

MARKETING GROUP SERVICES AGREEMENT

Last Updated August 1, 2016

Client's use of Active's marketing services (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 shall perform the services and obligations (the "Services") and Client shall fulfill the obligations more specifically set forth in statements of work or schedules under this Agreement (each, a "Schedule"). Additional Schedules may be added to this Agreement provided that each is mutually agreed upon and signed by both Parties and the terms of this Agreement shall apply to such future Schedules.
2. **Compensation.** Client agrees to pay Active the amounts for the Services as agreed upon by the Parties more specifically set forth in the applicable Schedule ("Compensation"). Active will invoice Client monthly in arrears for all such amounts unless otherwise expressly stated in the applicable Schedule. Payment shall be due thirty (30) days from receipt of an invoice, and each such amount will be overdue upon the day following such due date. To the extent any amount is not paid prior to becoming overdue, such amount will bear interest from the date of initially becoming due, at a rate equal to the lesser of 1.5% per month, compounded monthly, or the maximum rate permitted by law. Further, if any amount payable remains unpaid fifteen (15) days after becoming overdue, Active shall have the right upon three (3) days' prior written notice to Client to (a) immediately terminate this Agreement and/or (b) accelerate any unpaid portion of the Compensation so that it will be due and payable to Active as of the termination date, and in any case upon receipt of an invoice in relation thereto Client shall reimburse Active for any costs or expenses (including attorneys' fees) associated with collecting payment from Client. 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 and the Compensation.
3. **Expenses.** Client shall reimburse Active for reasonable travel costs as such costs relate to the applicable Schedule.
4. **Press Release/Publicity.** Upon written approval of the other Party, Active or Client may issue a formal press release relating to the entry and general terms of this Agreement.
5. **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.

Further, the Parties shall treat the terms (but not the existence) of this Agreement as Confidential information, provided that subsections b) and d) shall not apply to render such terms non-confidential.

6. **Client's Representations and Warranties.** Client represents and warrants that (a) its performance of its obligations hereunder does not and will not violate any applicable laws, rules, or regulations; (b) any products (including product samples) that it supplies hereunder ("Products") will be safe for use in accordance with their intended purpose; (c) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (d) this Agreement constitutes the valid and binding obligation of Client, enforceable in accordance with its terms; (e) none of the Client IP (as defined below) nor any Products infringe upon the intellectual property rights of any third party; (f) Client's proposed marketing of the Products, and the advertising of such Products conform to all state and federal laws and regulations relating to

adulteration, misbranding, labeling safety and the advertising thereof; (g) 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 (h) 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.

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 (i) violation by the Indemnifying Party of any applicable federal, state or local law, rule or regulation; or (ii) 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) the manufacture, use, sale, distribution, or marketing of the Products, including without limitation, (A) product liability claims; (B) injury to, or death of, any person, or damage to property arising from the Products; and (C) claims of deceptive or misleading messages, disparagement or unfair competition that are based upon product claims furnished to Active by Client or other information and material which Client supplies to Active hereunder provided that such Claim does not arise as a result of Active's breach of this Agreement; and/or (ii) the breach by Client of any of its representations or warranties hereunder, which shall include defaulting on any payment obligation.

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. **Term and Termination.** The term of this Agreement (the "**Term**") shall commence upon the Effective Date and continue until terminated in accordance the remainder of this provision. This Agreement may be terminated as follows:

- a) by either Party upon the material breach of this Agreement by the other Party, if such breach remains uncured for thirty (30) days following written notice to the breaching Party;
- 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; or
- c) by either Party with thirty (30) days prior written notice provided that there are no current Services being performed by Active at such time of termination.

If this Agreement is terminated prior to its completion either (i) by Active under either of paragraphs a) or b) above, or (ii) by Client other than under paragraph a) above, Client will pay any non-cancelable commitments properly entered into by Active hereunder, shall reimburse Active for any unbilled incomplete work previously authorized by Client, and shall pay the Compensation.

12. **Active Promotion.** Upon written approval by Client, Active may use the existence of this Agreement, and descriptions of the Services Active provides hereunder, to promote Active's services to other entities during and after the Term of this Agreement. In relation thereto, Client grants to Active a, non-exclusive, perpetual, royalty-free license to display and distribute in its marketing and case study materials and efforts samples of any promotional materials generated in the course of this Agreement, and any logo, trademark or service mark provided by Client in association with this Agreement (provided that Active may not modify any such marks in any way other than to resize them), for the limited purposes of demonstrating and promoting Active's own services. Such license shall, without limitation, include the right to display and distribute such material and information on Active's internet sites but will expressly exclude paid advertisements without further written approval from Client.

13. **Miscellaneous.**

a) **Entire Agreement.** This Agreement, any exhibits attached hereto, and the Schedule(s) 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 set forth in the Schedule.

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 Delaware 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 5 through 13 of this Agreement (expressly excluding the license granted by Client in Section 10), as well as all obligations of Client to pay outstanding amounts, 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 facsimile or such other 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.