

ACTIVE.COM LISTING SERVICES TERMS AND CONDITIONS

Last Updated October 26, 2016

Client's use of Active's event listing service(s) (the "**Services**") is subject to the terms set forth below (this "**Agreement**") and is between Client and Active. "**Active**" means Active Network, LLC with a principal place of business is at 717 N Harwood Street, Suite 2500, Dallas, TX 75201. "**Client**" means any party other than Active entering into this Agreement. Each of Client and Active shall hereinafter be a "**Party**" and collectively "**Parties**." In order to use the Services, Client must first agree to this Agreement. Client represents and warrants that Client has the necessary and full right, power, authority, and capability to accept this Agreement, to bind Client's organization, and to perform Client's obligations hereunder. Client can accept this Agreement by: (a) clicking to accept or agree to this Agreement, where this option is made available to Client by Active in the user interface for any Service; (b) where a link to this Agreement appears in an order form or other document provided to Client by Active; (c) by signing this Agreement if there is a designated area to sign; or (d) by actually using the Services. In the case of (d), Client understands and agrees that Active will treat Client's use of the Services as acceptance of this Agreement from that point onwards. Client may not use the Services and may not accept this Agreement if (i) Client is not of legal age to form a binding contract with Active, or (ii) Client is barred from receiving the Services under the laws of the United States or other countries including the country in which Client resides or from which Client uses the Services. Client may not use the Services if Client does not accept this Agreement. "**Effective Date**" means the date that Client accepts this Agreement. By accepting this Agreement, Client agrees as follows:

1. **Services.** Active will provide to Client an event listing on Active.com (the "**Listing**") related to Client's events ("**Events**"). The Listing will, upon approval by Active, be posted by Active and be available to search on all related searches on Active.com ("**Service(s)**"). Each Listing will be linked to the respective url provided by Client.
2. **Active Obligations.** Except as otherwise set forth herein, Active agrees to post on Active.com the Listing and maintain the Listing through the duration of the Event, or for one year from the Effective Date, whichever occurs first. Active agrees that it will use commercially reasonable efforts to post the Listing within two (2) business days following such order placement. Active does not guarantee any number of impressions, clicks, views, visits, etc. in conjunction with the Listing on Active.com. Active reserves the right to remove any Listing at its discretion for any or no reason including if it determines that any elements of the Listing are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or that violate any intellectual property rights or this Agreement. Active reserves the right to reject any Listing for any reason and Active is not liable for any costs associated with any Listing that has been rejected.
3. **Client Obligations.** At the time of order placement, for Active to perform the Services, Client must provide Active with all relevant Event information which will include, at a minimum, the date, time, event details and event registration link. Further, if applicable, Client will provide key messaging, product shots and logos for use in the Listing. Client agrees to secure all necessary licenses, contents, authorizations and other rights to materials it supplies to Active to permit Active to use such materials in order to provide the Services. Further, Client represents and warrants that, by using this Service, it is not in violation of any other agreement it may have in place and that it is not subject to any exclusivity requirements which would prohibit it from entering into this Agreement with Active.
4. **Compensation.** All fees associated with the purchase of a Listing are due at the time of order placement. However, actual placement of the Listing on Active.com is at Active's discretion. Client is responsible for all taxes, duties, and other charges in the nature of taxes and duties (excluding taxes on the net income of Active) exigible in relation to the Services.
5. **Client's Representations and Warranties.** Client represents and warrants that (a) the performance of its obligations hereunder does not and will not violate any applicable laws, rules, or regulations; (b) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (c) this Agreement constitutes the valid and binding obligation of Client, enforceable in accordance with its terms; (d) none of the Client IP (as defined below) nor any information provided for use with the Listing will infringe upon the intellectual property rights of any third party; (e) Client's proposed marketing of the Events, and the advertising of such Events conform to all state and federal laws and regulations relating to adulteration, misbranding, labeling safety and the advertising thereof; (f) all licenses, agreements, permits, waivers, releases, registrations, approvals, and/or authorizations required in connection with its performance under this Agreement have been or shall be timely obtained and will be valid and sufficient for its performance; and (g) it shall not direct Active to perform any services or engage in activities that would cause Active to violate any applicable laws, rules, or regulations in carrying out its obligations hereunder. Any and all content provided by Client must provide informational value to the audience and should meet the standard of being publishable.
6. **IAB Terms.** Further, this Agreement incorporates and is subject to the Standard Terms and Conditions for Internet Advertising for Media Buys One year or less, which can be found at http://www.iab.net/media/file/AB_4As-tsandcs-FINAL.pdf ("**IAB Terms**"), as amended by the Addendum to the IAB Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less ("**Addendum**"), attached hereto. To the extent there is a conflict in the terms of the Agreement, the IAB terms and the Addendum, the order of precedence shall be as follows: this Agreement, the Addendum, and the IAB terms and conditions.
7. **Indemnification.**
 - a) Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and its directors, officers, employees, agents, subcontractors, representatives, affiliates, successors, and assigns (the "**Indemnified Party**") from and against any and all third party claims, losses, liability, costs and expenses (including reasonable attorneys' fees) (each, a "**Claim**") against the Indemnified Party to the extent based upon provision by the Indemnifying Party of materials, products, or services that infringe the intellectual property rights of any third party provided that such materials, products, or services are used in accordance with this Agreement.
 - b) In addition, Client hereby agrees to indemnify and hold harmless Active and its directors, officers, employees, agents, subcontractors, representatives, affiliates, successors, and assigns from and against any and all Claims based upon (i) any actual,

