

MASTER CREATIVE SERVICES AGREEMENT BETWEEN
ACTIVE THERAPY GROUP
AND
ABX STUDIOS

This Master Creative Services Agreement is entered into as of the date last signed by and between ABX Studios, a North Carolina LLC hereby referred to as Agency, and Active Therapy Group, a Texas LLC hereby referred to as Client. Both entities may be referred to as "Parties."

BASIC TERMS AND CONDITIONS

1. DEFINITIONS

As used herein and throughout this Agreement:

- a. Agreement means the entire content of this Basic Terms and Conditions document, the Proposal document(s), Schedule B, together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.
- b. Client Content means all materials, information, factual, promotional, or other advertising claims, photography, writings and other creative content provided by Client for use in the preparation of and/or incorporation in the Deliverables.
- c. Copyrights means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under U.S. Copyright Law.
- d. Deliverables means the services and work product specified in the Project Order to be delivered by ABX Studios to Client, in the form and media specified in the Project Order.
- e. Agency Tools means all design tools developed and/or utilized by ABX Studios in performing the Services, including without limitation pre-existing and newly developed software including source code, web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements.
- f. Final Works means all creative content developed by ABX Studios, or commissioned by ABX Studios, exclusively for the Project and incorporated in the Final Deliverables, including, but not limited to, any and all visual elements, graphic design, illustration, photography, animation, motion design, audio-visual works, sounds, typographic treatments and text, modifications to Client Content, and Agency's selection, arrangement and coordination of such elements together with Client Content and/or Third Party Materials.
- g. Final Deliverables means the final versions of Deliverables provided by ABX Studios and accepted by Client.
- h. Preliminary Works means all creative content including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and

documents developed by ABX Studios and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Works.

- i. Project means the scope and purpose of the Client's identified usage of the work product as described in the Project Order.
- j. Services means all services and the work product to be provided to Client by Agency as described and otherwise further defined in the Project Order.
- k. Third Party Materials means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.
- l. Trademarks means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client.
- m. Working Files means all underlying work product and digital files utilized by ABX Studios to create the Preliminary Works and Final Works other than the format comprising the Final Deliverables.

2. PROJECT ORDER

The terms of the Project Order shall be effective for thirty (30) days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Project Order, together with any related terms and conditions and deliverables, may expire or may be subject to amendment, change or substitution.

3. FEES AND CHARGES

- a. In consideration of the Services to be performed by ABX Studios, Client shall pay to Agency fees in the amounts and according to the payment schedule set forth in the Project Order, and all applicable sales, use or value added taxes, even if calculated or assessed subsequent to the payment schedule.
- b. Expenses. Client shall pay ABX Studio's expenses incurred in connection with the Services as set forth in the Project Order if set forth in the Project Order.
- c. The Project pricing includes ABX Studios' fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography, typography, font and/or artwork licenses, prototype production costs, talent fees, music licenses and online access or hosting fees, will be billed to Client unless specifically otherwise provided for in the Project Order.
- d. Invoices. All invoices are payable within thirty (30) days of receipt, unless otherwise specified in the Project Order. A monthly service charge of 1.5 percent is payable on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by lateness or default in payment. ABX Studios reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are

conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding Additional Costs, Taxes, Expenses, and Fees, Charges, or the costs of Changes.

4. CHANGES

- a. General Changes. Unless otherwise provided in the Project Order, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at ABX Studios current standard hourly rate of \$350.00 per hour. Such charges shall be in addition to all other amounts payable under the Project Order, despite any maximum budget, contract price or final price identified therein. Agency may extend or modify any delivery schedule or deadlines in the Project Order and Deliverables as may be required by such Changes.
- b. Change Order. ABX Studios will notify Client in advance of any expected additional charges due to general changes requested which fall under section.
- c. ABX Studios will submit a written Change Order which will contain an estimate of the additional charges for written approval. Work shall not proceed on the requested changes until a fully signed Change Order is received by Agency
- d. Substantive Changes. If Client requests or instructs Changes that amount to a revision in or near excess of fifty percent (50%) of the time required to produce the Deliverables, and or the value or scope of the Services, ABX Studios shall be entitled to submit a new and separate Project Order to Client for written approval. Work shall not begin on the revised services until a fully signed revised Project Order and, if required, any additional retainer fees are received by ABX Studios.
- e. Timing. ABX Studios will prioritize performance of the Services as may be necessary or as identified in the Project Order, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the Project Order. Client agrees to review Deliverables within the time identified for such reviews and to promptly either:

