

Endurance and Sports Product Attachment

Last updated March 1, 2016

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

1. SERVICES. Active will provide Services related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "**Events**"), including without limitation access to its SaaS. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Services and SaaS. SaaS provided hereunder are deemed delivered when access is made available to Client.

2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

2.1. Active hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license during the term of this Product Attachment (a) to use the SaaS for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with Client's Event(s) solely in accordance with the Schedule and the Agreement, and (b) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this [Section 2](#). Client hereby grants to Active a limited license to use information provided by Client relating to Client's organization and Event, which may include content regarding the Event, Client's organization's name, trademarks, service marks, and logo, in connection with the promotion of Client's organization or Events and the Services that Active provides.

2.2. Client will make reasonable efforts to promote and encourage the use and availability of the SaaS in connection with the promotion of Events. Client will include Active's name and logo in newsletters, printed registration forms or mailings provided by Client to prospective participants (e.g., by inserting the following statement in any online or print media related to the Event(s) "Online Registration by Active.com" or other similar statement as reasonably directed by Active). During the term of this Product Attachment, Active will be the sole and exclusive provider of registration software and other services similar to the Software and Services provided to Client hereunder for all of Client's Events for which registration associated with Client's Events begins during the term of this Product Attachment until the Event occurs or registration or similar services are no longer needed. Active may present commerce offers to End Users (as defined below) as part of the registration process. For the purposes of this [Section 2.2](#), Client's Events will mean and include the Events of Client, Licensees (as defined below), and Licensors (as defined below). Client expressly understands and agrees that the exclusivity set forth in this [Section 2.2](#) is consideration in exchange for the pricing and other benefits being provided to Client hereunder. Without limiting the foregoing, Client will not enter into any agreement, arrangement, or relationship with any other party that offers online registration or transaction processing services similar to the SaaS provided to Client hereunder; provided, however, Client has the right to use another registration provider to provide similar software and/or services if Active cannot meet functional, currency, language or legal requirements for an Event or otherwise cannot perform the core, material functionality of the SaaS for such Event (each, a "**Platform Requirement**"), in which case Client may use another registration provider; provided, however, Client must provide written notice of the applicable deficiency, and Active will have 30 days from its receipt of such notice to provide the Platform Requirement or a reasonable workaround. If Active becomes aware that it will not be able to service an Event as set forth in the preceding sentence, Active will so notify Client. If Active later develops the capability to service such Event, Client will use Active as the exclusive provider of registration and other services similar to the SaaS provided for Client's other Events during the remainder of the term of this Product Attachment. In addition, to the extent that Client acquires Events following the Effective Date that, when acquired, are using online registration or transaction processing services similar to the SaaS provided to Client hereunder, Client will cause such Events to immediately transition to the SaaS, and such Events will be subject to this Product Attachment; provided however, Client will be relieved of its foregoing transition obligations if an Event is subject to a contract with another service provider existing prior to the Event's acquisition, in which case, such preexisting agreement may be observed but will not be renewed or extended by Client. If an acquired Event has an existing agreement with Active prior to its being acquired, Active will terminate such existing agreement, and such acquired Event will be added to and governed by this Product Attachment. Client will promote SaaS and Services to licensees of Client (collectively, "**Licensees**") and will cause each Licensee that holds events similar to Client's Events to enter into an agreement with Active to use the SaaS; provided however, Client will be relieved of its foregoing transition obligations if the Licensee is subject to a contract with another service provider existing prior to the later of the Effective or Client entering into the licensing arrangement with such Licensee, in which case, such preexisting agreement may be observed by the applicable Licensee but Client will cause the Licensee to not renew or extend such pre-existing agreement and to enter into an agreement with Active. If a Licensee has an existing agreement with Active as of the Effective Date, Client will cause each such Licensee to amend its agreement with Active to include the rates set forth in the Schedule applicable to this Product Attachment.

