

**DATE:**

October 27, 2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve a software license agreement with Active Hy-Tech Network for software to manage and score swim and dive meets at the KCSD Natatorium.

**APPLICABLE BOARD POLICY:**

08.2321 Copyrighted Materials

**HISTORY/BACKGROUND:**

Hy-Tek Sports offers the most complete swimming management software that is being used by schools, swim clubs and other organizations around the country. It provides a set of software tools that will help KCSD organize and manage top quality swim and dive meets

**FISCAL/BUDGETARY IMPACT:**

\$2,653.00 total paid by KCSD Aquatics

**RECOMMENDATION:**

Approval a software license agreement with Active Hy-Tech Network for software to manage and score swim and dive meets at the KCSD Natatorium.

**CONTACT PERSON:**

Matt Wilhoite

  
Principal/Administrator

  
District Administrator

  
Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.  
Principal—complete, print, sign and send to your Director. Director—if approved, sign and put in the Superintendent's mailbox.

**Invoice**

This form is a listing of a potential order and does not reflect an order that has been placed with Hy-Tek. Please print out this form since the data will be deleted as soon as you leave this form.

Click the Printer icon on your browser to get a printed record of this order.

Quantity	Description	Delivery	Price	Total
2	Swim Meet Manager Upgrade to Version 8.0	Web	\$ 269.00	\$ 538.00
2	Swim MM 8.0 Version Support Package	Web	\$ 20.00	\$ 40.00
2	Swim MM 8.0 Timing Console Interface	Web	\$ 295.00	\$ 590.00
3	Swim MM 8.0 Alpha Scoreboard Interface	Web	\$ 495.00	\$ 1485.00
				<b>SubTotal \$ 2653.00</b>
				<b>Shipping \$ 0.00</b>
				<b>Total \$ 2653.00</b>

**Thank you for choosing HY-TEK Sports Software Products**

Sincerely,

The Hy-Tek Team



January 1, 2023

**RE: 2023 Active Network, LLC IRS Form W-9**

Please find attached a Form W-9 for Active Network, LLC ("Active").

Due to Active's status as a single member LLC which is disregarded for federal income tax purposes, the name, entity type and federal employer identification number ("FEIN") of Active's parent company, Global Payments Inc. will appear on line 1, line 3 and Part I of the form respectively.

When setting up Active in your system, please use the following information:

Legal Name: Global Payments Inc.  
Doing Business as: Active Network, LLC  
FEIN: 58-2567903  
Remit to Address: PO Box 936565, Atlanta, GA 31193-6565

If you have any questions or concerns regarding this form, please contact Chris Muth at [christopher.muth@globalpay.com](mailto:christopher.muth@globalpay.com) or 404-926-9805. Please refer all other questions about your account to your sales representative.

Regards,

A handwritten signature in black ink, appearing to be "CM" or "Chris Muth", written in a cursive style.

Chris Muth  
Director, Indirect Tax

# ACTIVE Network Policies & Terms

## Policies

ACTIVE Copyright and  
Trademark Policy

ACTIVE Network Privacy  
Notice

ACTIVENet Privacy Notice

Social Media Policy

[Terms of Use](#)

Global Payments UK Tax  
Strategy

## Terms

Active Engagement Platform  
Product Terms

Active HY-TEK Services Terms  
And Conditions

Active Reserve Product  
Attachment

Active.com Listing Services  
Terms

## Terms of Use

[Print](#)

**EFFECTIVE DATE: MAY 25, 2018**

These Terms of Use are made and entered into by and between you and Active. **"Active," "we," "us," or "our"** means either (i) Active Network, LLC, with offices at 5850 Granite Parkway, Suite 1200, Plano, TX 75024, or (ii) if your billing address is in Canada, The Active Network, Ltd., with offices at Suite 2600, Three Bentail Center, 595 Burrard St, PO Box 49314, Vancouver, BC V7X 1L3. **"You," or "your,"** refers to you, a user of the Site or parent or legal guardian (over the age of 18) if such user is a minor in his or her state of residence. These Terms of Use shall apply to (a) all websites owned and/or operated by Active including without limitation the website on which these Terms of Use are posted and Active's subsidiary and/or affiliate entities, including but not limited to Maximum Solutions, LLC, JumpForward LLC, and Teampages Inc., whether or not referred to directly as Active, as well as mobile versions thereof and social networking service pages and applications (collectively, the **"Site"**), and (b) any and all services available on or through the Site (the **"Services"**). By accessing and/or using the Site, you are expressly agreeing to comply with and be bound by the following Terms of Use and any other policies, rules or guidelines that may be applicable to Services on the Site (**"Additional Terms"**), as well as all applicable laws and



Consumer Demand  
Generation Services Terms  
and Conditions  
Data Processing Addendum  
Digital Marketing Agency  
Terms  
Endurance, Sports, and  
Ticketing Product Terms  
Equipment Rental Terms  
Gateway API Product  
Attachment  
JumpForward Camps Product  
Terms  
JumpForward Product Terms  
Marketing Services Terms  
Payment Manager Product  
Terms  
Product and Service Terms  
Products and Services  
General Terms  
Purchase of Goods and  
Services  
Recreation and Membership  
Management Product Terms  
TeamPages Product Terms  
Third Party Hardware Terms  
Timing Equipment Sales and  
Lease Agreement Terms  
Timing Product Trial Period  
Terms

regulations. Further, you acknowledge that you have read and understood Active's Privacy Policy located at: <https://www.activenetwork.com/information/privacy-policy> (the "Privacy Policy"), which you understand will apply to the processing of your personal information in relation to the Site and the Services.

Active may revise and update these Terms of Use at any time; please periodically review them, because your continued usage of the Site indicates your agreement with any such changes. Any changes we make will be effective immediately upon notice, which we may provide by any means including, without limitation, posting a revised version of these Terms of Use on the Site. If we make any material changes to these Terms of Use, we will endeavor to notify you in advance of such change, by highlighting the change on the Sites or by sending an email to you at the email address that you have registered with us. You can determine when these Terms of Use were last revised by referring to the "Last Updated" legend at the top of these Terms of Use. You should return to this page periodically to ensure familiarity with the most current version of these Terms of Use.

To the extent that there is a conflict between these Terms of Use and the Additional Terms for an event, camp, license, class, ticket, contest, permit, facility/equipment reservation, transaction, sale, membership, reservation, donation, and/or activity for which you are using the Site to register or purchase (each, an "**Event**"), the Additional Terms of use shall govern. These Terms of Use will remain in full force and effect as long as you are a user of the Site and in the event of termination of any membership, service or feature, you will still be bound by your obligations under these Terms of Use, including any indemnification obligations, warranties, and limitations of liability.

