

BRAND AFFINITY TECHNOLOGIES, INC. – WEBSITE AND SERVICES TERMS OF USE

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PLEASE READ THESE WEBSITE AND SERVICES TERMS OF USE CAREFULLY. BY CLICKING “ACCEPT” AND ACCESSING OR USING THIS WEBSITE AND THE SERVICES PROVIDED THEREIN, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCESS OR USE ANY PORTION OF THIS WEBSITE OR THE SERVICES.

Website and Services Terms of Use

These terms and conditions of website and services use (“**Terms of Use**”) apply to your use of this website and platform (the “**Site**”) and the services provided therein. These Terms of Use are in addition to, and do not modify, the terms or conditions of any written agreement you may have with Brand Affinity Technologies, Inc. or any terms and conditions specific to certain uses of this Site that you must affirmatively accept before proceeding with such use, each of which shall control over these Terms of Use in the event of any conflicting terms. By accessing or using this Site, you accept these Terms of Use on your own behalf and on behalf of any entity for whom you are accessing or using this Site.

Ownership

This Site is owned by Brand Affinity Technologies, Inc. (“**BAT**”). All of the content available on this Site, including but not limited to text, graphics, data, statistics, photographs, audio files, video and software (collectively, “**Content**”) is owned by BAT or its licensors or content providers. BRAND AFFINITY TECHNOLOGIES, the BAT logo, netBAT, the netBAT logo, fantapper, the fantapper logo and @BAT are trademarks of BAT and may not be used without BAT’s prior written permission.

The name of each team or league names, logos, symbols, insignias, emblems, designs, uniforms, trademarks, and other identifications of a team or league, the team mascot and team dance team, and other similar items (collectively, “**Team Brand Assets**” or “**League Brand Assets**” as applicable) are owned by and used with permission from such team or league or their rights holders.

The name of each athlete, his or her voice, likeness and rights of publicity and privacy, and all nicknames, biographical information, and/or other identifying features (“**Athlete Brand Assets**”) are owned by and used with permission from such athletes or their rights holders.

The name of each celebrity, his or her voice, likeness and rights of publicity and privacy, and all nicknames, biographical information, and/or other identifying features (“**Celebrity Brand Assets**”) are owned by and used with permission from such celebrities or their rights holders.

The Team Brand Assets, League Brand Assets, Athlete Brand Assets, and Celebrity Brand Assets are referred to in these Terms of Use as the “**Talent Brand Assets**” and the team, league, athlete and celebrity are referred to in these Terms of Use as the “**Talent**.”

Certain statistical information is owned and provided under license by STATS LLC.

The Content and Talent Brand Assets are protected by laws governing copyright, trademark, rights of privacy or publicity, and other intellectual property rights.

Use of the Site

You must register to use portions of this Site.

Certain services available on this Site will require you to affirmatively accept additional terms and conditions specific to those services before proceeding with the use of such services. The acceptance of those additional terms and conditions will constitute a written agreement between you and BAT and/or the applicable licensor or content provider.

You may not use this Site, or any Content or Talent Brand Assets, or any service for any purpose not expressly permitted by these Terms of Use or the terms of any written agreement governing the use of specific Content, Talent Brand Assets or services. You may view the Content and Talent Brand Assets but are specifically prohibited from: (a) downloading, printing (including printing of “screen shots”), copying, re-transmitting or using in any way any of the Content or Talent Brand Assets without a written agreement governing such Content or Talent Brand Assets or in violation of any such written agreement; (b) using any automated data gathering or extraction methods; or (c) modifying the Site or any Content or Talent Brand Assets or framing the Site or Content or Talent Brand Assets.

BAT reserves the right to suspend or terminate your use of the Site or any service available through this Site at any time, without notice, for any reason, in BAT’s sole discretion.

Account Registration

You may register for an account by contacting a BAT representative <BAT contact>. You will be required to accept these Terms of Use as part of your use of the Site.

You may not register on behalf of another person or entity unless you are expressly authorized by such person or entity to do so.

By maintaining an account to use the Site, you agree to: (a) provide accurate and complete user information; (b) promptly update your user information when changes occur; (c) maintain the security of your user name and password; and (d) immediately notify BAT if you become aware of any unauthorized use of your account or other breach of security.

You agree that BAT may use or disclose any information about you obtained through your registration or from your use of this Site to comply with law, to respond to a subpoena, court order or other legal process, or to protect the rights or property of BAT or its customers, licensors or content providers.

