



Pathways Terms of Use

Activ8 Technologies Pty. Ltd. ACN 081 199 715

1. Welcome to Pathways

Thank you for visiting our Terms of Use (**Agreement**), we are Activ8 Technologies Pty. Ltd. ACN 081 199 715 of PO Box 614, Paddington QLD 4064 (**Activ8, we, our, us** and other similar terms). We provide a cloud-based software application that manages work experiences, structured work placements and school-based traineeships and apprenticeships known as Pathways (**Pathways**).

This Agreement outlines the terms and conditions associated with your use of Pathways. It is your obligation to ensure that you have read, understood and agree to the most recent terms available at <https://pathwayscloud.com/> (**Website**).

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined in clause 19.1. They aid to clarify the terms and conditions. Please feel free to email us at hello@activ8.com.au if you have any questions.

2. Forming an Agreement with us

When we provide you with a copy of this Agreement it is an invitation to treat by us. After having received this Agreement, you may make an offer to us to enter into this Agreement by one of the following ways:

- (a) completing the online order form at <https://pathwayscloud.com/> and submitting it to us;
- (b) providing us with a Purchase Order; or
- (c) providing us with written instructions to implement Pathways.

In making an offer to enter into this Agreement on behalf of your employer or any other entity, you represent and warrant you hold authority to enter into this Agreement on behalf of that entity and that the entity will comply with the obligations contained herein.

If we accept your offer, you will be regarded as having entered into this Agreement and will be bound by the terms and conditions stated herein.

3. How long this Agreement lasts and renewal

3.1 Subscription Period

This Agreement will commence when we accept your offer to enter into this Agreement and will continue for the Subscription Period, and any subsequent Subscription Periods, or until the Agreement is terminated in accordance with clause 16 (**Term**).

3.2 Renewal

If this Agreement is not terminated in accordance with clause 16, at least 30 days prior to the expiry of the then current Subscription Period, this Agreement will automatically renew for a further Subscription Period.

At least 60 days prior to the expiry of the then current Subscription Period, we will provide you with advance written notice of the upcoming renewal and any changes to the Subscription Fees or terms of this Agreement which will take effect from the commencement of the new Subscription Period. Any further Subscription Periods will be covered by the terms and conditions of the latest version of this Agreement, unless otherwise agreed in writing.

4. Your licence to use Pathways

We grant you a non-transferrable, non-exclusive and revocable licence to access Pathways for the Term, solely for your internal organisational purposes and subject to the terms and conditions of this Agreement.

We reserve the right to limit or suspend your licence to access Pathways if you fail to pay the Subscription Fee, or if in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement. Suspending your account will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Subscription Fee.

5. Free Trial of Pathways

We may grant you access to our trial environment in order to allow you to evaluate Pathways. Where we provide access to our trial environment you must not share the user login credentials with anyone else. In using the trial environment you are bound by all the terms contained in this Agreement, in particular clauses 12(Confidentiality) and 14 (Intellectual Property) but excluding any term requiring you to make payment.

You acknowledge and agree that the trial environment and all information stored within it will be accessible by other users. As such, you agree to only enter and store trial data that is free to be accessed by other users and must not enter any Personal Information. Notwithstanding any clause to the contrary, any information you enter into a trial environment is immediately assigned to us.

6. Your use of Pathways

6.1 Registering Accounts

You will be granted as many Accounts to access Pathways as is determined by your Subscription Fee. You are responsible for assigning Accounts granted by us to your Users. In order to use Pathways, your Users will be required to provide us with Personal Information and agree to our end user terms of use. If they do not agree to those terms, we are under no obligation to grant that user access to Pathways.

You agree to provide any information reasonably requested by us for the purpose of setting up your Accounts. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us in writing whenever any such information changes and you will not provide false or misleading information.

6.2 Account security

Maintaining the security of your Accounts is important to ensuring your data and the Personal Information of you Users, Students and Hosts are secure. We work hard to keep Pathways secure and we ask you to contribute.