**By using or attempting to use the Site, you certify that (i) you are a resident of the United States and are at least 16 years of age or, if under the age of 16, your parent has consented to your use of the Site via our consent mechanism as provided to your parent, or (ii) you are not a resident of the United States and are at least 18 years of age**

## Other Languages

Aviso De Privacidad

Aviso De Privacidad

Conditions Générales

D'utilisation

Condizioni D'uso

Cookie-Richtlinie

Datenschutzhinweis

Datenschutzhinweis

Déclaration De Confidentialité

Déclaration De Confidentialité

Informativa Sulla Privacy

Informativa Sulla Privacy

Nutzungsbedingungen

Data di entrata in vigore:  
venerdì 25 maggio 2018

Politique Sur Les Cookies

Política De Cookies

隐私声明

隐私声明

or, if under the age of 18, you have the consent of your parent or guardian (over the age of 18) to use the Site. You also certify that you are not a person barred from receiving Services under the laws of the United States or other applicable jurisdiction. If you do not meet these requirements or, if for any reason, you do not agree with all of the terms and conditions contained in these Terms of Use, you must stop using the Site immediately.

### 1. Registration.

You may browse the Site and view content without registering, but as a condition to using certain aspects of the Site, you may be required to register with Active and select a password and screen name (your "registration"). You are responsible for maintaining the confidentiality of your registration, and you undertake that you shall not disclose your registration to any other person. You shall not (i) select or use as your registration a name of another person with the intent to impersonate that person; (ii) use as your registration a name subject to any rights of a person other than you without appropriate authorization; or (iii) use as your registration a name that is otherwise offensive, vulgar or obscene.

You shall be responsible for all uses of your registration, whether or not authorized by you. You will immediately notify Active in writing of any unauthorized use of your account, or other account related security breach of which you are aware. You also agree to: (i) provide true, accurate, current and complete information about yourself as submitted to Active, and (ii) maintain and promptly update your registration information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Active has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Active has the right to immediately suspend or terminate your account and refuse any and all current or future use of the Site or Services (or any portion thereof) in its sole discretion.

Active's use of your registration data, together with other personal information, is addressed in the [Privacy Policy](#).



To the extent permissible by law, we are not liable for any harm caused or related to the theft or misappropriation of your user name or password due to your failure to take reasonable measures to maintain the confidentiality of your registration, your disclosure of your user name or password, or your authorization of anyone else to use your user name or password. If you have reason to believe that your registration is no longer secure, you must promptly change your password to the Site and immediately notify us of the problem by contacting us at [support@active.com](mailto:support@active.com). In the event of any dispute between two or more parties as to account ownership, you agree that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties.

## **2. Code of Conduct.**

In connection with User Content (as defined in Section 6 below) and your use of the Site, you agree that you will not, nor permit anyone else to, indirectly or directly:

- upload, post, email, transmit or otherwise make available any User Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as proprietary or confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- submit information that includes non-public personal or identifying information (including personal data) about another person without that person's explicit consent, where that person is specifically aware that Active will process their information for the purposes envisaged by your disclosure;
- upload, post, email, transmit or otherwise make available any User Content that infringes any

patent, trademark, trade secret, copyright or other proprietary rights of any party;

- restrict or inhibit any other visitor or member from using the Site, including, without limitation, by means of "hacking" or defacing any portion of the Site;
- access or attempt to access parts of the Site for which you are not authorized by Active, circumvent or attempt to circumvent any security or password protection on the Site, access the Site by any means other than through the interface that is provided and authorized by Active;
- modify any software for the Site in any manner or form, nor use modified versions of such software, including (without limitation) for the purpose of obtaining unauthorized access to the Site;
- use the Site or Materials (as defined in Section 3 below) for any unlawful purpose;
- express or imply that any statements you make are endorsed by us, without our prior written consent;
- impersonate any person or entity, whether actual or fictitious, including any employee or representative of Active;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any User Content transmitted through the Site;
- transmit (a) any content or information that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene, pornographic, hateful, vulgar or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (b) any material, non-public information about companies without the authorization to do so; (c) any trade secret of any third party; or (d) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or other

unsolicited commercial communication (except as otherwise expressly permitted by us);

- use the Site to harm minors in any way;
- engage in spamming or flooding;
- transmit any software or other materials that contain any viruses, worms, Trojan horses, defects, date bombs, time bombs or other items of a destructive nature;
- modify, adapt, sublicense, translate, sell, reverse engineer, decompile or disassemble any portion of the Site or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Site;
- remove any copyright, trademark or other proprietary rights notices contained on the Site;
- "frame" or "mirror" any part of the Site;
- "stalk" or otherwise harass another;
- link to any page of or content on the Site without written authorization;
- use any robot, bot, spider, offline reader, site search/retrieval application or other manual or automatic device or process to retrieve, index, data mine, scrape or in any way reproduce or circumvent the navigational structure or presentation of the Site or its contents without our prior written consent, including with respect to any CAPTCHA displayed on the Site. Notwithstanding the foregoing, Active grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. Active reserves the right to revoke these exceptions either generally or in specific cases;

- harvest or collect information about Site visitors or members without Active's express consent (which may be contingent upon you obtaining the consent of any such Site visitors or members, in the terms stipulated by Active);
- take any action that imposes or may impose (in Active's sole discretion) an unreasonable or disproportionately large load of data, information, or queries on our (or our third party providers') infrastructure;
- share use of your password or use any passcode or password, regardless of whether or not such passcode or password is unique, to participate in any offer on the Site if you are not the original recipient of such passcode or password;
- provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to Section 219 of the Immigration and Nationality Act; and/or
- violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law.

The foregoing actions shall constitute a material breach of these Terms of Use.

You acknowledge, consent and agree that Active may access, preserve and disclose your account information and User Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with laws, rules,



regulations, or legal process; (b) enforce these Terms of Use; (c) respond to claims that any User Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Active, its users and the public.

You understand that the technical processing and transmission of the Site, including your User Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

You understand that the Site and software embodied within the Site may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Active and/or content providers who provide content to the Site. You may not attempt to override or circumvent any of the usage rules embedded into the Site. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Site, in whole or in part, is strictly prohibited.

Should you choose to submit any ideas, suggestions, documents, and/or proposals ("**Submissions**") to Active through any of its media, you acknowledge and agree that: (a) your Submissions do not contain confidential or proprietary information; (b) Active is not under any obligation of confidentiality, express or implied, with respect to the Submissions; (c) Active shall be entitled to use or disclose (or choose not to use or disclose) such Submissions for any purpose, in any way, in any media worldwide; (d) Active may have something similar to the Submissions already under consideration or in development; (e) your Submissions shall automatically become the property of Active without any obligation of Active to you; and (f) you are not entitled to any compensation or reimbursement of any kind from Active under any circumstances.

### **3. Ownership and Restrictions on Use.**

The information and materials provided on or through the Site, including any content, data, text, designs, graphics, images, photographs, illustrations, audio and video clips,

logos, icons and links (collectively, the **"Materials"**) are owned exclusively by Active or its licensors, and are intended to educate and inform you about the events and other products and services offered or described on the Site. Subject to your compliance with these Terms of Use, you may use the Materials solely for your personal, non-commercial use, provided that you do not remove any copyright or other proprietary notices contained therein. Subject to your compliance with these Terms of Use, we grant you a limited license to use the Site and Materials for your personal use only; provided that you may not use, reproduce, modify, display, publicly perform, distribute, create derivative works of or circumvent any technological measure that effectively controls access to the Site and/or Materials in any way including, without limitation, by manual or automatic device or process, for any purpose. Notwithstanding anything to the contrary herein, all rights not specifically granted in the license set forth above shall be reserved and remain always with Active. Use of the Site and Materials for any purpose other than as expressly authorized in these Terms of Use is a violation of our copyrights and other proprietary rights, and is strictly prohibited.