(i) approve the Deliverables in writing; or,

(ii) provide written comments and/or corrections sufficient to identify the Client's concerns, objections or corrections to ABX Studios. Client shall respond to any request by ABX Studios for written clarification of any concern, objection or correction. Client acknowledges and agrees that ABX Studios' ability to meet any and all schedules is entirely dependent upon Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Project Order and that any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the Deliverables. Any such delay caused by Client shall not constitute a breach of any term, condition or Agency's obligations under this Agreement.

- f. Acceptance. Client, within three 10 business days of receipt of each Deliverable, shall notify Agency, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Project Order, or of any other objections, corrections,

changes or amendments Client wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and ABX Studios will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from Client, the Deliverable shall be deemed accepted.

5. CLIENT RESPONSIBILITIES

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

- (a) coordination of any decision-making with parties other than ABX Studios;
- (b) provision of Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Project Order;
- (c) ensuring that all information and claims comprising Client Content are accurate, legal and conform to applicable standards in Client's industry.

6. ACCREDITATION/PROMOTIONS

Agency retains the right to reproduce, publish and display the Deliverables in Agency's portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

7. CONFIDENTIAL INFORMATION

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works. Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Project Order except as may be required by a court or governmental authority. Notwithstanding the foregoing,

Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

8. RELATIONSHIP OF THE PARTIES

- a. ABX Studios shall provide the Services under the general direction of Client, but ABX Studios shall determine, in its sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.
- b. ABX Studios Agents. ABX Studios shall be permitted to engage and/or use third party designers or other service providers as independent contractors in connection with the Services. Notwithstanding, ABX Studios shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this Agreement.
- c. No Solicitation. During the term of this Agreement, and for a period of six 3 months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any Agency employee or Design Agent of ABX Studios, whether or not said person has been assigned to perform tasks under this Agreement.
- d. No Exclusivity. The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by ABX Studios, and ABX Studios shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered.

9. WARRANTIES AND REPRESENTATIONS

- a. By Client. Client represents, warrants and covenants to ABX Studios that (a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client Content, (b) the Client Content is accurate, legal, conforms to ethical standards of the Client's industry, does not infringe the rights of any third party, and use of the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties, (c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and (d) Client shall comply with all laws and regulations as they relate to the Services and Deliverables.
- b. By Agency
(a) ABX Studios hereby represents, warrants and covenants to Client that Agency will provide the Services identified in the Agreement in a professional and timely manner and in accordance with all reasonable professional standards for such

services.

(b) Agency further represents, warrants and covenants to Client that (i) the Final Deliverables shall be the original work of ABX Studios and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by ABX Studios, the Agency shall have secure agreements from such contractors granting all necessary rights, title, and interest in and to the Final Deliverables sufficient for Agency to grant the intellectual property rights provided in this Agreement, and (iii) to the best of ABX Studios' knowledge, the Final Works provided by ABX Studios and subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties. In the event Client or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Project Order or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties of ABX Studios shall be void.

(c) Except for the express representations and warranties stated in this Agreement, ABX Studios makes no warranties whatsoever. ABX Studios explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the Project.

10. INDEMNIFICATION/LIABILITY/DISCLAIMER

- a. By Client. Client agrees to indemnify, save and hold harmless ABX Studios from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances ABX Studios shall promptly notify Client in writing of any claim or suit; (a) Client has sole control of the defense and all related settlement negotiations; and (b) ABX Studios provides Client with commercially reasonable assistance, information and authority necessary to perform Client's obligations under this section. Client will reimburse the reasonable out-of-pocket expenses incurred by ABX Studios in providing such assistance.
- b. By Agency. Subject to the terms, conditions, express representations and warranties provided in this Agreement, Agency agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses arising out any breach of ABX Studios' representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of Client provided that (a) Client promptly notifies Agency in writing of the claim; (b) Agency shall have sole control of the defense and all related settlement negotiations; and (c) Client shall provide Agency with the assistance, information and authority necessary to perform Agency's obligations under this section. Notwithstanding the foregoing, Agency shall have no obligation to defend or otherwise indemnify Client for any claim or adverse finding of

