
END USER TERMS

ACTIVE SOFTWARE PLATFORM UK LTD

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1. GENERAL

- (a) These end user terms (“**Terms**”) apply to users’ (“**you**”, “**your**”) use of and/or access to any Business Fitness platforms, products, and the services contained therein and/or accompanying that access and use (“**Products**”). In these Terms, “Business Fitness” 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
“Active Workpapers”; “Active Workflow”; “Active Documents”; “Active Share & Sign”; “Active Ledger”	UK	Active Software Platform UK Ltd Company number: 14943713
“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) Any terms that are capitalised but not defined in these Terms shall be as defined in the MSA.
- (c) 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.
- (d) These Terms are subject to amendments by Business Fitness as may be permitted under the relevant MSA.
- (e) Business Fitness reserves the right to make changes to these Terms from time to time. Your continued use of the Products constitutes your acceptance of the amended Terms.
- (f) You must not use the Products if you are:
- not the individual assigned to the account through which you are accessing the Products; or
 - not at least 18 years of age.

2. LICENCE

Subject to you complying with the Terms and where the nature of the Products provided to you by the Customer requires you to be able to access the Products, Business Fitness grants you a non-exclusive, non-transferable, revocable, royalty-free, limited right to download, install and use the Products for the Customer's 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). This personal data will be used as set out at clause 12.
- (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.

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 a 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 Order Form;
- (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. All Intellectual Property Rights in the Products shall belong to and remain vested in (or automatically upon creation shall vest in), Business Fitness. Except for the license(s) granted to you in these Terms, nothing in these Terms grants you any rights to or in any Intellectual Property Rights in the Products.
- (b) Any New IP that is created will be owned by, vest in, and (to the extent required) be assigned to, Business Fitness.
- (c) You must not do anything that infringes the Intellectual Property Rights of Business Fitness.
- (d) Without prejudice to clause (a), to the extent that your use of the Products results in any modifications, adaptations, developments, or any derivative works of or to the Products ("Improvements"), then notwithstanding any rights or remedies of Business Fitness under these Terms, any and all Intellectual Property Rights in and to such Improvements shall immediately vest in and be owned by Business Fitness.
- (e) Business Fitness makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the Products.
- (f) Business Fitness shall defend you against any third party claim that the use of the Products in accordance with these Terms infringes any third party Intellectual Property Right and shall indemnify you for and against any amounts awarded against you in judgment or settlement of such claims, provided that (i) Business Fitness is given prompt notice of such claim; (ii) you provide reasonable co-operation to Business Fitness in the defence and settlement of such claim, at Business Fitness's expense; (iii) Business Fitness is given sole authority to defend or settle the claim; and (iv) you make no admission of liability or fault itself or on behalf of Business Fitness.
- (g) In the defence or settlement of any claim pursuant to clause (f) above, Business Fitness may at its sole option and expense either: (i) procure for you the right to continue using the Products in the manner contemplated by these Terms; (ii) replace or modify the Products so that it becomes non-infringing; or (iii) terminate these Terms immediately by providing written notice to you, without liability to you.
- (h) Business Fitness shall not in any circumstances have any liability if the alleged infringement is based on: (i) modification of the Product by anyone other than Business Fitness; or (ii) your or any other User's use of the Product otherwise than in accordance with these Terms or in a manner contrary to the instructions given to you by Business Fitness; or (iii) your or any other User's use of the Products after notice of the alleged or actual infringement from Business Fitness or any appropriate authority; or (iv) use or combination of the Product with any other software or hardware, in circumstances where, but for such combination, no infringement would have occurred.

- (i) You shall defend Business Fitness against all or any costs, claims, damages or expenses incurred by Business Fitness in respect of any third party claim relating to the Customer's or any User's use of the Products otherwise than in accordance with these Terms, provided that (i) you are given prompt notice of such claim; (ii) Business Fitness provides reasonable co-operation to you in the defence and settlement of such claim, at your expense; and (iii) you are given sole authority to defend or settle the claim; and (iv) Business Fitness makes no admission of liability or fault itself or on your behalf.

6. CONFIDENTIALITY

- (a) Each party must take all reasonable steps to ensure that it, and 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) The provisions of clause (a) shall not apply to information that:
 - a. is or becomes generally available in the public domain otherwise than arising in connection with a breach of this clause by the recipient;
 - b. is lawfully in the recipient's possession free of any restrictions as to its use or disclosure at the time of disclosure by the disclosing party;
 - c. is lawfully acquired from an independent third party who did not itself obtain it under an obligation of confidentiality; or
 - d. is independently developed without access or reference to any information disclosed by the disclosing party.
- (c) Each party must on demand, return to the other party any Confidential Information supplied by the other party in connection with the Terms.
- (d) 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.
- (e) 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.
- (f) Each party is not in breach of this clause 6 in circumstances where when dealing with the Confidential Information:
 - a. it is legally required to disclose it pursuant to a court, governmental or administrative authority, or regulatory body order, provided that in each such case, the party shall, if legally permissible, notify the other party of the requirement as soon as reasonably practicable and use commercially reasonable endeavours to discuss with the other party and agree any possible limitations or restrictions on disclosure in advance to the extent permitted by law; or
 - b. each party discloses it to its affiliates, personnel, solicitors, auditors, insurers or accountants for the purposes of these Terms, provided that each party shall ensure that any such personnel to whom it discloses the other party's Confidential Information comply with this clause 6.
- (g) The provisions of this clause 6 shall survive termination or expiry of these Terms, however arising.

7. AVAILABILITY AND SUPPORT

- (a) Except as otherwise agreed, Business Fitness makes no warranty, and has no

obligation to ensure that:

- a. to the extent the Products include software, the software is error or defect free;
 - b. the Products are available for use at any given time;
 - c. 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; or
 - d. the Products are error-free.
- (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) For the avoidance of doubt, nothing in these Terms excludes either party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or for any liabilities that cannot be excluded under applicable law.
- (d) To the fullest extent permitted by law:
 - a. 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
 - b. Business Fitness excludes all liability to you under or in connection with these Terms, and your use, or Business Fitness' provision, of the Products.
- (e) 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's total aggregate liability under these Terms exceed the sum of the Service 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;
 - a. any fraud or wilful conduct by you under or in connection with the Terms;
 - b. any negligent acts or omissions by you under or in connection with the Terms; or
 - c. your breach of the Terms.

11. TERMINATION

- (a) These Terms shall continue in force for the duration of your use of a Product under the MSA entered into by the Customer unless terminated in accordance with this clause 11.
- (b) 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.
- (c) 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 www.active.businessfitness.com/uk/privacypolicy.
- (b) You acknowledge that any personal data (as defined in the Data Protection Legislation) disclosed to Business Fitness via the use of the Products may be disclosed to Business Fitness's associated entities, third-party service providers or contractors, and/or stored on infrastructure used by Business Fitness, outside of the UK and EEA.

13. MISCELLANEOUS

- (a) These Terms are governed by and construed in accordance with the laws of England and Wales, and each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.
- (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 our Customer 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.