The Site, including all Site software, databases, proprietary information, documentation, software, contents, computer codes, ideas, know-how and Materials (and all modifications and derivative works thereof and any intellectual property and other rights relating thereto or contained therein) including, without limitation, the selection, compilations, sequence and "look and feel" and arrangement of items, is owned and operated by Active and will remain the exclusive property of Active. You acknowledge that the Site is protected by copyright, trademark and other laws. You further acknowledge that you do not acquire any ownership rights by using the Site or the Materials. You shall not challenge, contest or otherwise impair Active's ownership of the Site and the content therein. The trademarks, logos, and service marks displayed on the Site (collectively the **"Trademarks"**) are the registered and unregistered trademarks of Active and Active's advertisers, licensors, suppliers and others.

The Trademarks owned by Active, whether registered or unregistered, may not be used in connection with any product or service that is not offered by Active, in any manner that is likely to cause confusion with customers, or in any manner that disparages Active. Nothing contained on the Site should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Trademark without the express written permission of Active, Active's licensors or suppliers, or the third party owner of any such Trademark. Misuse of any Trademarks is prohibited, and Active will aggressively enforce its intellectual property rights in such Trademarks, including via civil and criminal proceedings.

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Trademarks owned by Active include, without limitation, those published and searchable on the United States Patent and Trademark Office located at <http://www.uspto.gov> at "Trademarks Search" and the Canadian Trademark Office at: [http://strategis.ic.gc.ca/sc\\_mrksv/cipo/welcome/welcome.html](http://strategis.ic.gc.ca/sc_mrksv/cipo/welcome/welcome.html) at "Trade-marks Database" indicating Active Network, LLC as the identified owner for conducting such search.

#### **4. Making Purchases.**

If you wish to purchase products or services or register for an Event described on the Site (each, a "Transaction"), you will be asked to supply certain information applicable to your Transaction, including, without limitation, credit card and

other information. You understand that any such information will be treated by Active in the manner described in our [Privacy Policy](#). You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the price(s) in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your Transactions. In addition to these Terms of Use, your Transaction shall be subject to any Additional Terms applicable to such services, features or purchases. Registration for Events may be regulated by certain state, county and city laws or regulations. You acknowledge that complying with any such laws is your responsibility, and YOU AGREE NOT TO HOLD US LIABLE FOR YOUR FAILURE TO COMPLY WITH ANY LAW OR OUR FAILURE TO NOTIFY YOU OF, OR PROPERLY APPLY, ANY LAW. WE WILL COMPLY WITH LAW ENFORCEMENT AND MAY PROVIDE THEM WITH ALL INFORMATION YOU SUBMIT TO US TO ASSIST IN ANY INVESTIGATION OR PROSECUTION THEY MAY CONDUCT. You represent and warrant that all information you provide, including but not limited to all information concerning your name, address, credit card number, and other identifying information of any nature will be true, complete and correct, and that you will update all information as it changes. You agree that you will only use credit cards belonging to you or for which you are expressly authorized to use. You further agree that you will not attempt to conceal your identity or location by using virtual private networks ("VPNs") multiple Internet Protocol ("IP") addresses or email addresses. You grant Active the right to provide any information you submit to third parties for purposes of facilitating the completion of Transactions initiated by you or on your behalf. Verification of information may be required prior to the acknowledgment or completion of any Transaction.

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service; and/or to refuse to provide any user with any product or service. Verification of information applicable to a purchase may be required prior to Active's acceptance of any order. Price and availability of any product or service are subject to change without notice.

If we are unable to verify or authenticate any information you provide during any registration, ordering, purchase, sale, authentication, delivery, payment or remittance process, or any other process, or if we are no longer able to verify or authorize your credit card or bank account information, your event registration may be cancelled, we may refuse to honor all pending and future purchases made on such credit card accounts and/or on any online accounts associated with such credit card accounts, and you may be prohibited from using the Site. Charges and Billing. The Site may require payment of access fees. By registering for the Site, you hereby authorize Active to charge your credit card in advance for all applicable fees incurred by you in connection with your chosen service, purchase or registration for your account. You hereby understand and agree that in most cases, Active will be charging your designated credit card in accordance with the payment schedule of the Transaction, Service or Event for which you have registered, but some service fees may accumulate on your credit card account before they are actually charged to your credit card. You further understand and agree that it is your responsibility to notify Active of any changes to your credit card or if your credit card has expired, otherwise your access to the Service may be disconnected or interrupted. You shall additionally be responsible for and shall immediately pay Active, on demand, any payments that are made to us that are subject to an unjustified, subsequent reversal. Unless indicated otherwise, all fees shall be paid in U.S. dollars.

Active reserves the right to change any fees (which includes but is not limited to, charging a fee for packages, options, upgrades and/or a Service for which Active does not currently charge a fee) or billing methods at any time, provided, however, that such modifications shall not take effect earlier than thirty (30) days after Active posts such modification on the Site. Active also has the right to collect



applicable taxes and impose premium surcharges for some areas of the Service and these surcharges may apply immediately after you register for the associated service. You may cancel your account or any associated optional or upgraded services therefore at any time, but Active will not refund any remaining portion of your pre-paid fees and you may be charged an additional cancellation fee.

You agree to pay your account balance on time. You also agree to pay any taxes, including sales or use taxes, resulting from your Transaction or use of the Service. Amounts not paid by you to Active when due will be assessed an additional 1.5% (or the highest amount allowed by law, whichever is lower) per month if your payment is more than thirty (30) days past due. That amount is also due immediately. You are responsible and liable for any fees, including attorneys' and collection fees, that Active may incur in its efforts to collect any remaining balances due from you. These Terms of Use shall in no way limit any other remedies available to Active. You also understand and agree that you will be billed for and will pay any outstanding balances if you cancel your account or your account is terminated. You must notify Active of any billing problems or discrepancies within sixty (60) days after they first appear on your credit card account statement. If you do not notify Active within sixty (60) days, you waive any right to dispute such problems or discrepancies.

