



## **Pathways End User Terms of Use**

**Activ8 Technologies Pty. Ltd. ACN 081 199 715**

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## 1. Welcome to Pathways

Thank you for visiting our Pathways End User 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**).

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## 2. Forming an Agreement with us

By creating a Pathways Account, you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using Pathways.

Throughout this Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined in clause 14.1. They aid to clarify the terms and conditions. Please feel free to email us at [hello@activ8.com.au](mailto:hello@activ8.com.au) if you have any questions.

This Agreement will commence when you create a Pathways Account and will continue until the date of termination of this Agreement in accordance with clause 11 (**Term**).

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## 3. Your licence to use Pathways

You acknowledge and agree that to access Pathways, you are required to provide us with Personal Information and create an Account with us. You agree to provide any information reasonably requested by us for the purpose of setting up your Account and operating Pathways. We reserve the right to reject any new Account in our absolute discretion.

You warrant that all of the information you provide to us is accurate and complete in all respects and you will not provide false or misleading information.

In providing you with access to Pathways, we grant you a non-transferrable, non-exclusive and revocable licence for the Term, and subject to the terms and conditions, of this Agreement.

Maintaining the security of your Account is important to ensuring your Personal Information, and the data which we process on your behalf, remains safe. We work hard to keep Pathways secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorised employee or agent may create an Account on behalf of your organisation and a parent or guardian may control an account of their child. You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via Pathways, whether such activities are authorised by you or not.

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## 4. Your use of Pathways

You undertake not to upload, store or access any data on Pathways if such access or storage would infringe a person's Intellectual Property right, breach any Privacy Law or breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).

You must not:

- (a) in any way tamper with, hinder or modify Pathways;

- (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) use any screen capture, data mining, robot, crawler or similar data gathering, reproduction or data extraction tools to collect information from Pathways;
- (e) install or store any software applications, code or scripts on or through 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.

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## 5. Access to Pathways

You acknowledge and agree Pathways will only be accessible using the internet, with a valid Account, where a School has granted you access and will not be available "locally" from your own servers or devices.

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 it 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.

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## 6. Agreements made using Pathways

You acknowledge that we are not a party to the relationship, agreement or any dealings between users of Pathways or the entities they represent. Each party to an agreement formed using Pathways is solely responsible for:

- (a) determining the suitability of each other party before entering into an agreement with them;
- (b) negotiating, agreeing to, and executing any terms or conditions of any agreement which they form with another party; and
- (c) complying with the obligations of any agreement between parties.

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## 7. Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website.

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## 8. Confidentiality

A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information. Notwithstanding any other provision of this clause 8, a party may disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers and accountants.

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

A party will not be in breach of this clause 8 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

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## 9. Use of Intellectual Property and User Content

If you provide us with content, including, without limitation, text, photos, images, audio, video, code, data, Personal Information and any other materials (**User Content**), you grant us a perpetual, worldwide, royalty free licence to use, host, store and modify that User Content for the purposes of operating Pathways.

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

While we reserve the right to take down any User Content which is in breach of this Agreement, you acknowledge and agree we are not required to monitor User Content, nor are we responsible for it.

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) use Pathways in a manner which may infringe any other person's Intellectual Property;
- (c) incorporate all or part of Pathways in any other webpage, site, application, bureau service or other digital or non-digital format; or
- (d) 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.

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## 10. Warranties, liability and indemnities

### 10.1 Warranties

We aim to provide the best possible user experience, however, 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.

### 10.2 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.

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.

### 10.3 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with 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.

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## 11. Ending this Agreement

### 11.1 Termination for convenience

Either party may terminate this agreement by giving the other party 14 days notice.

### 11.2 Our right to terminate

We may terminate immediately:

- (a) with written notice where you commit a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, you have failed to remedy the breach within 14 days after the receipt of a notice to remedy;
- (b) if your account remains inactive for 90 days; or
- (c) if the School who invited you to use Pathways no longer holds a valid licence to use Pathways.

### 11.3 Actions upon termination

Upon termination you must immediately stop using Pathways, we reserve the right to permanently erase any data associated with your Account, and you will no longer have access to your Account.

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## 12. 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 12 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 12. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 12 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.

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## 13. General

**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 one month written notice to you. If you do not accept the terms of the variation you must immediately cease using Pathways.

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## 14. Definitions and interpretation

### 14.1 Definitions

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

**Account or Pathways Account** means the username and access credentials used when you access Pathways.

**Agreement** means these terms and conditions.

**Confidential Information** means information that is by its nature confidential, including but not limited to information relating to either party's personnel, 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.

**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.

**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.

**School** means the school, TAFE, government body or entity that purchases a licence and grants you access to Pathways.

**You or your** means the person or entity using Pathways.

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