alleged or anticipated breach by Client of this Agreement, (ii) any actual, alleged or anticipated breach by Client of any applicable law; or (iii) injury or death to a person or damage to property resulting from the participation in an Event operated by Client in connection with the services.

8. **Indemnification Claims Procedure.** Each Party's obligations under Section 7 are conditioned upon (a) prompt written notice of the existence of a Claim, provided that a failure of prompt notification shall not relieve the Indemnifying Party of liability hereunder except to the extent that defenses to such Claim are materially impaired by such failure of prompt notification; (b) sole control over the defense or settlement of such Claim by the Indemnifying Party, provided, however, that the Indemnifying Party shall not, in the defense of any such action, consent to the entry of any judgment or enter into any settlement where such entry of judgment or settlement does not include a provision releasing the Indemnified Party from all liability with respect to such Claim, except with the written consent of the Indemnified Party, (which consent shall not be unreasonably withheld, conditioned or delayed); and (c) the provision of assistance by the Indemnified Party at the Indemnifying Party's request to the extent reasonably necessary for the defense of such Claim.
9. **Disclaimer of Warranties and Limitations of Liability.** TO THE EXTENT PERMITTED BY LAW, ACTIVE EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. ACTIVE'S SERVICES ARE PROVIDED TO CLIENT ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACTIVE SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY OR FROM NEGLIGENCE OR STRICT LIABILITY), OR FOR INTERRUPTED COMMUNICATIONS, LOSS OF USE, LOST BUSINESS, LOST DATA, OR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. ACTIVE'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT IN ANY CASE WHATSOEVER SHALL NOT EXCEED AN AMOUNT GREATER THAN THE AMOUNT ACTUALLY RECEIVED BY ACTIVE FROM CLIENT AS CONSIDERATION FOR THE SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.
10. **Intellectual Property.** Client hereby grants to Active a royalty-free, non-exclusive license to use to all intellectual property of Client (including without limitation any trademarks, trade names, trade dress and copyrights) (collectively, "**Client IP**") provided by Client for the sole purpose of carrying out Active's obligations under this Agreement. No right, property, license, permission or interest of any kind in or to the use of Client IP is or is intended to be given to, transferred to, or acquired by Active by the execution, performance or nonperformance of this Agreement or any part thereof other than the express non-exclusive licenses set forth in this Agreement. Any intellectual property developed by Active separate and apart from the Client IP pursuant to this Agreement shall be the sole property of Active.
11. **Confidentiality.** The Parties recognize that confidentiality is of the essence of this Agreement. Except as otherwise expressly permitted in this Agreement, neither Party shall disclose to any person or entity (except such recipient Party's own employees and agents with a need to know such information in order to permit execution and completion of this Agreement who are aware of and have agreed to maintain the confidentiality of the information, and such recipient Party's legal counsel and/or accountants/auditors) any non-public information of the other Party obtained in connection herewith (the "**Confidential Information**"). The Confidential Information does not include information which:
 - a) is at the time of disclosure or subsequently becomes generally available in the industry and/or to the public through no breach of this Agreement by the receiving Party,
 - b) was rightfully in the receiving Party's possession prior to the date of the disclosure of such information to such Party,
 - c) is supplied to the Party without restriction by a third party who was under no obligation to the disclosing Party or any other person or party to maintain such information in confidence,
 - d) is independently developed by the receiving Party, or
 - e) the receiving Party shall become required by law or court order to disclose; provided that immediately upon receiving any such request, and to the extent that it may legally do so, the receiving Party promptly notifies the disclosing Party in writing of such requirement to enable the disclosing Party to seek a protective order to protect the confidentiality of such information, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information. To the extent that the receiving Party must disclose the Confidential Information pursuant to this Section, any such disclosure shall be limited to only that Confidential Information required to be disclosed to comply with the order of the relevant court or regulatory body.
 - f) Further, the Parties shall treat the terms (but not the existence) of this Agreement as Confidential information, provided that subsections b) and c) shall not apply to render such terms non-confidential.
12. **Term and Termination.** The term of this Agreement (the "**Term**") shall commence upon the Effective Date and continue until terminated as follows:
 - a) Upon Event completion or one year after the Effective Date, whichever occurs first;
 - b) by either Party upon the bankruptcy, insolvency, or appointment of a receiver or receiver-manager in relation to the business and/or assets of, the other Party;