Parties other than Active provide services, or sell products or access to their Events on the Site. You may order services or merchandise through the Site from other parties not affiliated with Active ("**Seller**"). All matters concerning the merchandise and services desired from a Seller, including but not limited to purchase terms, payment terms, warranties, guarantees, maintenance and delivery, are solely between you and Seller. Active makes no warranties or representations whatsoever with regard to any goods or services provided by Sellers. You will not consider Active, nor will Active be construed as, a party to such transactions, whether or not Active may have received some form of revenue or other remuneration in connection with the transaction. You agree that Active will not be liable for any



costs or damages arising out of such transactions, either directly or indirectly. We are not responsible for examining or evaluating, and we do not warrant the offerings of, any of these businesses or individuals. Active does not assume any responsibility or liability for the actions, product or content of all these and any other third parties. You should carefully review their privacy statements and other conditions of use. It is the responsibility of the Event organizer to communicate its refund policy to you and to issue refunds to you via the Site or otherwise. You understand and agree that Event organizers reserve the right to cancel Events for various reasons, including, without limitation, in the event of weather events (including, but not limited to, heat, tornadoes, earthquakes, fires, storms, lightning and floods), accidents, acts of war or terrorism, military conflicts or riots or for any reason that would affect the safety and security of Event participants and spectators. In the event of such cancellation, there will be no refund of your payment unless authorized by the Event organizer. If you want to request a refund, you must request the refund directly from the Event organizer. To the extent that an Event is cancelled or does not meet your expectations for any reason, you must contact the Event organizer and your sole and exclusive remedy with respect to the Event is with the Event organizer and not with Active. All communications or disputes regarding refunds are between the Event organizer and you. Active will not be responsible or liable in any way for refunds, errors in issuing refunds or lack of refunds in connection with an Event. In addition, Active is not responsible for the truth or accuracy of any listings by Event organizers or the ability of any Event organizer to perform, hold an Event, or complete a transaction. Notwithstanding the foregoing, you may report the misconduct of Event organizers and/or third parties in connection with the Site or any Services to us, and we, in our sole discretion, may investigate the claim and take action.

**Donations.** When you make a donation, Active receives a fee for the use of our technology without any additional charge to you. Donations collected by Active will be sent in regular intervals to the designated charitable organization in accordance with contract and applicable law, less Active's fee. Any refunds shall be exclusively and directly handled by

the designated charitable organization. Active shall not be responsible for processing or making any refunds.

#### **5. Information Provided by Active.**

Although Active strives to provide Materials that are both useful and accurate, the nature of the data and other information contained on the Site are subject to frequent change. In addition, the facts and circumstances of every situation differ. Accordingly, although Active endeavors to use reasonable care in assembling the Materials, the Materials may not be up-to-date, accurate or complete.

In addition, portions of the Materials have been contributed to the Site by various artists, sports teams and other persons. The inclusion of such information does not indicate any approval or endorsement thereof, and Active expressly disclaims any liability with respect to the foregoing.

#### **6. Forums and User Content.**

Active and its designees may host message boards, blog feeds and other forums found on the Site (collectively, the **"Forums"**), and you may have the ability to provide or upload to the Site creative suggestions, ideas, notes, concepts, information, content, audio recordings, videos, photographs, graphics, artwork or other copyrighted works and materials (collectively, **"User Content"**).

By sending or transmitting User Content to Active, or by posting such User Content to any area of the Site, YOU GRANT US AND OUR DESIGNEES A PERPETUAL, WORLDWIDE, NON-EXCLUSIVE, UNLIMITED, TRANSFERABLE, FULLY SUBLICENSEABLE (THROUGH MULTIPLE TIERS), ASSIGNABLE, ROYALTY-FREE, FULLY PAID UP, IRREVOCABLE RIGHT AND LICENSE TO USE, REPRODUCE, DISTRIBUTE (THROUGH MULTIPLE TIERS), MODIFY, ADAPT, COMBINE WITH OTHER WORKS, CREATE DERIVATIVE WORKS OF, PUBLICLY PERFORM, DISPLAY, STORE, DIGITALLY PERFORM, PUBLISH (ON THE SITE, ON ANY OTHER WEBSITE(S), IN PRINT, RADIO, TELEVISION OR ELSEWHERE), MAKE, HAVE MADE, SELL, OFFER FOR SALE, IMPORT AND COMMERCIALIZE USER CONTENT, OR ANY PORTION THEREOF, IN ANY MANNER AND CONTEXT (INCLUDING BUT NOT LIMITED TO USAGE IN COMMERCIAL, ADVERTISING OR PROMOTIONAL MATERIALS), NOW KNOWN OR

IN THE FUTURE DISCOVERED, IN ACTIVE'S SOLE DISCRETION, IN ANY WAY, IN ANY AND ALL MEDIA NOW KNOWN OR HEREINAFTER DISCOVERED, WITHOUT LIMITATION AND WITHOUT ANY COMPENSATION OR ACKNOWLEDGMENT TO YOU OR ANY THIRD PARTY. To the extent permitted by law, you specifically waive any "moral rights" in and to the User Content. The foregoing grant includes without limitation, any copyrights and other intellectual property in and to your User Content. To the extent permitted by law, none of the User Content will be subject to any obligation, whether of confidentiality, attribution or otherwise, on our part and we will not be liable for any use or disclosure of any User Content. If you have any User Content that you would like to keep confidential and/or do not want others to use, do not post it to the Site. ACTIVE IS NOT RESPONSIBLE FOR A USER'S MISUSE OR MISAPPROPRIATION OF ANY USER CONTENT YOU POST TO THE SITE.

If Active does decide, in its sole discretion, to attribute User Content to you, you hereby grant Active the right to use your member name with respect to such attribution, and hereby completely and irrevocably release and forever discharge us from and waive any claims (including, without limitation, any privacy or publicity rights claims) with respect to such use of your member name. For clarity, the foregoing license grant to Active does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to the material in your User Content, unless otherwise agreed in writing.

You further acknowledge that Active (a) is under no obligation to post, display or otherwise use any User Content, and (b) has no obligation whatsoever to pay you any royalty or other amounts on any revenues or other consideration that Active receives directly or indirectly from the use or display of your User Content or otherwise from the exercise of Active's rights granted under these Terms of Use. You hereby agree not to instigate, support, maintain, or authorize any action, claim, or lawsuit against Active or its owners/operators, affiliates, and/or licensors, or any other person, on the grounds that any use of User Content, or any derivative works thereof, infringe any of your rights as creator of the User Content, including, without limitation, trademark

rights, copyrights, publicity rights, privacy rights and moral rights.

Information on our Forums may be provided by our staff and other contributors, some of whom use anonymous screen names and are people not otherwise connected with Active. You acknowledge that a large volume of information is available in our Forums and that people participating in such Forums occasionally post messages or make statements, whether intentionally or unintentionally, that are inaccurate, offensive, indecent, objectionable, obscene, threatening, harassing or encourages any such conduct, or that otherwise violate any of the Codes of Conduct, and you hereby completely and irrevocably release and forever discharge us from and waive, any legal or equitable rights or remedies you have or may have against Active with respect thereto. We neither endorse nor are responsible for such messages or statements, or for any opinion, advice, information or other utterance made or displayed on the Site or Forums by third parties, whether such third parties are visitors to the Site, members of the Active community or others. The opinions expressed in the Forums reflect solely the opinion(s) of the participants and may not reflect the opinion(s) of Active. We are not responsible for any errors or omissions in articles or postings, for hyperlinks embedded in messages or for any results obtained from the use of such information. Under no circumstances will we or our affiliates, suppliers or agents be liable for any loss or damage caused by your reliance on such information obtained through the Site. If notified by a user of User Content that allegedly does not conform to these Terms of Use, Active may in its sole discretion investigate the allegation and determine in good faith and in its sole discretion whether to remove the User Content.