BAT reserves the right to terminate your account at any time, without notice, for any reason, in BAT's sole discretion.

Endorsement Opportunities

Registered users may use the BAT research and selection tools to view Content and Talent Brand Assets that satisfies their desired marketing objectives and use the BAT platform to build and/or submit proposals for advertising, sponsorship, endorsement and/or other promotional or marketing campaigns incorporating existing Content, seeking to create new Content that includes any Talent Brand Assets, and/or seeking personal services to be rendered by Talent (each an "**Endorsement Opportunity**"). You may not use any Content or Talent Brand Assets in connection with any Endorsement Opportunity until acceptance and approval by Talent of such Endorsement Opportunity in its final form, inclusive of all design, content or other relevant information, has been received through the BAT Site and any required agreements have been signed or electronically accepted and delivered by all parties to such agreements.

You agree that once you have submitted a proposal to a Talent through the BAT platform or have engaged BAT's other services with respect to any Endorsement Opportunity, you will not directly contract with any Talent or third party regarding any Endorsement Opportunity in circumvention of BAT. In the event that you do circumvent BAT, you agree to pay to BAT 25% of total fees and expenses paid to Talent and/or third parties in connection with the Athlete Endorsement Opportunity, as well as any costs of BAT to investigate and enforce its rights with respect to this provision (including without limitation attorneys fees and court costs).

Payment Terms

When you submit an Endorsement Opportunity, you may be required to pay a minimum service fee, as calculated based upon the details of the Endorsement Opportunity ("**Campaign Initiation Minimum**"). The total service fees billed to you include the amounts payable to BAT and any billing premiums payable to the Talent for participating in the campaign ("**BAT Service Fees**"). The amount of the Campaign Initiation Minimum, where applicable, will be provided to you at the time you submit the Endorsement Opportunity.

Subject to other terms and fees as specified in any approved Endorsement Opportunity or other agreement that you may enter into with BAT and/or Talent, you will be billed for the BAT Service Fees on a monthly basis, within ten (10) calendar days after the last day of each calendar month, beginning upon commencement and delivery of the approved Endorsement Opportunity. If you do not start the campaign within thirty (30) days after approval by Talent of the Endorsement Opportunity, you agree to pay the Campaign Initiation Minimum, if applicable, in which case the Campaign Initiation Minimum will be treated as a non-refundable deposit and credited towards campaign billings in connection with your use of an approved Endorsement Opportunity. BAT will be entitled to receive the greater of the Campaign Initiation Minimum or the actual BAT Service Fees incurred for the approved Endorsement Opportunity and other terms and fees as specified in any other agreement that you may enter into with BAT and/or Talent.

All payments are due within thirty (30) days from invoice date, unless otherwise agreed upon. You agree to pay interest on all past-due amounts at the lower of one and one-half percent (1.5%) per month or the highest rate allowed by law. You will pay for, and will indemnify BAT for, any applicable sales, use, transaction, excise or similar taxes and any federal, state or local fees or charges imposed on, in respect of or otherwise associated with any payments made to BAT, provided, however, that you will not be responsible for any income taxes, employee taxes or taxes related to BAT's general operation.

Confidential Information

You agree to maintain in confidence and not disclose to any third party the terms of any Endorsement Opportunity submitted via the Site or amount of the BAT Service Fees paid or payable to BAT. BAT agrees to maintain in confidence and not disclose to any third party (other than the Talent or the Talent's representatives, who will be obligated to maintain such information in confidence) the terms of any Endorsement Opportunity submitted via the BAT Site or the estimated or actual amount of any campaign spending or the service fees paid or payable to BAT

Linking to Our Site

We generally do not object to links made from third party web sites to the home page of our Site. Links to our Site should use our name, Brand Affinity Technologies, but not our trademarks. Without our prior written consent, (a) you may not link to any page of our Site other than the home page and (b) links may not be presented in any way that suggests we control, endorse or recommend the third party site, its content or any goods or services offered by the third party. You may not link to this Site if we notify you in writing to remove links to this Site. You may not use metatags or any other hidden text incorporating our name or trademarks without our prior written consent.

Links to Third Party Sites

This Site may contain links to web sites that are owned or operated by third parties. Clicking on a link to a third party site will cause you to leave this Site. All third party links are provided to you as a convenience. Third party sites are not endorsed or controlled by us and we are not responsible for the content of or any goods or services available through any third party site. We reserve the right to terminate any link at any time. We disclaim any liability for third party sites.