You are responsible for the activities of your Users that occur via Pathways, whether such activities are authorised or not. You are also responsible for granting and revoking access to Users and for ensuring each User is the sole person accessing Pathways via that Account. You agree to use your reasonable endeavours to procure that each of your Users will keep all Account details strictly confidential.

6.3 We are cloud based

You acknowledge and agree Pathways will only be accessible using the internet, by Users with a valid Account and will not be available "locally" from your own servers or devices.

6.4 Conduct which is expressly prohibited

Unless otherwise authorised by us in writing, you may only acquire and make use of Pathways for the sole purpose of meeting your internal organisational needs. This means you must not use or include any part of Pathways in any service bureau or fee generating service offered to third parties unless you have first obtained permission from us.

You must not and will use reasonable endeavours to procure that your Users do not:

- (a) undertake to upload or store any data on Pathways where such storage would breach any Privacy Law;
- (b) use Pathways directly or indirectly for any activity or transmit any information or material unlawfully, or which is obscene, indecent, uses offensive language, defames, abuses, harasses, stalks, threatens, menaces or offends any person;
- (c) knowingly transmit any viruses or other disabling features to or via Pathways;
- (d) intentionally disable or circumvent any protection or disabling mechanism of Pathways;
- (e) use Pathways in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of Pathways;
- (f) use Pathways in connection with a breach of any law in Australia or the jurisdiction in which you operate; or
- (g) attempt, facilitate or assist another person to do any of the above acts.

7. Payment for your use of Pathways

7.1 Invoicing and payment

We will provide you with a tax invoice for the Subscription Fee, and you agree to pay any outstanding amounts within 14 days of receipt.

Unless expressed otherwise, Subscription Fees are quoted in Australian Dollars and are exclusive of GST, withholding taxes, duties and charges imposed or levied in Australia, or overseas, in connection with this Agreement. You are solely responsible for providing evidence of being GST exempt, which in our sole discretion we deem acceptable, before any supply is made on a GST exempt basis.

7.2 Fee disputes

If there is a genuine dispute about whether all or any part of the Subscription Fee, or any other amount contemplated by this Agreement, is payable, you may withhold the disputed amount until the dispute is resolved and provide detailed notice of the nature of the disputed amount in writing prior to the due date for the invoice.

Provided you pay the non-disputed amount, we will not suspend your access to Pathways or terminate this Agreement for non-payment of the disputed fees while we investigate the dispute.

7.3 Late payment

If any Subscription Fee remains unpaid more than 30 days past its due date, we may, without limiting our other rights and remedies, suspend your access to Pathways until such amounts are paid in full. We will provide at least 7 days prior notice that the Subscription Fee is overdue before any such suspension.

Suspending your access will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Subscription Fee.

Interest at a rate of 1.5% per month (18 percent per annum), or at an interest rate equal to the maximum rate permitted by the applicable law, whichever is less, may be charged on overdue amounts at our sole discretion.

8. Agreements made using Pathways

8.1 We are not a party

You acknowledge that we are not a party to the relationship, agreement or any dealings between you and any Third Party through Pathways. You are solely responsible for:

- (a) determining the suitability of Third Parties before entering into an agreement with them;
- (b) negotiating, agreeing to, and executing any terms or conditions of any agreement you have with a Third Party; and
- (c) complying with the obligations of any agreement you have with a Third Party.

8.2 Independent legal advice

You must satisfy yourself of the suitability of any Paperwork you use, or any other agreement you enter into through Pathways with a Third Party, and obtain all legal and professional advice you deem necessary before entering into or relying upon the terms of the agreement with a Third Party. We make no warranties or representation regarding the suitability of any Paperwork, which you use to enter into an agreement with a Third Party.

9. The implementation of Pathways

We are happy to help you get started with Pathways. Our Implementation Services are designed to help you make the best use of Pathways as quickly as possible. Where Implementation Services are requested, we will liaise with you and form a plan to provision Pathways for your organisation (**Implementation Plan**). Typically, set up any letters and mail merges you have prepared and provide remote (Zoom/Teams etc) training for your Users.

