoing, these Terms do not supersede or limit your rights under the terms and conditions of

- (1) any written agreement you have entered into with Brightpath regarding the use of Products, or
- (2) any applicable laws or regulations to the extent that these terms are prohibited by such laws or regulations.

### 1. Accounts

You are responsible for the use of the Products. You may use the Products only if you can form a binding contract with Brightpath. Your account with Brightpath gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. We may maintain different types of accounts for different types of users. If you are accepting these Terms and using the Products on behalf of a company, organisation, government or other legal entity, then (a) “you” includes you and that entity, and (b) you represent and warrant that you are an authorised representative of the entity with the authority to bind the entity to these Terms, and that you agree to these Terms on the entity’s behalf. You may use the Products only in compliance with these Terms, any agreement entered into by your institution relating to the Products, and all applicable local, state, national and international laws, rules and regulations.

In situations where you have authorized or registered another individual, including a minor, to use your account(s), you are fully responsible for (i) the online conduct of such User; (ii) controlling the User’s access to and use of the Products; and (iii) the consequences of any misuse.

You are solely responsible for your interactions with other Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. Brightpath shall have no liability for your interactions with other Users, nor for any User’s acts or omissions.

### 2. Privacy

Any information that you provide to Brightpath, including first name, last name, email address, registration numbers, student information, and any other information including personal information you have provided, may provide, or may be collected by us in connection with your use of the Products (“**Your Information**”), will be collected, maintained and used in order to provide the Products to you or your institution, or in accordance with these Terms, any additional terms applicable to an individual Product, and any agreement entered into by your institution relating to the Product. You understand that, through your use of the Products, you consent to the collection and use (as set forth in these Terms and any agreement entered into by your institution relating to the Product) of Your Information, including the transfer of Your Information to servers for storage, hosting, and processing by Brightpath.

For the avoidance of doubt, personal information that includes Student Data (defined below) provided to Brightpath through the use of these Products is governed by the terms of the agreement between Brightpath and the educational institution relevant to your use of the Products, should such agreement exist. As between Brightpath and you, you, your students and/or the educational institution own all right, title and interest to all Student Data you provide or otherwise make available to us, and we do not own, control, or license such Student Data, except so as to provide the Products to you and to the educational institution that provides the products and controls Student Data from the educational records, if applicable, and as described herein. "Student Data" is any information (in any format) that is directly related to an identifiable current or former student that is maintained by a school, school district, or related entity or organization, or by us, as part of the provision of the Products.

If you have any questions regarding the privacy and use of Your Information, please contact us.

### 3. Content and your rights

You are responsible for Content that you submit, upload, post or display to the Products, and any consequences thereof. The Content you submit, post, or display may be viewed by other Users of the Products. You may be able to control the Content that other Users of certain Products may access through the privacy options in certain Products.

You retain your rights to any Content you submit, upload, post, or display on or through the Products. By submitting, posting or displaying Content on or through the Products, you grant us a worldwide, non-exclusive, royalty-free licence to use, host, store, copy, reproduce, process, transmit, and display to relevant users, in any and all media or distribution methods as part of providing any of the Products, for the purpose of showing student work back to teachers at their school in Brightpath. You agree that this licence includes the right for Brightpath to provide, promote, and improve the Products. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any Content that you submit.

All Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Products, and we do not take responsibility for such Content. Any use or reliance on any Content or materials posted via the Products or obtained by you through the Products is at your own risk.

Brightpath respects the intellectual property rights of others and expects Users of the Products to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us.

We reserve the right to remove Content alleged to be infringing copyright without prior notice, at our sole discretion, and without liability to you.

### 4. Your license to use the products

#### A. License

Brightpath gives you a worldwide, royalty-free, non-assignable, and non-exclusive licence to use the Products, subject to these Terms and any agreement entered into by your institution relating to the Products, solely for the intended use of the Products, and not for competitive intelligence, analysis, or demonstrations. You may not copy, modify, distribute, sell, or lease any part of our Products, nor may you reverse engineer or attempt to extract the source code of any Product, unless laws prohibit those restrictions, or you have our written permission.

## B. Acceptable use

When using the Products you must not: (i) circumvent, disable or otherwise interfere with any security related features of the Products or features that prevent or restrict use or copying of the content accessible via the Products; (ii) create more than one account for use with a particular Product (iii) give any false or misleading information or permit another person to use a Product under your name or on your behalf; (iv) impersonate any person, or misrepresent your identity or affiliation with any person or give the impression they are linked to Brightpath, if this is not the case; (v) use a Product if we have suspended or banned you from using it; (vi) advocate, promote or engage in any illegal or unlawful conduct or conduct that causes damage or injury to any person or property; (vii) modify, interfere, intercept, disrupt or hack any Product or collect any data from a Product other than in accordance with these Terms of Use; (viii) misuse the Products by knowingly introducing viruses, Trojans, worms, logic bombs or other material which would harm the Products or any User of the Products' equipment; (ix) submit or contribute any Content that contains nudity or violence or is abusive, threatening, obscene, misleading, untrue or offensive (in each case unless such Content is submitted or contributed for a predominantly educational purpose, such as, for example, historical materials contributed via a Product for class discussion) (x) use any Content in violation of any licensing terms specified by the owner; (xi) submit or contribute any information or commentary about another person without that person's permission; (xii) threaten, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety or take any action that is likely to harass, upset, embarrass, alarm or annoy any other person; or (xiii) use any automated system, including without limitation "robots", "spiders" or "offline readers", to access a Product in a manner that sends more request messages to the Product than a human can reasonably produce in the same period of time.