- fact arising out of or due to Client Content, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Agency.
- c. Settlement Approval. The indemnifying party may not enter into any settlement agreement without the indemnified party's written consent.
 - d. Limitation of Liability. In all circumstances, the maximum liability of ABX Studios, its directors, officers, employees, design agents and affiliates ("designer parties"), to Client for damages for any and all causes whatsoever, and Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net profit of ABX Studios. In no event shall ABX Studios be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by ABX Studios, even if ABX Studios has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.
 - e. The services and the work product of ABX Studios are sold "as is." Except for those warranties set forth in Sections 9, Agency makes no warranty, written, oral, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, with respect to the Services, to the extent permitted by applicable law.

1. TERM AND TERMINATION

- 1. Term. This Agreement shall commence upon the Effective Date and shall remain effective until terminated in accordance with this Agreement.
- 2. Termination. This Agreement may be terminated for convenience at any time by either party effective immediately upon receipt of notice, or the mutual agreement of the parties, or for cause if any party:
 - (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or
 - (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.
- 3. In the event of termination, ABX Studios shall be compensated for the Services performed through the date of termination in the amount of (a) any advance payment, (b) a prorated portion of the fees due, or (c) hourly fees for work performed by ABX Studios as of the date of termination; and Client shall pay all fees, with any Additional Costs incurred through and up to, the date of cancellation. In the event of termination for convenience by Client, Client shall pay in addition to the above an early termination fee equal to 2% of the total project fee, Schedule A shall not be effective, and Client shall not have rights to use Deliverables except upon written consent from Agency provided after such termination.
- 4. In the event of termination for convenience by ABX Studios or for cause by Client, and upon full payment of compensation as provided herein, Agency grants to Client such right and title as provided for in Schedule A of this Agreement with respect to those Deliverables provided to, and accepted by Client as of the date of termination.

5. Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

2. GENERAL

1. Modification/Waiver. This Agreement may be modified by the parties. Any modification of this Agreement must be in writing, except that ABX Studios' invoices may include expenses or costs that Client authorizes by electronic mail in cases of extreme time sensitivity. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.
2. Notices. All notices to be given hereunder shall be sent via an overnight delivery company (FedEx, UPS, etc) to the addresses and persons listed in the signature box below with cc: via email.
3. No Assignment. Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party except that this Agreement may be transferred or sold as part of a transfer or sale of the assigning party's entire business or portion thereof relating to the Project.
4. Force Majeure. ABX Studios shall not be deemed in breach of this Agreement if it is unable to complete the Services or any portion thereof by reason of fire, earthquake, flood, hurricane or other severe weather, labor dispute, act of war, terrorism, riot or other severe civil disturbance, death, illness or incapacity of Agency or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Agency's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Agency shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.
5. Governing Law and Dispute Resolution. The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of the United States and the State of North Carolina without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, either party may commence mediation and/or binding arbitration through Arbitration and Mediation Services. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorneys' fees and costs. In all other circumstances, the parties specifically consent to the local, state and federal courts located in the State of North Carolina. The parties hereby waive any jurisdictional or venue defenses available to them and further consent to service of process by mail. Client acknowledges that ABX Studios will have no adequate remedy at law in the event Client uses the deliverables in any way not permitted

hereunder, and hereby agrees that ABX Studios shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.

6. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.
7. Headings. The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.
8. Integration. This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between the Project Order and any other Agreement documents, the terms of the Project Order shall control. Any other ambiguities shall be resolved with the most reasonable and legally valid construction, without regard to authorship of such provisions. This Agreement comprises this Basic Terms and Conditions document, Schedule A, and Schedule B.

By their execution below, the parties hereto have agreed to all of the terms and conditions of this Agreement and each signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein.

AGENCY:

CLIENT:

Name: _____

Name: _____

Signed: _____

Signed: _____

Date: _____

Date: _____