You must ensure you dedicate sufficient resources and co-operate with us in order to bring about a successful implementation.

10. Our support and maintenance services

10.1 Support Services

While you maintain a valid licence to Pathways, we will provide support to assist you with technical issues which arise from your use of Pathways. Support will be provided in accordance with the Service Levels set out below. You may request support from us via the Support Portal or by contacting us on at help@activ8.com.au.

Users will be granted access to the detailed knowledge base accessible from within Pathways

10.2 Service Levels

For the purpose of understanding our Service Levels the following definitions apply:

Response means where we assign the error or defect in Pathways to an individual for resolution and advise you that this has been done.

Restore means when a solution to the error or defect (or a temporary work-around) has been implemented, enabling you to complete your work on Pathways.

Severity means as follows:

Level	Meaning
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Level 1	One or more of the following: <ul style="list-style-type: none"> • Pathways is not available to log in; or • Host Employer, Student, Placement modules have critical errors when visited.
Level 2	A specific technical feature of Pathways is not functioning (eg. emailing, document production)
Level 3	A specific function of Pathways is not functioning correctly (e.g. placement export not working)

We endeavour to Respond to and Restore faults which arise in Pathways within the following time frames:

Severity	Response Target	Restore Target
Level 1	4 hours	2 days
Level 2	8 hours	4 days
Level 3	24 hours	10 days

10.3 Pathways outages and system maintenance

If it is necessary to interrupt your use of Pathways, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, Pathways will be unavailable.

You acknowledge access to Pathways may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to Pathways which may change the interface and manner in which Pathways functions.

You agree that we are not liable for any loss, foreseeable or not, arising from any interruption to access, planned or not, and any such interruptions will not constitute a breach by us of these terms.

11. Privacy and information security

We are aware of the importance of protecting the Personal Information which we store in Pathways. We have a range of policies which relate to privacy and information security which we are happy to share with you. If you would like further information about our privacy and information security policies, please contact us.

We comply with our obligations under the *Privacy Act 1988* (Cth) including the Australian Privacy Principles. You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We will amend our Privacy Policy as required and in accordance with our obligations under the *Privacy Act 1988* (Cth). When we amend our Privacy Policy, we will post the new version on our Website.

The last thing we ever want is for a data breach to happen and we put a lot of effort into protecting User Data. However, we understand there is always a possibility of this happening and how people respond to such an event can have a significant bearing on the final outcome. As such, by entering into this Agreement each party acknowledges and agrees they will notify the other party of any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with this Agreement as soon as practicable after becoming aware of such activity. Furthermore, each party agrees to provide reasonable assistance to the other party in the investigation, assessment and containment of any data breach.

12. Confidentiality

12.1 Protecting Confidential Information

A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information, except where there is an express exclusion as set out in clause 12.3.

Each party will take all reasonable steps to ensure that its employees, agents, and any sub-contractors engaged for the purposes of the Agreement do not make public or disclose the other party's Confidential Information.

12.2 Permitted Disclosures

We may disclose information, including, but not limited to, your Personal Information or a transmission made using Pathways, in order to comply with a court order, subpoena, summons, discovery order, warrant, statute, regulation, governmental request, to protect our legal rights, prevent harm to persons or where such disclosure is necessary to the proper operation of Pathways (**Permitted Disclosures**).

You acknowledge and agree, we have no obligation to inform you if Permitted Disclosures are made.

12.3 Express exclusions

Notwithstanding any other provision of this clause 12:

- (a) either party may disclose the terms of this Agreement to its related parties, solicitors, auditors, insurers and accountants;

13. Our warranties to you

We warrant we own or have a licence to use the Intellectual Property in Pathways.

We warrant that for the Term, Pathways will perform substantially in compliance with any documentation we provide, including any training material or description of Pathways contained on the Website.