- c) by Client with five (5) days prior written notice; or
- d) by Active immediately at its discretion.

Except as otherwise expressly set forth herein, if this Agreement is terminated for any reason, Client shall be entitled to no refunds.

13. **Miscellaneous.**

a) **Entire Agreement.** This Agreement, any exhibits attached hereto, and the order form set forth the entire understanding and agreement of the Parties as to the subject matter hereof, and supersede any and all prior and contemporaneous representations, warranties, negotiations, agreements, and arrangements, and may be changed only by a written agreement signed by both Parties. Headings are inserted for the convenience of the Parties only and shall not be interpreted to modify the contractual language within each section.

b) **Notice.** All notices or other written communication required under this Agreement shall be in writing sent to the addresses provided in this provision (as changed from time to time upon noticed as provided in this provision) and shall be deemed properly given by sender and received by the addressee if on (i) the date of personal service or courier delivery, or (ii) the fifth (5th) business day following first class, registered or certified, postage prepaid mailing.

If to Active: Active Network, LLC
717 N. Harwood Street, Suite 2500
Dallas, TX 75201
Attn: Chief Legal Officer

If to Client, to the address provided by Client at the time of order placement.

c) **No Joint Venture.** Nothing contained in this Agreement or performed pursuant to this Agreement shall be construed as creating a partnership, agency or joint venture between Client and Active. The employees of one Party hereto shall not be deemed to be employees or agents of the other Party for any purpose whatsoever. Accordingly, each Party is responsible for payment of all employment taxes, benefits, insurance and the like for all work performed by its employees in connection with the performance of this Agreement.

d) **Damages.** In addition to any other damages that either Party may be entitled to at law or in equity, should either Party breach this Agreement, the non-breaching Party shall be entitled to recover reasonable attorney's fees, costs, and expenses incurred in successfully enforcing the terms of this Agreement.

e) **Governing Law; Submission to Jurisdiction.** This Agreement and any disputes arising under or related thereto (whether for breach of contract, tortious conduct or otherwise) shall be governed by the laws of the State of Texas and the federal laws applicable therein, without reference to principles of conflicts of law.

f) **No Assignment.** This Agreement is non-assignable without the written consent of the other Party, except that Active may assign without consent: (i) its rights to receive payments; or (ii) this Agreement to an affiliate or in connection with any sale of or any other transaction involving the transfer of more than fifty percent of its voting securities or assets. Any assignment in violation of this Agreement will be void.

g) **Further Assurances.** Each of the Parties agrees to take such further action to execute and deliver such additional documents as may be reasonably required to them to effectuate the purpose and intent of this Agreement.

h) **Force Majeure.** Each Party will promptly notify the other upon becoming aware that a Force Majeure Event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations hereunder. Subject to the foregoing, neither Party will be liable for any delay resulting from a Force Majeure Event and relevant performance dates will be extended to the extent of any such delay. For purposes hereof, "**Force Majeure Event**" means, with respect to either Party, any strike or other labor dispute, riot, war, act of terrorism, any natural disaster, fire, explosion, act of government or governmental agency or instrumentality, or other contingency beyond the reasonable control of either Party, which in any such case interferes with, or prevents, the fulfillment by such Party of its obligations hereunder.