You shall be solely responsible for your own User Content and the consequences of posting or publishing them. In connection with User Content, you affirm, represent and/or warrant that: (i) you own, or have the necessary licenses, rights, consents, and permissions to the User Content and to grant the rights and licenses to Active under all patent, trademark, trade secret, copyright or other proprietary or

intellectual property rights in and to any and all User Content in the manner contemplated by the Site and these Terms of Use; and (ii) you have the written consent, release, and/or permission of each and every identifiable individual person in the User Content to use the name or likeness of such person in the manner contemplated by the Site and these Terms of Use or, if such persons are minors, the written consent, release, and/or permission of such minor's parent or legal guardian. You further understand that the internet has no geographical boundaries, and you therefore agree to comply with all local rules regarding online conduct and acceptable User Content. You also agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside. You acknowledge and agree that we have the right to disclose such User Content and the circumstances surrounding their transmission to any third party in order to operate the Site properly; to protect ourselves, our sponsors and our members and visitors; and to comply with legal obligations or governmental requests.

Active reserves the right to delete from the Site any User Content, postings or member names and will cooperate fully with any law enforcement officials and/or agencies in any investigation, up to and including complete and immediate termination of your registration and/or accounts with Active. You acknowledge that Active may or may not pre-screen User Content, but that Active and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any User Content that is available via the Site. Without limiting the foregoing, Active and its designees shall have the right to remove any User Content that violates these Terms of Use or is otherwise objectionable, as determined in their sole discretion. You agree that you must evaluate, and bear all risks associated with, the use of any User Content, including any reliance on the accuracy, completeness, or usefulness of such User Content. In this regard, you acknowledge that you may not rely on any User Content created by Active or submitted to Active, including without limitation information in Active's message boards and in all other parts of the Site.

## 7. Links.

As a convenience to our members, we may provide links to third-party web sites. If you use these links, you will leave the Site. Your dealings with third parties through links to such third party websites or applications are solely between you and such third party. Unless otherwise explicitly stated, Active is not responsible for the content, goods or services provided on or through such websites, any updates or changes to such sites, for your use or inability to use such sites, or the privacy or other practices of such sites, and the fact that Active offers such links does not indicate any approval or endorsement of any material contained on any linked site. The linked sites are not under our control, and we make no representations as to the quality, suitability, functionality or legality of any sites to which we may provide links. Active expressly disclaims any responsibility for the content, legality, decency or accuracy of any information, and for any products and services, that appear on any third party website or application. You hereby completely and irrevocably release and forever discharge us from and waive any claim you might have against Active with respect to such sites.

Active and/or third parties may, from time to time, send email messages to you containing advertisements, promotions, etc. pursuant to our [Privacy Policy](#). Active makes no representation or warranty with respect to the content of any such email messages or any goods or services which may be obtained from such third parties, and you agree that, to the extent permitted by law, neither Active nor such third party shall have any liability with respect thereto. You agree not to forward or otherwise onwardly transmit any such email messages to other persons who are not named recipients of the original email.

YOU AGREE THAT YOUR USE OF INTERNET WEBSITES AND RESOURCES NOT CONTROLLED BY ACTIVE, INCLUDING WITHOUT LIMITATION, YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH WEBSITES AND RESOURCES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES AND



## RESOURCES.

### **8. Access By Minors.**

Active encourages parents to use appropriate parental discretion in determining whether to grant authorization to minor children to access the Site. Pursuant to 47 U.S.C. Section 230 (d), as amended, we hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available on external websites, two of which include GetNetWise ( <http://www.getnetwise.org/> ) and OnGuard Online ( <http://onguardonline.gov/> ). Please note that Active does not endorse any of the products or services listed at such websites.

### **9. Rules for Sweepstakes, Contests and Games.**

In addition to these Terms of Use, any sweepstakes, contests, games or similar promotions (collectively, “**Promotions**”) made available through the Site may be governed by specific rules that are separate from these Terms of Use. By participating in any such Promotion, you will become subject to those rules, which may vary from the terms and conditions set forth herein. Active urges you to review any specific rules applicable to a particular Promotion, which will be linked from such Promotion, and to review our [Privacy Policy](#), which, in addition to these Terms of Use, governs any information you submit in connection with such activities. To the extent such rules conflict with these Terms of Use, such rules shall control with respect to the particular Promotion.

### **10. Termination.**

These Terms of Use shall remain effective until terminated as set forth herein. We reserve the right to immediately terminate these Terms of Use, and/or your access to and use of the Site or any portion thereof, at any time and for any reason, with or without cause, including but not limited to repeated unauthorized postings of copyrighted works. Upon termination of these Terms of Use, your right to use the Site shall immediately cease, and you shall destroy all Materials obtained from the Site and all copies thereof. You agree that

any termination of your access to or use of the Site may be effected without prior notice, and that Active may immediately deactivate or delete your password and user name, and all related information and files associated with them, and/or bar any further access to such information or files. You agree that Active shall not be liable to you or any third party for any termination of your access to the Site or to any such information or files, and shall not be required to make such information or files available to you after any such termination.

## **II. Suspected Violation of these Terms or Law; Injunctive, Equitable Relief, and Liquidated Damages.**

Violations of these Terms of Use, including unauthorized use of the Site, may be investigated and appropriate legal action may be taken, including without limitation civil, criminal and injunctive redress. You understand and agree that in Active's sole discretion, and without prior notice, Active may terminate and block your access to the Site or to Active's other services, cancel your event registration, refuse to honor pending and future purchases made from all credit card accounts or online accounts Active believes may be associated with you, cancel an event registration associated with any person acting or believed to be acting in concert with you, remove any unauthorized User Content or exercise any other remedy available, if Active believes that your conduct or the conduct of any person with whom Active believes you act in concert, or the User Content you provide, or any resale of such event registrations purchased through Active, violates or is inconsistent with these Terms of Use or the law, or violates the rights of Active, a customer of Active or another user of the Site. Violating any limitations or terms on the Site, including but not limited to utilizing automated means to process or place event registrations that exceed the stated limit will be deemed to be a material violation of these Terms of Use.

You agree that monetary damages may not provide a sufficient remedy to Active for violations of these Terms of Use and you consent to injunctive or other equitable relief for such violations.

You agree that abusive use of the Site, as defined above, causes damage and harm to Active in the form of, among other things, impaired goodwill, lost sales, and increased expenses associated with responding to abusive use of the Site. You further agree that monetary damages for abusive use of the Site are difficult to ascertain and that proof of monetary damages for abusive use would be costly and difficult to calculate. Accordingly, you agree that liquidated damages are warranted for abusive use. Therefore, you agree that if you, or others acting in concert with you, alone or collectively request more than 1,000 pages of the Site in any twenty-four hour period, you, and those acting in concert with you, will be jointly and severally liable for liquidated damages in the amount of twenty-five cents (\$0.25) per page request each time that a page request is made after that first 1,000 during that twenty-four hour period. You acknowledge that: (a) Active has a valid interest in ensuring proper use of the Site; (b) this provision is reasonably tailored to that purpose; and (c) that the liquidated damages amount is a reasonable approximation of the costs and damages that Active would incur as a result of such action by you or others acting in concert with you.