Subject to the Non-excludable Conditions, we make no warranties or guarantees:

- (a) that Pathways is fault free;
- (b) regarding Pathways' fitness for any particular purpose which we have not expressed;
- (c) regarding your access to, or the results of your access to, Pathways; or
- (d) any Third Party's ability, willingness or requirement to meet its obligations to you.

14. Use of Intellectual Property and User Data

14.1 The Intellectual Property in Pathways

Nothing in this Agreement assigns our Intellectual Property to you.

You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

- (a) create an adaptation or translation of, all or part of Pathways in any way;
- (b) incorporate all or part of Pathways in any other webpage, site, application or other digital or non-digital format;

- (c) except to the extent that reproduction occurs automatically through its ordinary use, directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in Pathways; or
- (d) attempt to do any of the above.

14.2 Your User Data

If you provide us with User Data, you retain ownership of such content. This Agreement does not transfer ownership of User Data to us. However, you are solely responsible for the accuracy of any User Data uploaded onto Pathways, including any User Data which is merged with Placement Postcards or Paperwork.

Where you provide User Data, you grant us a non-exclusive, worldwide, revocable, royalty-free, license to use, host, store, reproduce, modify and create derivative works of User Data (such as those resulting from translations, adaptations or other changes we make so that User Data works better with Pathways) for the purpose of allowing us to provide to you and improve your use of Pathways.

You represent that you own all rights to your User Data or otherwise have (and will continue to have) all rights and permissions to legally use, share, display, transfer and license your User Data to the extent that it is used within Pathways.

At your request we may offer to configure your environment to allow for the central coordination of multiple business units within your organisation. To access these features please contact us at hello@activ8.com.au.

15. Limitation of Liability

15.1 Implied Conditions

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

15.2 Limitation of Liability

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including Consequential Losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) Pathways being inaccessible for any reason;
- (b) incorrect or corrupt data, lost data, or any inputs or outputs of Pathways;
- (c) computer virus, trojan and other malware in connection with Pathways;
- (d) security vulnerabilities in Pathways or any breach of security that results in unauthorised access to, or corruption of data;
- (e) negligence arising from our activities or that of our service providers;
- (f) any unauthorised activity in relation to Pathways;
- (g) the occurrence of an Event of Force Majeure; or
- (h) any act or omission by you, your personnel, your associates or any related body corporate under or in relation to this Agreement.

Where a Non-excludable Condition is deemed to apply, to the fullest extent possible under the law, we limit our liability for any breach to in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the

cost of replacement or repair of the goods; and in the case of services: the resupply of the services or the payment of the cost of having the services resupplied.

15.3 Consequential Loss

Notwithstanding any other clause in this Agreement, and to the maximum extent permitted at law, neither party is liable to the other for any Consequential Loss.

15.4 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or your use of Pathways, including any costs arising from your breach of this Agreement, your infringement of any third party Intellectual Property rights associated with this Agreement, any harm to, claim or action by a third party (including to that third party's personal property) which arise directly or indirectly from your use of Pathways and your breach of any law including, Privacy Law.

16. Ending this Agreement

16.1 Termination notice

You may notify us of your intention to terminate this Agreement by sending us a Cancellation Notice to hello@activ8.com.au. We may notify you of our intention to terminate this Agreement by sending you a Cancellation Notice to your Pathways Coordinator.

16.2 Termination for convenience

Either party may terminate this Agreement by providing the other party notice in writing. Termination will take effect, at the end of the then current Subscription Period, if the notice is provided at least 30 days prior to the end of the then current Subscription Period. If notice is provided less than 30 days prior to the end of the then current Subscription Period, termination will take effect at the end of the subsequent Subscription Period.

16.3 Termination for cause

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after receipt of a notice to remedy.

16.4 Actions upon termination

Upon termination:

- (a) you must immediately stop using Pathways;
- (b) we reserve the right to permanently erase any data associated with your Account;
- (c) you will no longer have access to your Account; and
- (d) you must not attempt to access Pathways.

