

AUSTIN ELEMENTARY 5K  
Feb. 11, 2017  
8:00 am  
**ONE FORM PER REGISTRANT**

First Name: \_\_\_\_\_

Last Name: \_\_\_\_\_

Gender:      M      F

Date of Birth: \_\_\_\_\_

Day Phone: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Emergency Contact Name: \_\_\_\_\_

Emergency Phone: \_\_\_\_\_

T-Shirt Size:    S      M      L      XL

5K Adult:      \$30

5K Child(11 and under):      \$15

Sleep in and get a shirt:      \$25

**ACTIVE AGREEMENT AND LIABILITY WAIVER (“Agreement and Waiver”)**

**PLEASE READ THE FOLLOWING AGREEMENT AND WAIVER CAREFULLY, AS IT AFFECTS YOUR FUTURE LEGAL RIGHTS. BY PROCEEDING WITH REGISTERING FOR THE EVENT, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE CAREFULLY READ THE AGREEMENT AND WAIVER AND AGREE TO THE TERMS SET FORTH BELOW.**

Though you still need to read the entire document, some of the key points of this Agreement and Waiver are highlighted here:

- The activity for which you are registering (the “Event”) may be physically challenging and may pose a risk of discomfort, illness, injury, and even death. You need to be satisfied that you are physically capable of doing the Event without undue risk to your health or your life. We do not conduct health or fitness checks on entrants.
- The Event may involve inherent risks and dangers to participants and observers and, accordingly, you participate or observe at your own risk.
- Where you have registered or entered on behalf of anyone under the age of 18 or have accompanied anyone under the age of 18 to observe the Event, you also agree to the contents of this Agreement and Waiver on behalf of the person under 18.

In consideration of being permitted to register and/or participate in and/or observe the Event, on behalf of yourself and any personal representatives, assigns, heirs, executors, successors, next of kin, and persons supported by you (if relevant under the applicable laws), you understand that:

1. Authority to Register and/or to Act as Agent. You represent and warrant to Active Network, LLC (“Active”) that you have full legal authority and capacity to complete the registration for the Event, including this Agreement and Waiver, on behalf of yourself and/or, where applicable, any party for whom you are registering (the “Registered Parties”), including full authority to make use of the credit or debit card to which registration fees will be charged. As used in this Agreement and Waiver, (a) “Active” means and includes Active Network, LLC, its partners, licensors, and any and all subsidiaries, affiliated entities, or entities that control, are controlled by, or are under common control with Active singly or together and its and each of their officers, employees, contractors, subcontractors and agents and each of their agents, representatives, successors and assigns; and (b) “you” or “your” means and includes you (as an individual) and all other Registered Parties for whom you are registering, and by virtue of agreeing to this Agreement and Waiver, for whom you are waiving certain rights.

If you are registering a child under the age of 18 or an incapacitated adult, you represent and warrant that you are the parent or legal guardian of that party and have the legal authority and capacity to enter into this Agreement and Waiver on his/her behalf and by proceeding with registration for the Event, you agree that the terms of this Agreement and Waiver shall apply equally to all of the Registered Parties. To the extent permitted by law, each person agreeing to this Agreement and Waiver for him/herself and/or on behalf of another Registered Party (including, without limitation, any minor) agrees to indemnify, defend, and hold Active harmless from any liability, claim, demand, cause of action, damage, loss, or expense (including court costs and reasonable attorneys’ fees) of any kind or nature (each, a “Liability” and collectively “Liabilities”) in the event the Liability arises because a Registered Party is found by a court of competent jurisdiction to not be bound by the terms and conditions of this this Agreement and Waiver. In addition, if, despite this Agreement and Waiver, any of the Registered Parties makes a claim against Active, you agree, immediately upon request or demand by Active, to defend, indemnify, and hold Active harmless from all Liabilities which may be incurred as the result of such claim.