Active is not required to provide any refund to you if it exercises any of its rights or remedies because you have violated these Terms of Use or any of Active's rights. Additionally, Active reserves the right, in its sole discretion, to modify, suspend or discontinue any part of this Site at any time, with or without notice to you. Active also reserves the right, in its sole discretion, to impose limits on certain features and services and to restrict access to the Site without notice to you. Active shall not be liable to you or any third party for any claim or cause of action arising out of its exercise of the foregoing rights.

## **12. Disclaimers.**

THE SITE, THE MATERIALS ON THE SITE, AND ANY PRODUCT OR SERVICE OBTAINED THROUGH THE SITE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, ACTIVE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE,

THE MATERIALS, AND ANY PRODUCT OR SERVICE OBTAINED THROUGH THE SITE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

THE INFORMATION ON THE SITE OR OTHERWISE IS PROVIDED WITH THE UNDERSTANDING THAT NEITHER ACTIVE NOR MEMBERS OF THE SITE, WHILE SUCH MEMBERS ARE PARTICIPATING IN ACTIVITIES ON THE SITE, ARE ENGAGED IN RENDERING LEGAL, MEDICAL, COUNSELING OR OTHER PROFESSIONAL SERVICES OR ADVICE. ACTIVE ENCOURAGES YOU TO SEEK APPROPRIATE PROFESSIONAL ADVICE OR CARE FOR ANY SITUATION OR PROBLEM WHICH YOU MAY HAVE. IN PARTICULAR, THE ACTIVITIES AND EXERCISES DESCRIBED IN TRAINING PROGRAMS AND ARTICLES ON THE SITE CAN BE DANGEROUS AND MAY RESULT IN INJURY OR DEATH. YOU SHOULD CONSULT WITH A LICENSED PHYSICIAN BEFORE PARTICIPATING IN ANY OF THE ACTIVITIES DESCRIBED ON THE SITE.

IN MOST INSTANCES, THE ABILITY OF ACTIVE TO PROVIDE SERVICES IS DEPENDENT UPON A TELECOMMUNICATIONS NETWORK OR THE INTERNET, WHICH MAY NOT BE FULLY SECURED, AS WELL AS GOODS AND SERVICES PROVIDED BY VARIOUS OTHER VENDORS AND THIRD PARTIES. ACTIVE DOES NOT WARRANT THAT YOUR USE OF THE SITE WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE, THAT DEFECTS WILL BE CORRECTED, THAT THE SITE OR THE SERVER(S) ON WHICH THE SITE IS HOSTED IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, THE SITE WILL MEET YOUR REQUIREMENTS, THE INFORMATION THAT MAY BE OBTAINED FROM THE USE OF THE SITE WILL BE ACCURATE OR RELIABLE, OR THE QUALITY OF ANY SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SITE WILL MEET YOUR EXPECTATIONS. YOU ACKNOWLEDGE THAT YOU ARE RESPONSIBLE FOR OBTAINING AND MAINTAINING ALL CONNECTIVITY OR INTERNET SERVICE, COMPUTER HARDWARE AND OTHER EQUIPMENT NEEDED TO ACCESS AND USE THE SITE, AND ALL CHARGES RELATED THERETO. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SITE AND YOUR RELIANCE THEREON. NO OPINION, ADVICE OR STATEMENT OF ACTIVE, WHETHER MADE ON THE SITE



OR OTHERWISE, SHALL CREATE ANY WARRANTY. ACTIVE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SITE OR ANY HYPERLINKED SITE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND ACTIVE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. YOUR USE OF THE SITE AND ANY MATERIALS PROVIDED THROUGH THE SITE ARE ENTIRELY AT YOUR OWN RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ACTIVE AND/OR ITS AFFILIATED PARTIES OR ON OR THROUGH THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

The Site, Materials or Forums may include inaccuracies or errors, or information or materials that violate these Terms of Use. Additionally, unauthorized alterations may be made by third parties to the Site, Materials or Forums. Although we attempt to ensure the integrity of the Site, we make no guarantees as to the Site's completeness or correctness. In the event that a situation arises in which the Site's completeness or correctness is in question, please contact us at [support@active.com](mailto:support@active.com) with, if possible, a description of the material to be checked and the location (URL) where such material can be found on the Site, as well as information sufficient to enable us to contact you. We will try to address your concerns as soon as reasonably practicable. For copyright infringement claims, see the Section on "Claims of Copyright Infringement," above.

### **13. Limitation of Liability.**

TO THE GREATEST EXTENT PERMITTED BY LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT NEITHER ACTIVE NOR ANY OF ITS AFFILIATES, SHAREHOLDERS, LICENSORS, SUPPLIERS, ADVERTISERS OR SPONSORS, NOR ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS OR OTHER REPRESENTATIVES, ARE OR WILL BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER

DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF DATA OR LOST PROFITS), UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE SITE AND/OR MATERIALS CONTAINED ON THE SITE, ANY LINKED SITE OR ANY PRODUCT OR SERVICE PURCHASED THROUGH THE SITE. WITHOUT LIMITING THE FOREGOING, TO THE GREATEST EXTENT PERMITTED BY LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT ACTIVE SHALL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR (I) THE USE OR THE INABILITY TO USE THE SITE, PRODUCTS, SERVICES OR ANY LINKED SITE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SITE OR ANY LINKED SITE; (III) USE BY YOU OF ANY TRAINING PROGRAM OR ANY OTHER PRODUCT PURCHASED THROUGH ACTIVE; (IV) YOUR PARTICIPATION IN ANY PROMOTION OR PROGRAM COORDINATED BY ACTIVE; (V) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, WHETHER ARISING IN CONTRACT OR IN TORT WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF ACTIVE; (VI) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; (VII) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE OR ANY LINKED SITE; (VIII) ANY FAILURE OF ANOTHER USER TO THE SITE TO CONFORM TO THE CODE OF CONDUCT; (IX) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SITE; (X) ANY BUGS, VIRUSES, WORMS, TROJAN HORSES, DEFECTS, DATE BOMBS, TIME BOMBS; MALICIOUS SCRIPTS; OR OTHER ITEMS OF A DESTRUCTIVE NATURE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SITE BY ANY THIRD PARTY; (XI) ANY ERRORS, MISTAKES, INACCURACIES OR OMISSIONS IN ANY MATERIALS, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY MATERIALS POSTED, EMAILED, TRANSMITTED OR OTHERWISE MADE AVAILABLE VIA THE SITE; (XII) ANY FAILURE OF AN EVENT ORGANIZER TO HONOR A REGISTRATION; (XIII) THE QUALITY, SAFETY OR LEGALITY OF EVENTS ADVERTISED ON THE SITE; (XIV) THE TRUTH OR ACCURACY OF ANY CONTENT OR EVENT LISTINGS ON THE SITE; AND/OR (XV) ANY OTHER MATTER RELATING TO THE SITE, OR ACTIVE PRODUCTS OR SERVICES. THE



MAXIMUM TOTAL AGGREGATE LIABILITY OF ACTIVE, ITS AFFILIATES, SHAREHOLDERS, LICENSORS, SUPPLIERS, ADVERTISERS AND SPONSORS, AND ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS AND OTHER REPRESENTATIVES, AND YOUR SOLE AND EXCLUSIVE REMEDY, FOR ALL DAMAGES, LOSSES SUFFERED BY YOU AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, SHALL BE THE GREATER OF THE TOTAL AMOUNT OF MONIES RECEIVED BY ACTIVE FROM YOU OR \$100 USD.