2.3. Client agrees to receive notifications regarding free product, promotional items, and giveaways at Client's Event(s) or facility(ies), but Client may opt not to receive the items. Users who register for, sign up, or otherwise use the SaaS in connection with the Events ("**End Users**") may opt in to receive information, items, or promotions/deals from Active or third parties, in which case, Active or such third party will be responsible for fulfillment and providing customer service for any such offers.

2.4. Client will: (a) not use the SaaS to transmit, publish, or distribute any material or information: (i) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable would consider private in nature; (b) not attempt to gain access to any systems or networks that connect thereto except for the express purpose of using the SaaS for their intended use; (c) not engage in any activity that interferes with or disrupts the SaaS; (d) not use the SaaS in violation of the CAN-SPAM Act, Canadian Anti-Spam Legislation, or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.

3. INFORMATION COLLECTION.

3.1. Active collects certain information from End Users, individuals, and/or Licensees as part of the registration process for Events (collectively, "**Participant Information**"). Client may login to Active's data management system to access the Participant Information. Client is responsible for the security of its login information and for the use or misuse of such information. Client will immediately disable a user's access who is using the SaaS on its behalf or notify Active in writing

if any such user is no longer authorized or is using such information without Client's consent. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiaries, affiliated entities, and Licensees, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives covenant not to sue and agree to defend, indemnify, and hold harmless Active from any claims arising from Active providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client. In the event of any dispute between two or more parties as to account ownership, Client agrees 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. Client agrees not to use the Software or Services to collect or elicit (a) any special categories of data (as defined in the European Union Data Protection Directive, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Active, and in such event, only in pre-defined fields within the Software that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the Software that are intended for that purpose.

3.2. Both parties agree to use the collected information in compliance with (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy and personal information (e.g., by including an appropriate CAN-SPAM Act and Canadian Anti-Spam Legislation opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Active's privacy policy, as published on its website or otherwise provided by Active from time to time.

3.3. To the extent that Client requests that Active provide (a) Client with access to Participant Information relating to End Users, individuals, members or participants associated with Licensees and/or administrative access to Licensee's account, or (b) another third party, such as an affiliated entity, Licensee, event timer, email marketer, donation service provider, etc. with access to Participant Information and/or administrative access to Client's account, Client represents and warrants that (i) it has and will continue to hold all necessary licenses, permits, consents, permissions, and agreements necessary for Active to provide such access; (ii) Active's provision of such access in compliance with this Product Attachment does not and will not violate any applicable laws, rules, or regulations; (iii) it will get affirmative written consent from each such Licensee and/or End User (as applicable) to provide Active with the rights to provide such access; (iv) it will use the Participant Information in compliance with this Section 3 as if the Participant Information was provided by the applicable End User or individual directly to Client; and (v) it will contractually require any such third party to comply with terms no less strict than those set forth in this Section 3; and (vi) it will be responsible and liable for the compliance of such third party with the terms and conditions of the Agreement.

3.4. Client acknowledges and agrees that Active and another entity from whom Client has received a license to hold its Event(s) (each, a "**Licensor**") may have previously entered into an agreement pursuant to which Licensor requires access to Participant Information and administrative access to Client's account with Active. Client hereby consents to Active providing each such Licensor with such Participant Information and access to Client's account.

4. FEES.

4.1. Client will pay the fees as more fully described in the applicable Schedule. Unless otherwise set forth in the applicable Schedule, Active will charge registration fees to individuals who register for the Events or purchase goods or services online, and will process and collect such fees as a merchant of record according to the card networks. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay Client sums due to Client based on the total fees collected, net of Active's service fees as set forth in the applicable Schedule and any other deductions provided herein. The applicable currency will be set forth in the Schedule.

