
END USER TERMS

Business Fitness (Accountants) Pty Ltd ACN 098 580 708 (Business Fitness)



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1. GENERAL

- (a) These End User Terms (“Terms”) apply to users’ (“you”, “your” or “users”) use of and/or access to any Business Fitness platforms, products, and the applicable services contained in an Order Form and/or accompanying that access and use (“Products”). In these Terms, “Business Fitness” or “us” means the entities listed below which provide the Products to you, or to the Business Fitness customer via whom you have been granted access to the Products (“Customer”), under the Master Services Agreement agreed between those parties (“MSA”), as the case may be:

PRODUCT	TERRITORY	BUSINESS FITNESS ENTITY
“Cirrus”; “Reportance”; “Active Ledger”; “Active Platform”; “Active Workpapers”; “Active Workflow”; “Active Documents”; “Active Share & Sign”; “Smart Suite”; “Smart Workpapers”; “HowNow”; “GoodBadUgly” (GBU)	Australia New Zealand	Business Fitness (Corporate) Pty Ltd ACN 113 529 445 Business Fitness (Accountants) Pty Ltd ACN 098 580 708
“Cirrus”; “Reportance”; “Active Ledger”; “Active Platform”; “Active Workpapers”; “Active Workflow”; “Active Documents”; “Active Share & Sign”; “Smart Suite”; “HowNow”; “GoodBadUgly” (GBU)	Rest of world	Active Software (Global) Pty Ltd ACN 660 113 477

- (b) By [checking the box next to “I agree”] or otherwise accessing or using the Products, you acknowledge that you have read, and agree to be bound by, the Terms.
- (c) These Terms are subject to amendments by Business Fitness as may be permitted under the relevant MSA.
- (d) Business Fitness reserves the right to make changes to these Terms from time to time at its discretion. Your continued use of the Products constitutes your acceptance of the amended Terms.
- (e) You must not use the Products if you are:
- (1) not the individual assigned to the account through which you are accessing the Products; or
 - (2) not at least 18 years of age.

2. LICENCE

As long as you comply with the Terms and where the nature of the Products provided to you by the Customer, Business Fitness grants you a non-exclusive, non-transferable, revocable, royalty-free, limited right to use the Products for your internal business purposes.



3. YOUR ACCOUNT

- (a) To complete the registration of your account for the Products, you must provide accurate and up-to-date information pertaining to your identity for verification purposes, which may include your full name, organisation name, position, email address, and telephone number (mobile).
- (b) You agree that you are responsible for maintaining the confidentiality of your account credentials, as well as for all activities that occur via your account. As such, you agree to protect your account from unauthorised access or use and to use or access the Products in accordance with the Terms at all times.

4. ACCEPTABLE USE

In using or accessing the Products, you must not:

- (a) share user credentials with others;
- (b) distribute a volume of emails higher than an amount deemed reasonable by Business Fitness, or otherwise misuse any communication or email tools;
- (c) use the Products to defame, spam or harass any person or to distribute, view or create any Material that may be pornographic, defamatory, offensive, obscene, illegal or unlawful;
- (d) use the Products in a way that may infringe the Intellectual Property Rights of Business Fitness or any third party;
- (e) reproduce any part of our Products for sale or incorporation into any other product or service intended for sale;
- (f) attempt to gain unauthorised access to any materials, documents or code other than which you have been given express permission to access, or to the computer system on which the Products are hosted;
- (g) transmit or upload to our Products any files, code or programs that may damage or corrupt the IT infrastructure, devices, data or software of Business Fitness or any third party;
- (h) make use of any resource or functionality supplied by use to an excessive extent as deemed by us, such as actioning excess file uploads and downloads, or permitting or facilitating access to our Products by more users than is permitted under the Customer's relevant subscription;
- (i) engage in any illegal or unlawful activity, including any fraudulent use of our Products;
- (j) engage in any activity that is otherwise deemed by us to be contrary to the way our Products are designed or permitted to be used;
- (k) engage in any activity that otherwise adversely affects other Customers' or users' use of, or access to, our products; or
- (l) engage in any activity otherwise deemed inappropriate by Business Fitness.

Users must not permit or facilitate the above acts by another person.

5. INTELLECTUAL PROPERTY RIGHTS

- (a) No rights of ownership to the Business Fitness IP are transferred under the MSA.
- (b) Any New IP that is created will be owned by, vest in, and (to the extent required) be assigned to, Business Fitness and you or any Customer must do all that is necessary to transfer New IP to Business Fitness, including entering into an assignment agreement for the transfer of the New IP to Business Fitness.
- (c) You must not do anything that infringes the Intellectual Property Rights of Business Fitness.



6. CONFIDENTIALITY

- (a) Each party must take all reasonable steps to ensure that its employees and agents, any sub-contractors, or persons otherwise engaged by either party, do not make public or disclose the other party's Confidential Information.
- (b) Each party must on demand, return to the other party any Confidential Information supplied by the other party in connection with the Terms.
- (c) Each party must use commercially reasonable efforts to ensure that all Confidential Information in its custody is protected at all times from unauthorised access or use by a third-party, and from misuse, damage or destruction.
- (d) You must ensure compliance with all security regulations, procedures or directions as may be given by Business Fitness from time to time relating to the Confidential Information or access to Business Fitness's Confidential Information.
- (e) Each party is not in breach of this clause 6 in circumstances where when dealing with the Confidential Information:
 - (1) it is legally required to disclose it; or
 - (2) each party discloses it to its related body corporate, related entities, personnel, solicitors, auditors, insurers or accountants for the purposes of these Terms.