CERTAIN U.S. STATE AND NON-U.S. NATIONAL LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

#### **14. Indemnification.**

You agree to indemnify, defend and hold Active and its affiliates, licensors, suppliers, advertisers and sponsors, and their respective directors, officers, employees, consultants, agents and other representatives, harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees) and other expenses that arise directly or indirectly out of or from (a) your breach of these Terms of Use, including any violation of the Code of Conduct, above; (b) any allegation that any User Content or other materials you submit to us or transmit to the Site infringe or otherwise violate the copyright, trademark, trade secret or other intellectual property or other rights of any third party; (c) your activities in connection with the Site; and/or (d) termination of your access to the Site.

#### **15. Arbitration Agreement.**

(a) Except as prohibited by law, each party to these Terms of Use agrees that any claim, controversy or legal dispute arising out of or relating to these Terms of Use (hereinafter, a **"Dispute"**) will be resolved through binding arbitration administered by JAMS. If JAMS is not available in the state or jurisdiction in which you reside, then the Dispute will be resolved through binding arbitration administered by the

American Arbitration Association (the **"AAA"** ). This arbitration agreement is intended to be broadly interpreted and includes claims, controversies or disputes arising out of or relating to any aspect of the relationship between you and us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, all of which shall be considered within the definition of **"Dispute."** THE PARTIES UNDERSTAND THAT, EXCEPT AS EXPLICITLY SET FORTH TO THE CONTRARY HEREIN, THEY ARE WAIVING ANY RIGHT TO A JURY TRIAL WITH RESPECT TO DISPUTES. However, Active may not invoke its right to arbitrate any individual claim that you bring in small claims court, as long as it is brought and maintained as an individual claim. Notwithstanding the above, we both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights. Each party agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or these Terms of Use must be filed within two (2) years after such claim or cause of action arose or be forever barred.

(b) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ( **"Notice"** ). Any Notice to us should be addressed to: Chief Legal Officer, c/o Active Network, LLC, 5850 Granite Parkway, Suite 1200, Plano, TX 75024 ( **"Notice Address"** ). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought (**"Demand"**). If we and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, either party may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or us shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled. After we receive notice at the Notice Address that you have commenced arbitration, we will promptly reimburse you for your payment of the filing fee up to \$350, unless your claim is for greater than \$50,000 (as described further below).

(c) The arbitration will be conducted under and governed by the Commercial Arbitration Rules and the Supplementary

Procedures for Consumer Related Disputes of the AAA (collectively, the "**AAA Rules**"), except as specified in or modified by these Terms of Use. The AAA Rules are available online at [adr.org](http://adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The arbitrator is bound by the terms of this Section 15. All issues are for the arbitrator to decide, except that issues relating to the scope of the arbitration provision are for the court to decide (as described further in subsection (d) below). The rules promulgated by the AAA concerning class arbitration shall not apply. For any non-frivolous claim that does not exceed \$50,000, we will pay all costs of the arbitration (i.e. the JAMS filing and administration fee and the arbitrator's fee) up to \$350 for an arbitration initiated in accordance with this arbitration agreement. If, however, the arbitrator finds that either the substance of your claim or the relief sought is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse us for all monies we previously disbursed that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$50,000 in damages, the payment of these fees will be governed by the AAA rules.

(d) Notwithstanding the AAA Rules, the foregoing or any other provision of these Terms of Use (including the arbitration agreement), any disagreement or dispute concerning arbitrability (whether a particular Dispute is arbitrable) or the scope of this arbitration agreement shall be resolved by, if your billing address is in Canada, the Supreme Court of British Columbia, or otherwise, by the United States District Court for the federal district in which you reside; provided that if that United States District Court lacks subject matter jurisdiction, then any such disagreement or dispute shall be resolved by the state court of general jurisdiction embracing the area in which you reside. By way of example only (and not by limitation), if the parties do not agree on whether a particular Dispute is subject to arbitration under this arbitration agreement, the proper tribunal to decide such Dispute is the United States

District Court (for the appropriate district, as provided above) or, absent subject matter jurisdiction in that United States District Court, in the appropriate state court (as described above). The arbitrator shall stay all arbitration proceedings pending a decision from the appropriate court on disputes under this subsection (d). The arbitrator shall follow, adhere to and defer to the decision, order, decree or judgment of the court following the court's decision of any such dispute under this subsection (d). Any action, award or partial award of the arbitrator in contravention of this limitation may be the subject of court appeal by the aggrieved party. No other aspect of any ruling by the arbitrator shall be appealable, and all other aspects of the arbitrator's ruling shall be final and non-appealable, except as set forth herein.

(e) WAIVER OF CLASS-WIDE PROCEEDINGS: You agree that, by entering into these Terms of Use, you and we are each waiving the right to participate in a class action or class arbitration. Each party to these Terms of Use agrees and covenants that it will not initiate any class-wide proceedings, including class actions or class arbitrations, against another party, and will not act as a class representative or class member. This provision constitutes an agreement that any Dispute will be resolved exclusively on a bilateral basis between the parties, with each party acting in his/her/its individual capacity. Further, unless both parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If for any reason the prohibition on class arbitration in this subsection (e) is not or cannot be enforced, then the agreement to arbitrate will not apply.

(f) These Terms of Use evidence a transaction in interstate commerce, and thus the Federal Arbitration Act (the "FAA") governs the interpretation and enforcement of this provision. Texas state law and procedures concerning arbitration shall apply to these Terms of Use only to the extent that they do

not conflict with and are not inconsistent with the FAA. This arbitration agreement shall survive termination of these Terms of Use.

(g) Unless both parties agree otherwise, any arbitration hearings will take place in the Dallas, Texas, or another location mutually agreeable to the parties. Subject to the terms of this arbitration agreement, all Disputes shall be decided by a single arbitrator, who shall be either: (1) a retired federal judge; (2) a retired state court judge who sat on a trial court or appellate court for at least five (5) years; or (3) an attorney admitted to practice in the state in which the Dispute will be resolved for at least twenty-five (25) years with no disciplinary history. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS (or the AAA, as applicable) and request selection of an arbitrator in accordance with the applicable AAA Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted.