**2. ASSUMPTION OF RISK. IN CONSIDERATION OF THE ACCEPTANCE OF YOUR REGISTRATION AND PARTICIPATION IN THE EVENT, YOU ASSUME FULL AND COMPLETE RISK AND RESPONSIBILITY**

**FOR ANY DISCOMFORT, ILLNESS, INJURY, OR ACCIDENT WHICH MAY OCCUR WHILE YOU ARE PREPARING FOR THE EVENT, DURING THE EVENT, WHILE YOU ARE ON THE PREMISES OF THE EVENT, OR WHILE YOU ARE TRAVELING TO OR FROM THE EVENT. YOU UNDERSTAND THAT PARTICIPATING IN THE EVENT MAY BE HAZARDOUS, AND THAT YOU SHOULD NOT ENTER AND PARTICIPATE UNLESS YOU ARE MEDICALLY ABLE AND PROPERLY TRAINED. YOU SHOULD CONSULT YOUR DOCTOR BEFORE PARTICIPATING IN THE EVENT. IT IS YOUR RESPONSIBILITY TO CHECK AND TO ENSURE THAT YOU ARE AT ALL TIMES MEDICALLY AND PHYSICALLY FIT TO PARTICIPATE IN THE ACTIVITIES RELATED TO THE EVENT. YOU ACKNOWLEDGE AND AGREE THAT THE EVENT MAY BE HELD OVER PUBLIC ROADS AND FACILITIES OPEN TO THE PUBLIC DURING THE EVENT AND UPON WHICH HAZARDS ARE TO BE EXPECTED. YOU ALSO ACKNOWLEDGE AND AGREE THAT PARTICIPATION IN THE EVENT MAY CARRY WITH IT CERTAIN INHERENT RISKS AND DANGERS THAT CANNOT BE ELIMINATED COMPLETELY RANGING FROM RISK OF MINOR DISCOMFORT TO CATASTROPHIC INJURIES INCLUDING PERMANENT DISABILITY AND DEATH. YOU ARE AWARE OF AND ASSUME ALL RISKS ASSOCIATED WITH PARTICIPATING IN THE EVENT, INCLUDING WITHOUT LIMITATION RISKS OF PERMANENT INJURY OR DEATH DUE TO FALLS, OBSTACLES, CONTACT WITH OTHER PARTICIPANTS, ACTS OR OMISSIONS OF OTHER PARTICIPANTS, EFFECT OF WEATHER, TRAFFIC AND CONDITIONS OF ANY ROAD.**

3. Representations. You represent and warrant that you are in good physical condition, are able to safely participate in the Event, and have no medical condition that would make your participation in the Event more hazardous. You consent to medical care and transportation in order to obtain treatment in the event of injury to you and understand that this Agreement and Waiver extends to any liability arising out of or in any way connected with the medical treatment and transportation provided in the event of an emergency and/or injury. You understand that no medical care may be available, but if it is, you assume liability for any and all medical expenses incurred as a result of your participation in the Event (where such medical expenses are not provided on a free of charge basis by any medical services organizations, clinics, or hospitals), including, but not limited to ambulance transport, hospital stays, physician, and pharmaceutical goods and services. You agree to observe and obey all posted rules and warnings, to follow any instructions or directions provided to you by Active or the Event organizer and to abide by any decision of any Event official relative to your ability to safely participate in or attend the Event. You understand and agree that you are expected to exhibit appropriate behavior at all times while at the Event and to obey all applicable laws while participating in or attending the Event. This includes, generally, respect for other people, equipment, facilities or property. You agree that Event officials may dismiss you, without refund, should your behavior, in the opinion of Active or the Event organizer, endanger the safety of or negatively affect the Event. You understand and agree that you are responsible for taking care of your own personal belongings during the Event and, to the maximum extent permitted by law, neither Active nor the Event organizer is responsible for any personal item or property that is lost, damaged or stolen at the Event. You understand and agree that the Event organizer reserves the right to cancel the Event in the event of weather (including, but not limited to, heat, tornadoes, earthquakes, fires, storms, lightning and floods), accidents, acts of war or terrorism, military conflicts or riots, or for any reason that would affect the safety and security of Event participants and/or spectators or the feasibility of the Event to be held. In the event of such cancellation or any other cancellation for any reason, there will be no refund of your payment unless authorized and paid by the Event organizer. You agree to hold Active harmless from any liability, claim, demand, cause of action, damage, loss, or expense (including court costs and reasonable attorneys' fees) of any kind or nature, related to any cancellation or disruption of the Event.