When you leave this Site, please be aware that our Terms of Use do not govern any third party sites to which we link. You should review the applicable terms of use and policies, including privacy policies, of any third party site.

Notices of Alleged Infringement

We respect the intellectual property of others, and we ask you to do the same. If you believe your copyright, trademark, or other property rights have been infringed by the display of any Content, Talent Brand Assets or other material on this Site, please send a written notification to our Designated Agent for Notices of Infringement:

Brand Affinity Technologies, Inc.
Attn: Notice of Infringement

101 Academy, Suite 110
Irvine, CA 92617
Phone: (949) 242-7980
Email: legal@brandaffinity.net

To be effective, the notification must be in writing and include:

- Identification of the copyrighted work or other right claimed to have been infringed;
- Identification of the Content, Talent Brand Assets or other material that is claimed to be infringing and information reasonably sufficient to permit us to locate such material;
- Information reasonably sufficient to permit us to contact the complaining party, such as address, telephone number, and if available, an e-mail address;
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, agent, or law;
- A statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; and
- A physical or electronic signature of a person authorized to act on behalf of the owner of the work that is allegedly infringed.

Upon receipt of a valid notice of a claim of infringement, we may immediately remove the identified material from our Site without liability as provided in the Digital Millennium Copyright Act.

BAT may terminate the right to use this Site of any user who BAT believes may be infringing the intellectual property rights of BAT or any third party.

Indemnification

You agree to defend, indemnify and hold harmless BAT and its officers, directors, employees, affiliates, customers, licensors, and content providers against any claims, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or relating to (a) your (or anyone using your BAT account's) breach of these Terms of Use, (b) your (or anyone using your BAT account's) unauthorized use of any Content or Talent Brand Assets or (c) the infringement or misappropriation of any intellectual property right of any third party arising out of any Endorsement Opportunity submitted by you. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

Disclaimer and Limitation of Liability

THIS SITE AND ITS CONTENT ARE PROVIDED "AS IS" AND BAT AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, CUSTOMERS, LICENSORS AND CONTENT PROVIDERS EXCLUDE AND DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT

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BAT uses reasonable efforts to ensure the accuracy of the Content, but makes no representations or warranties as to the accuracy of any Content.

Some jurisdictions do not permit the exclusion of implied warranties or certain limitations on liability. Some of the disclaimers or limitations above may not apply to you to the extent they are prohibited by law.

Governing Law

The laws applicable to the interpretation and enforcement of these Terms of Use shall be the federal law of the United States and the laws of Delaware, without regard to any conflict of law provisions.

Disputes

Any proceeding or action at law or in equity arising out of or relating to these Terms of Use shall be filed only in the state or federal courts located in Delaware. You hereby consent to irrevocably submit to the exclusive jurisdiction and venue of, and agree that venue is proper in, such courts. Notwithstanding this, you agree that BAT shall be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

Severability

The provisions of these Terms of Use are intended to be severable. If for any reason any provision of these Terms of Use is held to be unenforceable in whole or in part, such provision shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without in any manner affecting the validity or enforceability of that provision in any other jurisdiction or the remaining provisions of these Terms of Use in any jurisdiction.

Miscellaneous

BAT may assign all or any portion of its rights or obligations under these Terms of Use without your consent. You may not assign these Terms of Use, or any of your rights or obligations hereunder, without the prior written consent of BAT, provided, however that you shall have the right to assign or transfer all of your rights or obligations hereunder to any successor-in-interest by way of sale, merger, consolidation, reorganization, restructuring or the acquisition of all or substantially all of your business and assets or more than 50% of your outstanding ownership interests. Subject to the foregoing, these Terms of Use will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of these Terms of Use will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter exercise such rights or remedies.

Changes to Our Terms of Use

We reserve the right to change any of the terms and conditions contained in these Terms of Use, at any time and in our sole discretion. When we make changes, we will revise the “last updated” date at the top of these Terms of Use. Any changes will be effective immediately upon posting on the Site. Your continued use of the Site following the posting of changes will constitute your acceptance of such changes. Please check back to this page from time to time to determine if any changes have been made.

The terms “Team Brand Assets”, “Athlete Brand Assets” and “League Brand Assets” as used in this Terms of Use have the same meaning as the terms “Team Property”, “Athlete Property” and “League Property”, respectively, found in the previous versions of our Terms of Use.

How to Contact Us

You can contact us by email at info@brandaffinity.net or by calling (949) 242-7980.