4.2. Active may suspend its performance hereunder, including remitting payments, or terminate the Agreement or this Product Attachment in the event it reasonably believes that Client's use of the Services or SaaS is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. If Active reasonably believes that a transaction may be fraudulent or otherwise contrary to law, Active may issue an invoice or offset an equivalent amount from Client's account or any payment Active owes to Client and return the value to the End User (as set forth below) and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

4.3. Any minimum volume commitment will be set forth in the applicable Schedule. The minimum volume calculation will begin on the first date on which End Users are able to register for each Event through the SaaS ("**Go-Live Date**"). If the Schedule indicates that Client is paying on a subscription basis, Client will be invoiced for the first year of subscription fees upon the Go-Live Date, with subsequent annual subscription fees being invoiced 30 days prior to each anniversary of the Go-Live Date.

4.4. If Client uses any daily deal program, group buying platform, or other similar service (each, a "**Daily Deal Service**") to promote its Events or other products whereby End Users are able to register for an Event or purchase a good or service at a discounted price, notwithstanding the price paid by such End User, Client will be responsible for Active's fees based on the full transaction amount as if the End User paid the applicable price that would have been charged without the Daily Deal Service.

4.5. If (a) Client fails to meet an agreed upon minimum volume commitment as set forth in a Schedule; (b) there are any overdue amounts owed by Client; or (c) there are returned charges or items, including those resulting from any error or complaint related to an Event, Active has the right to charge fees owed to Active by Client by issuing an invoice, or by offsetting the deficiency from any account balance Client maintains with Active or any payment Active owes Client.

4.6. All fees described in the applicable Schedule are in consideration of the SaaS and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any end user.

4.7. In the event Client is entering into this Product Attachment and using the Services and/or SaaS for the benefit of a third-party Event or organization ("**Third Party Recipient**"), Client agrees that Active can remit amounts directly to the Third Party Recipient identified by Client. In addition, Client will cause each Third Party Recipient to agree to and comply with provisions that are at least as protective of Active as Section 4 of the General Terms and Section 5 of this Product Attachment in Client's agreement with such Third Party Recipient. Should Client fail obtain such agreement to such provisions and the failure results in costs or damages to

Active, Client agrees to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys' fees. In addition, Client is responsible and liable for each Third Party Recipient's compliance with the terms and conditions of the Agreement.

4.8. It is Client's responsibility to notify End Users of Client's refund policy. Client must ensure that Client's refund policies are consistent with the Agreement. Client agrees that all fees for a given Event are earned by Client only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to Client will be net of all service fees, reversals, refunds, disputed charges, chargebacks and other deductions whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event or otherwise. No payments will be made to Client with respect to any Event that is cancelled. If payments have already been made by Active to Client for a cancelled Event or if Active reasonably determines that it is prudent or otherwise necessary to pay a refund to or honor a chargeback request from an End User, Active may issue an invoice or offset an equivalent amount from Client's account or payment owed by Active to Client and return the value to the End User, and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

4.9. When Active is acting as the merchant of record and Client elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the term of the Agreement, Active may, upon at least 5 business days' prior written notice, (i) require Client to send to Active Client's books and records related to its sales tax payments, and/or (ii) visit Client's premises during Client's normal business hours to review Client's sales tax payments.

5. INDEMNIFICATION. Client will defend, indemnify, and hold Active harmless from an against any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Active to the extent that such Claim is based upon (a) 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 and/or SaaS; (b) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (c) use or unauthorized disclosure of Participant Information by Client and Licensees, Licensors, or other third parties to whom access is given to Participant Information as provided hereunder; (d) Client's use of the Services and/or SaaS in violation of Section 2.4 of this Product Attachment; (e) any claims for refunds or chargeback requests from End Users; and/or (f) brought by a Third Party Recipient or brought in connection with Active's payment to a Third Party Recipient of any fees due hereunder in accordance with the Agreement.

6. TERM AND TERMINATION.

6.1. Unless otherwise set forth in the applicable Schedule, the term of this Product Attachment will be for 3 years from the Effective Date with automatic renewals for 3 year terms thereafter (each, a "**Renewal Term**"), unless either party gives written notice to the other party to terminate this Product Attachment no less than 12 months prior to the expiration of the then-current term. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Services and/or SaaS that are related to or interoperable with Services or SaaS set forth in a previously entered into Schedule, the term of such subsequent Schedule will be concurrent and coterminous with the term of the previously entered into Schedule.