**4. RELEASE AND WAIVER OF LIABILITY. YOU HEREBY WAIVE, RELEASE, COVENANT NOT TO SUE AND FOREVER DISCHARGE ACTIVE AND ALL OTHER PERSONS ASSOCIATED WITH THE EVENT, FOR ALL LIABILITIES, CLAIMS, ACTIONS, OR DAMAGES THAT YOU MAY HAVE AGAINST THEM ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR REGISTRATION AND/OR PARTICIPATION IN THE EVENT, INCLUDING WITHOUT LIMITATION ANY LIABILITIES, CLAIMS, ACTIONS, OR DAMAGES**

CAUSED BY NEGLIGENCE OF THE ABOVE PARTIES (INCLUDING ANY NEGLIGENT RESCUE ATTEMPT), THE ACTION OR INACTION OF ANY OF THE ABOVE PARTIES, OR OTHERWISE. ACTIVE SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ACTIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). WITHOUT LIMITING THE FOREGOING, ACTIVE WILL NOT BE RESPONSIBLE FOR (A) THE USE OR THE INABILITY TO USE THE ACTIVE SITES, PRODUCTS OR SERVICES; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE ACTIVE SITES; (C) YOUR PARTICIPATION IN ANY PROMOTION OR PROGRAM COORDINATED BY ACTIVE; (D) PERSONAL INJURY; (E) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (F) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE ACTIVE SITES; (G) ANY OTHER MATTER RELATING TO THE ACTIVE SITES, OR ACTIVE PRODUCTS OR SERVICES; OR (H) YOUR PARTICIPATION IN THE EVENT. YOU AGREE THAT ACTIVE'S MAXIMUM LIABILITY TO YOU, FOR ANY REASON OR CAUSE WHATSOEVER, SHALL NOT EXCEED THE TOTAL AMOUNT OF MONIES RECEIVED BY ACTIVE FROM YOU.

NOTHING IN THIS AGREEMENT AND WAIVER SHALL BE CONSTRUED AS LIMITING OR EXCLUDING ACTIVE'S OR THE EVENT ORGANIZER'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY GROSS NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER MATTER FOR WHICH IT WOULD BE ILLEGAL OR UNLAWFUL TO EXCLUDE OR ATTEMPT TO EXCLUDE LIABILITY. YOUR STATUTORY RIGHTS AS A CONSUMER ARE NOT AFFECTED BY THIS AGREEMENT AND WAIVER.

5. INDEMNITY. YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS ACTIVE AND ALL OTHER PERSONS ASSOCIATED WITH THE EVENT, FROM ALL LIABILITIES ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) YOUR PARTICIPATION IN THE EVENT, INCLUDING WITHOUT LIMITATION ANY LIABILITY CAUSED BY NEGLIGENCE (INCLUDING ANY NEGLIGENT RESCUE ATTEMPT), THE ACTION OR INACTION OF ACTIVE, (B) YOUR USE OF ACTIVE, OR (C) ANY VIOLATION BY YOU OF ANY TERMS OF THIS AGREEMENT AND WAIVER AND/OR THE TERMS OF USE LOCATED AT [HTTP://WWW.ACTIVENETWORK.COM/INFORMATION/TERMS-OF-USE.HTM](http://www.activenetwork.com/information/terms-of-use.htm).

6. DISCLAIMER OF WARRANTIES. YOU EXPRESSLY AGREE THAT USE OF ACTIVE'S SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ACTIVE MAKES NO WARRANTY THAT ACTIVE SITES' SERVICES WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE. ACTIVE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ACTIVE DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF ANY INFORMATION ON, OR PROVIDED IN CONNECTION WITH, THE ACTIVE SITES. ACTIVE IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS, OR FOR THE RESULTS OBTAINED FROM THE USE OF SUCH INFORMATION.

7. Use of Likeness. You hereby irrevocably grant Active and the Event organizer permission to record your voice and photograph you in conjunction with the Event. You understand and agree that the term "photograph" as used herein encompasses both still photographs and video recordings. You further grant Active and the Event organizer permission to use your photograph, voice, and likeness taken in conjunction with the Event, in any form, including edited versions, in or over any medium including without limitation streaming audio and/or video over the internet, broadcast, cable, satellite transmissions, and media that are unknown at this time, worldwide for any legitimate purpose including, without limitation, any commercial purpose, without compensation to you. You further waive any right of inspection of any such recordings and photographs. You understand that any such recordings and photographs recorded by Active and/or the Event organizer shall become the sole property of Active and/or the Event holder, as applicable.

8. Severability. You further expressly agree that this Agreement and Waiver is intended to be as broad and inclusive as is permitted by applicable law, and if any provision of this Agreement and Waiver is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement and Waiver (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 (b) 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 the Agreement and Waiver shall be deemed amended accordingly.