i) **Survival.** Sections 3, 5, 7 through 13 of this Agreement (expressly excluding any license granted by Client in), and any provision which by its nature survives, shall survive the expiration or termination of this Agreement for any reason.

j) **Counterparts; Delivery.** This Agreement shall be executed in separate counterparts which may be delivered by such electronic means as are available to the Parties, and such counterparts taken together, shall constitute one and the same original document.

k) **Severability.** If any provision of this Agreement 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 this Agreement (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 this Agreement shall be

deemed amended accordingly.

- l) **Reservation of Rights.** All rights not expressly granted in this Agreement are reserved by Active. Client acknowledges that: (a) all Services are licensed and not sold; (b) Client acquires only the right to use the Services in accordance with this Agreement, and Active will retain sole and exclusive ownership of and all rights, title, and interests in the Services, including the following: (i) all Intellectual Property embodied or associated with the Services, (ii) all deliverables and work product associated with the Services, and (iii) all copies and derivative works thereof; and (c) the Services, including the source and object codes, logic, and structure, contain and constitute valuable trade secrets of Active and its licensors.

- m) **Third Party Sites.** Active.com may provide, or third parties may provide, links to other Internet websites or resources. Because Active has no control over such websites and resources, Client acknowledges and agrees that Active is not responsible for the availability of such websites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, services or other materials on or available from such websites or resources. Client further acknowledges and agrees that Active shall not be responsible for any damage or loss caused or alleged to be caused by or in connection with any use of or reliance on any such content, advertising, products, services or other materials available on or through any such website or resource.

**ADDENDUM TO IAB STANDARD TERMS AND CONDITIONS FOR
INTERNET ADVERTISING FOR MEDIA BUYS ONE YEAR OR LESS
(VERSION 3.0)**

This Addendum (“**Addendum**”) to the IAB STANDARD TERMS AND CONDITIONS FOR INTERNET ADVERTISING FOR MEDIA BUYS ONE YEAR OR LESS located at http://www.iab.net/media/file/IAB_4As-tsandcs-FINAL.pdf (“**IAB Terms**”) is hereby made a part of the Agreement above. To the extent anything herein conflicts with the IAB Terms, this Addendum shall control. Terms defined in the IAB Terms shall have the same meaning when used in this Addendum unless otherwise specified.

- In the event Advertiser is entering into a direct contractual relationship with Media Company to purchase Ads and no Agency is engaged, then the following shall apply. The definition of Ad is deleted and replaced with the following: “**Ad**” means any advertisement provided by Advertiser.” The definition of Advertiser is deleted and replaced with the following: “**Advertiser**” means the advertiser listed on the applicable IO.” The definition of Agency is deleted in its entirety. All references to Agency in the Agreement shall be references to Advertiser, except in cases resulting in duplicative references to Advertiser in such sentence, then reference to Agency shall be deleted in its entirety in such sentence and such sentence shall be modified accordingly. The fourth and fifth sentences of Section III(a) are deleted in their entirety. The second sentence of Section III(b) is deleted in its entirety. The first sentence of Section III(c) is deleted and replaced with the following: “Media Company agrees to hold Advertiser liable for payments for Ads placed in accordance with the IO.” The second through ninth sentences of Section III(c) are deleted in their entirety. Section X(c) is deleted in its entirety.
- Section V(a) (“**CANCELLATION AND TERMINATION; Without Cause**”) is deleted in its entirety.
- Section IX(b) (“**AD MATERIALS**”) is amended to add the following to the beginning of the Section: “Advertiser must submit all Advertising Materials to Media Company 10 business days prior to the IO start date. In the event Advertiser fails to submit Advertising Materials within the required time, Media Company shall run the last advertisement provided by Advertiser for the same ad space.”
- Section IX(e) (“**AD MATERIALS; No Modification**”) is deleted in its entirety and replaced with the following:
 - (e) No Modification. Media Company will not edit or modify the submitted Ads in any material way without Advertiser’s approval. Media Company will use all Ads in strict compliance with these Terms and any written instructions provided on the IO.
- Section XIV(e) (“**MISCELLANEOUS; Notice**”) is amended by deleting “, and immediately if sent electronically or by fax”.