6.2. If Client has entered into a sub-merchant agreement for payment processing services, and such agreement is terminated by the applicable acquiring bank, Active may terminate this Product Attachment and the effected Schedule.

6.3. Notwithstanding the termination or expiration of this Product Attachment or the Agreement under any circumstance other than in the event of Active's material, uncured breach of the Agreement, the parties agree that Active will continue to be the exclusive provider of registration software and other services similar to the Services and SaaS as described in Section 2.2 of this Product Attachment.

7. ASSIGNMENT.

7.1. Client may not resell, assign, or transfer any of its rights or obligations hereunder except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without Active's prior written approval will be null and void.

7.2. Client may assign this Product Attachment and/or applicable Schedules solely as follows: Except for Retained Assets (as defined below), Client will cause each Schedule hereunder to be assigned to (i) the purchaser of all or substantially all of Client's assets or equity securities or (ii) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((i) and (ii) together, a "**Change of Control**").

7.3. If Client seeks to sell, assign or otherwise transfer any Events which are the underlying subject matter of any Schedule (the "**Subject Assets**") regardless of whether such sale, assignment or transfer constitutes a Change of Control (any such transaction, a "**Transfer**"), Client will cause the portion of the applicable Schedule relating to such Event(s) to be assigned to the purchaser or assignee of the Subject Assets (i.e. Client will require the purchaser to assume Client's obligations under the applicable Schedule and the Agreement relating to such Event); provided however, in the event Client seeks to consummate a Transfer or enters into a Change of Control, but Client retains assets (i.e. Events) which are the underlying subject matter of a Schedule ("**Retained Assets**"), Client will cause the applicable portion of the Schedule relating to the Subject Assets to be assigned to the purchaser or assignee of the Subject Assets, and Client will retain its obligations under the Agreement and the Schedule(s) relating to the Retained Assets. Client will be responsible for any and all costs incurred by it in connection with any such assignment.

7.4. Client will provide written notice to Active of any proposed or completed Change of Control or Transfer as soon as permissible and in any event within 5 days of the public announcement or close of the transaction, whichever occurs first. Within the 30 day period following such notice, Active will have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee of the Subject Assets is a competitor of Active or a party with whom Active does not want to do business. Client agrees to require that the purchaser or assignee (as outlined in this Section 7) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule.

8. MISCELLANEOUS.

8.1. Sections 5, 6, and 8 of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

8.2. The “**Liquidated Damage Amount**” equals the “Projected Contract Value” (to the extent such amount is specified in the applicable Schedule(s)), minus the amount of revenue already paid to Active net of all refunds, credit card chargebacks, and all other deducted amounts. Client agrees that (a) it will pay Liquidated Damages to Active if (i) Client breaches its exclusivity obligations under Section 2.2 of this Product Attachment; (ii) Active terminates a Schedule and/or the Agreement in accordance with Section 5.2 of the General Terms; (iii) Client fails to cause an assignment as specified in Section 7 of this Product Attachment; and/or (iv) Active terminates a Schedule and/or the Agreement pursuant to Section 7.4 of this Product Attachment; (b) all Liquidated Damage Amounts set forth in the Agreement will automatically reset during each Renewal Term; (c) Active may offset any Liquidated Damages Amount set forth in the Agreement from any account balance Client maintains with Active or any payment Active owes Client; (d) because of the difficulty in making a precise determination of actual damages incurred by Active, the Liquidated Damage Amount will be assessed, not as a penalty, but as a reasonable approximation of costs incurred by Active and Active’s loss of revenue; and (e) that in any suit or other action or proceeding involving the assessment or recovery of liquidated damages, the reasonableness of the Liquidated Damage Amount will be presumed and the liquidated damages assessed will be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Agreement.