**9. ACCEPTANCE. BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT AND WAIVER, YOU ARE AFFIRMING THAT YOU HAVE READ THIS AGREEMENT AND WAIVER AND FULLY UNDERSTAND ITS TERMS. YOU UNDERSTAND THAT YOU AND ALL REGISTERED PARTIES ARE GIVING UP SUBSTANTIAL RIGHTS, INCLUDING THE RIGHT TO SUE. YOU ACKNOWLEDGE THAT YOU ARE AGREEING TO THIS AGREEMENT AND WAIVER FREELY AND VOLUNTARILY, AND INTEND BY YOUR ACCEPTANCE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW. IF THE PARTICIPANT IS A MINOR OR INCAPACITATED ADULT, YOU CERTIFY THAT YOU ARE THE PARTICIPANT'S PARENT OR GUARDIAN AND AGREE TO THIS WAIVER AND RELEASE FROM LIABILITY ON BEHALF OF THE PARTICIPANT.**

10. Applicable Law; Consent to Jurisdiction; Other Jurisdiction-Specific Provisions.

***Provisions Applicable to Events Held in Australia:*** You agree that this Agreement and Waiver is governed by the law of New South Wales and you irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New South Wales for all matters relating to this Agreement and Waiver.

***Provisions Applicable to Events Held in Hong Kong:*** You agree that the laws of Hong Kong will apply to all matters relating to this Agreement and Waiver. You irrevocably consent that exclusive jurisdiction for any dispute with Active relating to this Agreement and Waiver shall be the courts of Hong Kong.

You irrevocably grant Active and the Event organizer permission to exhibit, edit, circulate, publish and use your personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)).

This Agreement and Waiver is written in English and Chinese. In case of discrepancies between the two versions, the English version shall prevail.

***Provisions Applicable to Events Held in Ireland:*** You agree that the laws of the Ireland will apply to all matters relating to this Agreement and Waiver. You irrevocably consent that exclusive jurisdiction for any dispute with Active relating to this Agreement and Waiver shall be the courts of Ireland.

You agree to release Active, the Event organiser and all or any other Occupiers ("Occupiers" has the meaning given to the term "Occupier" by section 1 of the Occupiers Liability Act, 1995 ) for the time being from any claims that might otherwise subsist under the Occupiers Liability Act, 1995, to the maximum extent permitted by law.

***Provisions Applicable to Events Held in New Zealand:*** You agree that this Agreement and Waiver is governed by the law of New Zealand and you irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New Zealand for all matters relating to this Agreement and Waiver.

***Provisions Applicable to Events Held in Singapore:*** You agree that the laws of Singapore will apply to all matters relating to this Agreement and Waiver. You irrevocably consent that exclusive jurisdiction for any dispute with Active relating to this Agreement and Waiver shall be the courts of the Republic of Singapore.

***Provisions Applicable to Events Held in the United Kingdom:*** You agree that the laws of England and Wales will apply to all matters relating to this Agreement and Waiver. You irrevocably consent that exclusive jurisdiction for any dispute with Active relating to this Agreement and Waiver shall be the courts of England and Wales.

***Provisions Applicable to Events Held in the United States of America:*** Except as prohibited by law, you agree that any claim, controversy or legal dispute arising out of or relating to this Agreement and Waiver

(hereinafter, a "Dispute") will be resolved through binding arbitration. This arbitration agreement is intended to be broadly interpreted and includes claims, controversies or disputes arising out of or relating to any aspect of the relationship between you and Active, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, all of which shall be considered within the definition of "Dispute." This Agreement and Waiver fully incorporates by reference the entire Arbitration Agreement contained in Active's Terms of Use (including, but not limited to, the waiver of a right to a jury trial and waiver of class-wide proceedings) ("Arbitration Agreement"), which is located at:

<http://www.activenetwork.com/information/terms-of-use>.

You affirm you have had the opportunity to review the Arbitration Agreement and affirm you are expressly agreeing to comply with and be bound by the entirety of the Arbitration Agreement. This Agreement and Waiver evidences a transaction in interstate commerce, and thus the Federal Arbitration Act (the "FAA") governs the interpretation and enforcement of your agreement to arbitrate all Disputes hereunder.

Delaware state law and procedures concerning arbitration shall apply any Disputes arising out of or relating to this Agreement and Waiver to the extent that they do not conflict with and are not inconsistent with the FAA.

---

Signature of Participant  
(Parent or Guardian if under 18)

---

Date