(h) This arbitration agreement is not intended to modify or limit the remedies available to either party, including the right to seek interim relief, such as injunction or attachment, through judicial process, which will not be deemed a waiver of the right to demand and obtain arbitration. Any Dispute that is not arbitrated, including any judicial action to enforce this arbitration provision will be litigated exclusively in, if you reside in Canada, the Supreme Court of British Columbia, or otherwise in the United States District Court for the federal district in which you reside, and the parties hereby consent and submit to the jurisdiction and venue of such court; provided that if that United States District Court lacks subject matter jurisdiction, then any such disagreement or dispute shall be resolved by the state court of general jurisdiction embracing the area in which you reside.

(i) The arbitrator shall have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law;



provided, however, that in no event shall the right to discovery granted to the parties to these Terms of Use exceed ten (10) interrogatories, twelve (12) documents requests, two third-party subpoenas, and one deposition (of not more than four hours), per side. The parties may submit such pre-arbitration and post-arbitration briefs (including briefs during arbitration) as they choose, provided that no party shall submit briefing exceeding a reasonable page limitation to be set by the arbitrator. In the event any party submits a motion, the arbitrator shall consider the motion and either deny it or request opposition briefing by the non-moving party, which shall not be required until requested by the arbitrator. The arbitrator may not grant a motion without allowing the opposing party an opportunity to oppose. The total length of the arbitration hearings on the merits shall not exceed 10 hours of hearing time, to be divided equally between the opposing sides. All discovery shall be completed no later than sixty (60) days after appointment of the arbitrator. The hearing shall be concluded no later than one hundred eighty (180) days after appointment of the arbitrator, unless the arbitrator's schedule requires a later hearing. The arbitrator may only extend these limits at the request of a party when the arbitrator finds exceptional cause for the extension. The parties may extend these limits by mutual agreement.

(j) The arbitrator shall be required to issue a written arbitration decision including the arbitrator's essential findings, conclusions and a statement of award. Except as set forth herein, the arbitrator shall have exclusive authority to resolve all Disputes.

#### **16. Connectivity; Mobile.**

Normal carrier charges and taxes may apply to any Materials you access from the Site. Active is not responsible for any surcharges you incur from your cell phone or internet service provider as a result of the use of the Site. With respect to mobile versions or applications, your carriers' normal rates and fees, including text messaging and data fees may apply to your use of the Site or Services. In the event you change or deactivate your mobile telephone number, you will endeavor to update your account information within 48 hours to

ensure that your messages are not sent to the person who acquires your old number.

#### **17. Applicable Law.**

You and Active agree that (i) for users in Canada, the statutes and the laws of British Columbia, without regard to the conflict of laws principles thereof, will apply to all matters relating to the use of the Site and (ii) for all other users, the statutes and laws of the State of Texas, without regard to the conflict of laws principles thereof, will apply to all matters relating to use of the Site.

#### **18. U.S. Export Controls.**

This Site and software derived from this Site is further subject to United States export controls. No software from this Site may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Site or any software derived therefrom, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

#### **19. Privacy.**

We believe that your privacy and the privacy of all our users are important. These Terms of Use should be read alongside our Privacy Policy, which is a non-contractual document providing important information about how your personal information is used. Please carefully review our [Privacy Policy](#). Whilst the Privacy Policy does not create contractual obligations for either Active or you, you acknowledge and agree that, to the extent permitted by law, any disputes related to our [Privacy Policy](#), including any breaches in security or privacy (and statutory obligations relating to security or privacy), will be subject to the limitations on liability contained in these Terms of Use. By registering for and participating in a sports Event, you understand and agree that your activity or event, or other results may be posted by the Event organizer. If you would prefer that your

results not be posted or be taken down, you must contact the organizer of the Event directly, and Active is not responsible for the posting or removal of such information. Active will not be responsible or otherwise liable for any use or disclosure of your contact information, or financial information, by a third party to whom Active is allowed to disclose your contact information under the [Privacy Policy](#). If you post any User Content to the Site, by email or otherwise, we will treat it as non-confidential and non-proprietary to you. When we say in these Terms of Use "post" we mean the provision of information to the Site through features of the Site that are used to make information available to other members of the public (e.g., user reviews, bulletin/message boards, chat rooms, etc.). User Content is outside of the scope of the [Privacy Policy](#) and may be publicly displayed and disclosed and otherwise used by Active or any third party in any way. By posting User Content to the Site, you authorize us to use or allow others to distribute, reproduce or otherwise use such User Content. You should not post information about yourself on the Site that can be used to identify or contact you, including, but not limited to, your name, home or work address, phone numbers, email address or other such information. If you post such information, Active cannot prevent it from being used in a manner that violates these Terms of Use, the law, or your personal privacy and safety. By posting such information on the Site, you violate these Terms of Use, and you assume the risks and sole liability for the results of such posting.

## **20. Questions.**

If you have any questions, comments or complaints regarding these Terms of Use or the Site, feel free to contact us at: [support@active.com](mailto:support@active.com)

## **21. Notice Regarding Electronic Commercial Services for California Users.**

Under California Civil Code Section 1789.3, California Site users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916)

445-1254 or (800) 952-5210.

## **22. Notice.**

Active may provide you with notices, including those regarding breaches of security, by email, regular mail or postings on the Site. All notices from you to Active must be sent to Active Network, LLC, 5850 Granite Parkway, Suite 1200, Plano, TX 75024 or [support@active.com](mailto:support@active.com) and such notices will be deemed received the next day if sent via email, overnight mail or courier or three (3) days after deposited in the mail sent certified or registered.

## **23. Miscellaneous.**

Active may assign its rights and obligations under these Terms of Use and upon such assignment, Active may be relieved of any further obligation hereunder. You may not assign any of your rights or obligations under these Terms of Use. Any assignment in violation of these terms is void.

Rights and obligations under these Terms of Use which by their nature should survive will remain in full effect after termination or expiration of the Terms of Use.

You represent to Active that you have the authority to register with Active according to these Terms of Use. The failure of Active to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision. The section titles in these Terms of Use are for convenience only and have no legal or contractual effect. Active may provide you with notices, including those regarding changes to these Terms of Use and notices regarding breaches of security, by email, regular mail or postings on the Site. Except for certain Active licensors, or as may be otherwise expressly provided herein, there are no third-party beneficiaries to these Terms of Use. If any provision of these Terms of Use is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (i) the validity, legality, and enforceability of the remaining provisions of these Terms of Use (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) shall not in any way be affected or impaired



thereby, and (ii) to the fullest extent possible, the unenforceable provision shall be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and these Terms of Use shall be deemed amended accordingly. We may translate these Terms of Use, our [Privacy Policy](#) or any other operating rules, policies and procedures that may be published from time to time on the Site into other languages for your convenience. The English language version of each of these documents is the version that governs your use of the Site and in the event of any conflict between the English language version and a translated version, the English language version will control. A printed version of these Terms of Use and of any notices given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.