Failure to comply with these rules of acceptable use constitutes a serious breach of these Terms of Use, and may result in our taking appropriate action (with or without notice).

## 5. Brightpath rights

The Products are always evolving and the form, nature, and/or functionality of the Products may change from time to time without prior notice to you. In addition, Brightpath may stop (permanently or temporarily) providing the Products (or any features within the Products) to you or to Users generally and may not be able to provide you with prior notice. We also retain the right to create limits on use and storage at our sole discretion at any time without prior notice to you.

All right, title, and interest in and to the Products (excluding Content provided by Users or other third parties) are and will remain the exclusive property of Brightpath and its licensors. The Products are protected by copyright, trademark, and other laws. Nothing in the Terms gives you a right to use the Brightpath name or any of the Brightpath trademarks, logos, domain names, and other distinctive brand features. Any feedback, comments, or suggestions you may provide regarding Brightpath, or the Products is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

## 6. Registration obligations & passwords

You may never use another User's account without permission from Brightpath. In consideration of your use of the Products, you agree (a) that Your Information will be true, accurate, current and complete, and (b) to maintain and promptly update Your Information to keep it true, accurate, current and complete. You are responsible for safeguarding any password that you use to access the Products and for any activities or actions under your password. We require you to use "strong" passwords. You agree to (a) notify Brightpath of any unauthorized use of your password or User identification and any other breach of security, and (b) ensure that you exit from your account at the end of each session.

## 7. Termination

We may suspend or terminate your accounts or cease providing you with all or part of the Products at any time for any reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms, (ii) you create risk or possible legal exposure for us; or (iii) our provision of the Products is no longer commercially viable. In such a termination event, the license granted hereunder shall automatically terminate. In all such cases, the Terms shall terminate, including, without limitation, your license to use the Products, except that the following Sections shall continue to apply: 2, 3, 5, 7, 8 and 9.

Nothing in this Section shall affect Brightpath's rights to change, limit, or stop the provision of the Products without prior notice, as provided elsewhere in these Terms.

## 8. Disclaimers & limitations of liability

Please read this Section carefully since it limits the liability of Brightpath and its parents, subsidiaries, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and/or licensors (collectively, the "Brightpath Entities"). Each of the Subsections below only applies up to the maximum extent permitted under applicable law. Nothing in this Section is intended to limit any rights you may have which may not be lawfully limited.

### A. The Products are Available "AS-IS"

Your access to and use of the Products or any Content are at your own risk. You understand and agree that the Products are provided to you on an "as is" and "as available" basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, the Brightpath entities disclaim all warranties and conditions, whether express or implied, of merchantability, fitness for a particular purpose, or non-infringement. No advice or information, whether oral or written, obtained from any of the Brightpath Entities or through the Products will create any warranty not expressly made herein.

### B. Third-Party Links and Resources

The Products may contain links to third-party websites or resources. You acknowledge and agree that the Brightpath Entities are not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by the Brightpath Entities of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources. If you access a third-party website or service from a Product or share your Content on or through any third-party website or service, you do so at your own risk, and you understand that these Terms and the Privacy Policy do not apply to your use of such sites.

### C. Limitation of Liability

To the maximum extent permitted by applicable law, the Brightpath entities shall not be liable for any indirect, incidental, special, consequential or punitive damages, or any loss of profits or revenues, whether incurred directly or indirectly, or any loss of data, use, good-will, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the products; (ii) any conduct or content of any user or other third party on, through, or associated with the products, including without limitation, any defamatory, offensive or illegal conduct of other users or third parties; (iii) any content obtained from the products; or (iv) unauthorized access, use or alteration of your transmissions or content.

#### D. Indemnity

You agree to defend, indemnify and hold harmless Brightpath and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to a Product, including any data or content transmitted or received by you; (ii) your violation of any provision of these Terms, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) any Content that is submitted via your User Account including without limitation misleading, false, or inaccurate information; (vi) your wilful misconduct; or (vii) any other party's access and use of a Product with your unique username, password or other appropriate security code.

### 9. General terms

#### A. Waiver & severability

The failure of Brightpath to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, then that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of these Terms will remain in full force and effect.

#### B. Entire Agreement

Nothing in these Terms supersedes or limits your rights under (1) the terms and conditions of any written agreement you have entered into with Brightpath regarding the use of Products, or (2) applicable laws or regulations to the extent these Terms are prohibited by such laws or regulations. In the event of any conflict between these Terms and the terms and conditions of an applicable written agreement you have entered into with Brightpath, the terms and conditions of the written agreement shall prevail.

We may revise these Terms from time-to-time, the most current version will always be linked to at <https://www.brightpath.com.au> If the revision, in our sole discretion, is material we will notify you through the Products or through the email associated with your profile. By continuing to access or use the Products after those revisions become effective, you agree to be bound by the revised Terms.