7. AVAILABILITY AND SUPPORT

- (a) Except as otherwise agreed, Business Fitness makes no warranty, and has no obligation to ensure that:
 - (1) to the extent the Products include software, the software is error or defect free;
 - (2) the Products are available for use at any given time; or
 - (3) the Products are compatible with the infrastructure, IT systems, websites, webpages, or web content, including add-ons and widgets, you choose to access the Platform.
- (b) Subject to anything contained in the MSA to the contrary, Business Fitness and its third-party providers do not, and are not obligated to provide, any technical or other support for the provision of the Products to you.

8. WARRANTIES

You warrant to us that:

- (a) you have the full right and title to enter into the Terms;
- (b) that no information has been withheld from Business Fitness that may affect its decision to enter into the Terms;
- (c) you have satisfied yourself of the content of the Terms and, if necessary, obtained independent advice from a relevant expert to confirm same before entering into it; and
- (d) you will comply with any applicable laws, standards or regulations in respect of your access to or use of the Products.



9. LIMITATION OF LIABILITY

- (a) You acknowledge and agree that your ability and entitlement to access the Products is subject to you complying with your obligations under these Terms, and any other limitation or exclusion set out in same.
- (b) Unless otherwise specified, neither party is liable to Third Parties regarding, arising out of or in connection with, the Terms.
- (c) To the fullest extent permitted by law:
 - (1) you acknowledge that the Products are provided to you “as-is”, and Business Fitness excludes all warranties and representations (express and implied) unless otherwise stated to the contrary in these Terms; and
 - (2) Business Fitness excludes all liability to you under or in connection with these Terms, and your use, or Business Fitness’ provision, of the Products.
- (d) In the event that business Fitness cannot lawfully exclude liability arising under these Terms, and to the fullest extent permitted by law, in no event will Business Fitness’ total aggregate liability under these Terms exceed the sum of the fees paid by Customer to Business Fitness for your licence to the Product(s).

10. INDEMNITY

You agree to indemnify, and will keep Business Fitness indemnified against any:

- (a) Claims against Business Fitness;
- (b) Loss suffered by Business Fitness, arising from:
 - (1) any fraud or wilful conduct by you or your Personnel under or in connection with the Terms;
 - (2) any negligent acts of omissions by you or your Personnel under or in connection with the Terms; or
 - (3) your breach of the Terms.

11. TERMINATION

- (a) Where Business Fitness finds you in breach of these Terms, Business Fitness may contact you to discuss changing the contravening usage so that it conforms with the Terms.
- (b) If the contravening use continues after Business Fitness has contacted you, Business Fitness may, without further notice to you, suspend or limit the user’s access to any or all Products (or any feature of a Product) for any period we think is reasonably necessary.



12. PRIVACY

- (a) Your personal information and/or personal data will be collected and processed in accordance with Business Fitness's Privacy Policy, available at <https://www.active.businessfitness.com/au/privacy-policy-au>
- (b) You consent, acknowledge and agree that:
 - (1) any personal information (as defined in the Privacy Act 1988 (Cth) ("Privacy Act")) disclosed to Business Fitness through the use of the Products may be provided to Business Fitness' associated entities, third-party service providers or contractors ("Providers"), and/or stored on infrastructure used by Business Fitness, outside of Australia for the purpose of supplying the Products; and
 - (2) by continuing to use the Products, you expressly agree and consent to the disclosure of any personal information outside of Australia in the manner permitted by this clause.
- (c) In providing this consent you understand and acknowledge that countries outside Australia do not always have the same privacy protection obligations as Australia in relation to personal information however Business Fitness will endeavour to take reasonable steps to have Providers comply with similar privacy compliance obligations.
- (d) By providing your consent, under the Privacy Act, Australian Privacy Principle 8.1 does not apply to disclosures referred to in clause 12(b).

13. MISCELLANEOUS

- (a) These Terms are governed by and construed in accordance with the laws of Queensland, Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- (b) You must not assign, transfer or novate any of your rights or obligations (including your account) under or relating to these Terms.
- (c) Business Fitness can assign its obligations in these Terms by providing you with 30 day's prior written notice of such assignment.
- (d) If a provision of these Terms is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of these Terms have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.



14. DEFINITIONS

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent; or
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to these Terms or the MSA.

Confidential Information means, in relation to each party (for the purposes of this definition, Discloser), all information disclosed by or on behalf of the Discloser, concerning or relating to information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential or commercially sensitive, but excluding any such information:

- (a) which is publicly known;
- (b) which is disclosed to the other party without restriction by a third party (other than the Discloser) and without any breach of confidentiality by that third party; or
- (c) which is developed independently by other party without reliance on any of the confidential information.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

New IP means any and all Intellectual Property Rights created in the course of, or connection with, the provision of the Products and the performance of the services under the MSA.

Personnel means in relation to a party, any Related Body Corporate, Related Entity, employee, officer, agent, contractor, professional adviser of that party.

Related Body Corporate includes any corporation that is deemed to be related to a person by virtue of the provisions of the Corporations Act 2001 (Cth).

Related Entity means a person which is a related entity within the meaning of that term in section 9 of the Corporations Act 2001 (Cth).