16.5 Transition out services

You are solely responsible for extracting any User Data held on Pathways which you wish to retain prior to termination. However, you may request us to provide transition or disengagement services, in which case we will:

- (a) prepare an agreement and plan which will specify relevant milestones, resources required, (including any resources you need to provide) and associated charges; and

(b) if you agree, provide the relevant services and you will pay us the associated charges.

When performing transition out services we will use reasonable endeavours to minimise disruption to your ongoing operations and reasonably co-operate with your incoming service provider (although nothing requires us to provide any incoming service provider with any of our confidential information).

17. Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 17 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, in Brisbane Queensland and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 17. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 17 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

18. General provisions

Assignment - We may assign, novate or otherwise transfer any of our rights or obligations under this Agreement without notice to you, or without obtaining your prior consent. However, if we require it you must sign any documents to give effect to an assignment, novation or transfer under this clause. You must not assign, novate or otherwise transfer any of your rights or obligations under this Agreement without our prior written consent, such consent not to be unreasonably withheld.

Entire Agreement - This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

Governing law - The laws of Queensland and the Commonwealth of Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Severability - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

Variations to this Agreement - We may vary this Agreement by giving you 30 days written notice prior to the end of the current Subscription Period. If you do not accept the terms of the variation you may terminate your subscription in accordance with clause 16.1.

Waiver - Clauses and rights in this Agreement can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Agreement does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances.

19. Definitions and interpretation

19.1 Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

Account or **Accounts** means the access credentials needed to access Pathways.

Agreement means these terms and conditions.

Cancellation Notice means a notice sent by either party, in accordance with clause 16.1, requesting the termination of this Agreement.

Confidential Information means information that is by its nature confidential, including but not limited to information relating to either party's personnel, your students, policies, practices, clientele, business strategies, Intellectual Property rights, the system operations associated with Pathways and security credentials. But does not include information already rightfully known to the receiving party at the time of disclosure by the other party or in the public domain other than as a result of a disclosure in breach of its obligations of confidentiality under this Agreement.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Event of Force Majeure means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Host means an individual or entity whose details you upload to Pathways and designate as a "host employer".

Implementation Services means services relating to the installation and configuration of Pathways, including importation of User Data and training on how to use Pathways.

Implementation Plan takes its meaning from clause 9.

Intellectual Property means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, Confidential Information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Paperwork means the documents obtained from Pathways, generated by a User and merged with User Data, including agreements, forms, letters, certificates, logbooks or other documents.

Parent means an individual whose details you upload to Pathways and designate as a "parent".

Pathways Coordinator means a User of yours designated in Pathways as a Pathways Coordinator.

Personal Information means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

Privacy Law means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

Privacy Policy means the privacy policy available on our Website as amended by us from time to time.

Purchase Order means a document provided to us by you outlining a request for the implementation of Pathways.

Service Levels takes its meaning from clause 10.2.

Student means an individual whose details you upload to Pathways and designate as a "student".

Subscription Fee means the monthly price for Pathways as agreed between the parties. Up to date pricing can be found on the Pathways web site, or via the helpdesk.

Subscription Period means 1 year.

Support Portal means the support system available via Pathways and the Website.

Third Party means any other person or entity who you interact with on or through Pathways, including Students, Parents and Host Employers.

Us, we or our means Activ8 Technologies Pty. Ltd. ACN 081 199 715.

User means the end user of Pathways.

User Data means, without limitation, any text, photos, images, audio, video, code, data or any other materials you directly upload onto Pathways or that you provide to us to upload onto Pathways.

Website means the website located at <https://pathwayscloud.com/> and any of its subdomains.

You or your means the organisation who has accepted this Agreement.

19.2 Interpretation

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

- (a) a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;
- (b) any reference to a trustee includes any substituted or additional trustee;
- (c) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
- (d) "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
- (e) where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
- (f) headings are for convenience and will not affect interpretation;
- (g) words in the singular will be taken to include the plural and also the opposite;
- (h) when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body;

- (i) a reference to a party's conduct includes omissions as well as acts; and
- (j) if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute.