active NETWORK

PRODUCTS AND SERVICES AGREEMENT

33364

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	City of Long Beach	**ADDRESS:**	2760 Studebaker Road Long Beach, CA 90815
CONTACT NAME:	Stephen Scott	**TELEPHONE:**	
EMAIL:	stephen.scott@longbeach.gov	**FAX:**	

OVERVIEW OF AGREEMENT		
This document (the "Agreement") consists of this cover page, the General Terms, and the following Schedules and Exhibits (check all applicable Appendices)		
☒	Appendix 1:	Hosted Software
☐	Appendix 2:	Licensed Software; Support and Maintenance
☒	Appendix 3:	Third Party Products
☒	Exhibit A:	Schedule - Pricing Form
☐	Exhibit B:	Services Exhibit
☒	Exhibit C:	Maintenance Exhibit

APPROVED AS TO FORM
Dec. 13 , 20 *13*
CHARLES PARKIN, City Attorney
By _____
GARY J. ANDERSON
DEPUTY CITY ATTORNEY

NOTE: If Client is tax exempt, certificate must be provided along with signed contract.

In consideration of the mutual promises and covenants contained in this Agreement, Client and TAN hereby agree to be bound by this Agreement. By signing below, Client acknowledges and confirms that it has read the General Terms and all attached Appendices, Schedules and exhibits and understands that each forms an integral part of this Agreement.

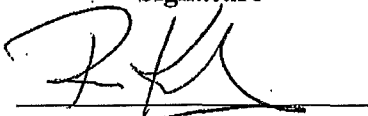| CLIENT	THE ACTIVE NETWORK, INC. ("TAN")
Signature: *(Assistant City Manager EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.)*	Signature:
Name: Patrick H. West	Name: Ram Krishnan
Title: City Manager	Title: SVP
Date: 12.16.13	Date: 12.12.13

The Active Network, Inc., 10182 Telesis Court, San Diego, California 92121
Telephone: (858) 964-3801, Fax: (858) 964-3978

Last revised May 21, 2013

THE ACTIVE NETWORK, INC.
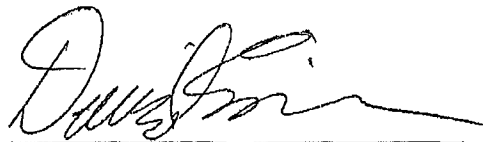
OFFICER'S CERTIFICATE

December 13, 2013

I, David Eisler, solely in my capacity as General Counsel of The Active Network, Inc., a Delaware corporation (the "Company"), do hereby certify that I am the duly appointed General Counsel of the Company and authorized to execute this Certificate on behalf of the Company. I do further certify, solely in my capacity as General Counsel of the Company that the following named individual is a duly elected or appointed, qualified and acting Senior Vice President of the Company, who holds the position set forth opposite the individual's name below, and the specimen signature written opposite such individual's name is such individual's genuine signature. As such, the following named individual is authorized on behalf of the Company to enter into a Products and Services Agreement, to be entered into between the Company and the City of Long Beach.

Name	Position(s)	Signature
Ram Krishnan	Senior Vice President	

[Signature Page to Follow]

IN WITNESS WHEREOF, I have hereunto signed my name as General Counsel of the Company as of the date first set forth above.

David Eisler
General Counsel

GENERAL TERMS: TERMS APPLICABLE TO ALL PRODUCTS AND SERVICES

1. INTERPRETATION

1.1 **Definitions.** For the purposes of interpreting this Agreement, the following terms will have the following meanings:

(a) **"Affiliates"** of a designated corporation, company or other entity means all entities which control, are controlled by, or are under common control with the named entity, whether directly or through one or more intermediaries. For purposes of this definition "controlled" and "control" mean ownership of more than fifty percent (50%) of the voting capital stock or other interest having voting rights with respect to the election of the board of directors or similar governing authority.

(b) **"Agreement"** means this Products and Services Agreement, inclusive of all Appendices, Schedules and exhibits.

(c) **"Client"** means the legal entity other than TAN entering this Agreement.

(d) **"Concurrent Use"** means use at the same moment in time to access a given server computer (of any kind) owned or controlled by Client.

(e) **"Database Server"** means the single server computer upon which the Enterprise Database is resident.

(f) **"Effective Date"** means the last date set forth on page one of this Agreement.

(g) **"Enterprise Database"** means the MSDE, MS SQL Server, or Oracle database files containing customer data and that are accessed by the Licensed Software.

(h) **"Hosted Software"** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and are identified in a Schedule as licensed (or sublicensed) to Client by TAN in connection with this Agreement, and which reside on TAN's servers and are accessible by Client's staff or Users via the Internet.

(i) **"Internet Client"** means a remote device capable of using the Internet to access selected Licensed Software on the Internet Server or the Enterprise Database on the Database Server via the Internet Server.

(j) **"Internet Server"** means a single server computer used by Client which enables access to the Licensed Software by individuals using an Intranet or the Internet, having a minimum configuration as set out in hardware specifications previously described to Client as applicable to the Licensed Software to be installed and used upon it.

(k) **"IVR Server"** means a single server computer used by Client for voice-recognition and telephone-based, rather than computer-based, access to the Enterprise Database by Client's clients, having a minimum configuration as set out in hardware specifications previously described to Client as applicable to the Licensed Software to be installed and used upon it.

(l) **"Licensed Software"** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and are identified in a Schedule as licensed (or sublicensed) to Client by TAN in connection with this Agreement, and/or which are in the future provided to Client by TAN under any circumstances unless provided under a separate licensing agreement.

(m) **"Maintenance"** means the provision of error investigation and repair services as set out in Sections 21 through 24, the Support and Maintenance Handbook attached as Exhibit C, and the provision of new Versions and Releases in respect of the Licensed Software all as more particularly set out in the Support and Maintenance Handbook.

(n) **"Module"** means a single module element of Licensed Software listed in a Schedule.

(o) **"Online Services"** means services, such as Internet registration, that are enabled by Hosted Software and available to the public via the Internet.

(p) **"Other Services"** means Services other than Pre-Agreed Services acquired by Client under this Agreement or any further Professional Services as provided in an agreed Statement of Work, purchase order, or Schedule.

(q) **"Payment Server"** means a single server computer used by Client to process electronic payments from its clients, having a minimum configuration as set out in hardware specifications previously described to Client as applicable to the Licensed Software to be installed and used upon it.

(r) **"Pre-Agreed Services"** means Services which are expressly listed in a Schedule as being acquired hereunder by Client.

(s) **"Products"** means all Licensed Software, Hosted Software, Third Party Products, and other products (including documentation) provided to Client by or on behalf of TAN.

(t) **"Professional Services"** means any and all types of services which TAN provides, to Client and/or to other customers of TAN, in the course of TAN's business, including but not limited to services relating to the installation, implementation, optimization, administration, training and troubleshooting of computers, computer software including the Licensed Software, computer networks, databases, internet-related equipment and applications, but expressly excludes Support and Maintenance. Professional Services that are not included as part of the Pre-Agreed Services, as defined above, shall be as set forth in any applicable and mutually agreed statement(s) of work (each a "Statement of Work"). Each such Statement of Work shall, upon mutual agreement by the parties, become part of and incorporated by reference into this Agreement.

(u) **"Release"** means any release, update, patch, set of revisions, or bug/permanent fix or temporary bypass solution released by TAN to its customers generally during the term of this Agreement, which provides enhancements and/or error corrections to the then-current Version or Release, and where a new Version has been released and no new Release has been released since the release of that Version, that Version will also constitute a Release for the purpose of determining whether Support or Maintenance is available with respect to that Version. New Releases will be denoted by an increase to the version number to the right of the decimal point such as from Release 1.1 to Release 1.2.

(v) **"Schedule"** means an itemized pricing form associated with this Agreement that lists the Products and Services provided by TAN to Client hereunder and the related fees. The initial version of which may be attached hereto and labeled as <u>Exhibit A</u>. Each additional Schedule must be signed by both parties and will be governed by this Agreement.

(w) **"Services"** means all Professional Services, Support and Maintenance, Online Services, and Other Services provided to Client by or on behalf of TAN.

(x) **"Software"** means the Licensed Software and the Hosted Software as defined elsewhere in this Section.

(y) **"Support"** means the ongoing telephone, email, web-based and dial-in support and problem resolution to assist Client in the use of the Licensed Software, the Hosted Software, and Other Services and Products of TAN as set out in the Support and Maintenance Handbook.

(z) **"Support and Maintenance Handbook"** means the documents published by TAN setting out the applicable service levels, processes, restrictions, and other particulars of Support and Maintenance provided in respect of the Software and Other Services and Products of TAN, as amended from time to time upon notice to Client.

(aa) **"Support and Maintenance Start Date"** means, for implementations performed by TAN, the first day of implementation of the Licensed Software or ninety (90) days following the delivery of the Licensed Software, whichever occurs first, and upon delivery of the Licensed Software for implementations being performed by the customer or a 3rd party vendor.

(bb) **"System Utilities"** includes the following: Accounting Processes, Central Login, Log File, Copy Database, Maintain Database, MSDE Tool, Oracle Setup Utility, Query Tool, System Maintenance, Upgrade Database and View Components.

(cc) **"TAN"** means The Active Network, Inc. as referenced on the first page of this Agreement.

(dd) **"Third Party Products"** means those hardware, firmware and/or software products, provided to TAN by third parties, listed in a Schedule, together with all user manuals and other documents accompanying the delivery of the Third

Party Products, provided that the Third Party Products shall not include software developed by TAN.

(ee) **"User"** means a person who accesses and uses any of the Products in any manner whatsoever.

(ff) **"Version"** means a version of the Licensed Software providing a particular functionality, while a new Version of the Licensed Software will provide new/additional functionality and/or improvements to a previous Version. New Versions will be denoted by a change to the version number to the left of the decimal point such as from Version 1.0 to Version 2.0.

(gg) **"Workstation"** means a computer attached to a local or wide-area network (including an Intranet), which accesses the Licensed Software or Enterprise Database.

1.2 Headings. The headings contained in this Agreement are inserted for convenience and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

2. CHARGES AND PAYMENTS

2.1 Taxes. Client will pay all applicable sales, use, withholding and excise taxes, and any other assessments against Client in the nature of taxes, duties or charges however designated on the Services and Products or their license or use, on or resulting from this Agreement, exclusive of taxes based on the net income of TAN, unless exempted by law and unless a valid tax exemption certificate has been provided to TAN prior to invoicing.

2.2 Currency. Unless otherwise indicated in a Schedule, all prices are in the currency of the country in which Client is located.

2.3 Delivery. Delivery for Products supplied by TAN under this Agreement will be deemed to have occurred F.O.B. origin, which in the case of Licensed Software and/or Hosted Software will typically be in the form of an email from TAN providing a FTP (i.e. file transfer protocol) downloadable link. To the extent applicable, Client will be responsible for shipping and handling costs.

2.4 Invoices/Payment. TAN will provide invoices to Client for all amounts owing by Client hereunder. Such invoices are to be provided as indicated in the attached Appendices or Schedule, and subsequently due within thirty (30) days from the date of invoice.

3. CLIENT INFORMATION; CONFIDENTIALITY

3.1 Client Information and Obligations. In order to assist TAN in the successful provision of Services and Products to Client, Client shall (i) provide to TAN information relating to Client's organization, technology platforms, systems configurations, and business processes and otherwise relating to Client that is reasonably requested by TAN from time to time, (ii) make available such personnel assistance to TAN as

may be reasonably necessary for TAN to perform hereunder; and (iii) carry out in a timely manner all other Client responsibilities set forth herein. Any delay by Client hereunder shall result in a day-for-day extension of TAN's dependent obligations.

3.2 Confidential Information.

(a) In the performance of or otherwise in connection with this Agreement, one party ("Disclosing Party") may disclose to the other party ("Receiving Party") certain Confidential Information of the Disclosing Party. "Confidential Information" means any information of either party, which is not generally known to the public, whether of a technical, business or other nature (including, but not necessarily limited to: trade secrets, know how, computer program source codes, and information relating to the customers, business plans, promotional and marketing activities, finances and other business affairs of such party); provided that the same is conspicuously marked or otherwise identified as confidential or proprietary information prior to, upon or promptly after receipt by the other party; and provided further that the any software or software application server source code provided by TAN or its licensors shall be deemed to constitute Confidential Information without further designation by TAN. The Receiving Party will treat such Confidential Information as confidential and proprietary of the Disclosing Party and will use such Confidential Information solely for the purposes for which it is provided by the Disclosing Party and will not disclose such Confidential Information to any third party (other than a third party under contract whereby that third party has agreed in writing to keep the Confidential Information confidential).

(b) Exclusions. The obligations under this paragraph will not apply to any: (i) use or disclosure of any information pursuant to the exercise of the Receiving Party's rights under this Agreement; (ii) information that is now or later becomes publicly available through no fault of the Receiving Party; (iii) information that is obtained by the Receiving Party from a third party authorized to make such disclosure (other than in connection with this Agreement) without any obligation of secrecy or confidentiality; (iv) information that is independently developed by the Receiving Party (e.g., without reference to any Confidential Information); (v) any disclosure required by applicable law (e.g., pursuant to applicable securities laws or legal process), provided that the Receiving Party will use reasonable efforts to give advance notice to and cooperate with the Disclosing Party in connection with any such disclosure; and (vi) any disclosure with the consent of the Disclosing Party.

4. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

4.1 **SPECIFIC EXCLUSION OF OTHER WARRANTIES.** THE EXPRESS WARRANTIES SET OUT IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER APPLICABLE, EITHER EXPRESS OR IMPLIED BY LAW (IN CONTRACT OR TORT OR OTHERWISE) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, DURABILITY, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE ABOVE, TAN DOES NOT WARRANT THAT ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF CLIENT OR THAT THE OPERATION OF PRODUCTS AND SERVICES PROVIDED HEREUNDER WILL BE FREE FROM INTERRUPTION OR ERRORS.

4.2 **RESTRICTIONS ON WARRANTY.** TAN HAS NO OBLIGATION TO REPAIR OR REPLACE PRODUCTS DAMAGED BY EXTERNAL CAUSE OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN TAN.

4.3 **NO INDIRECT DAMAGES.** WITHOUT LIMITING THE GENERALITY OF SECTIONS 4.1 AND 4.4, IN NO EVENT WILL TAN BE LIABLE TO CLIENT OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

4.4 **LIMITS ON LIABILITY.** IF, FOR ANY REASON, TAN BECOMES LIABLE TO CLIENT OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT OR OTHERWISE), THEN:

(a) THE TOTAL AGGREGATE LIABILITY OF TAN TO CLIENT AND ALL OTHER PARTIES IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO TAN AS CONSIDERATION FOR THE PRODUCTS AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE; AND

(b) IN ANY CASE CLIENT MAY NOT BRING OR INITIATE ANY ACTION OR PROCEEDING AGAINST TAN ARISING OUT OF THIS AGREEMENT OR RELATING TO ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER MORE THAN TWO YEARS AFTER THE RELEVANT CAUSE OF ACTION HAS ARISEN.

4.5 **SEPARATE ENFORCEABILITY.** SECTIONS 4.1 THROUGH 4.4 ARE TO BE CONSTRUED AS SEPARATE

PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

4.6 For the purposes of this Section 4, reference to TAN shall also include its suppliers and licensors.

5. RESTRICTIONS

5.1 U.S. GOVERNMENT RESTRICTED RIGHTS. The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is The Active Network, Inc. or one of its Affiliates or subsidiaries.

5.2 Export Restrictions. The Products may include encryption software or other encryption technologies that may be controlled for import, export, or purposes under the laws and regulations of the countries and/or territories in which the Products are used ("**Applicable Law**"). Client may not export, re-export, or assist or facilitate in any manner the export or re-export of, any portion of the Products, as determined by Applicable Law under which Client operates: (i) to any country on Canada's Area Control List; (ii) to any country subject to UN Security Council embargo or action; (iii) contrary to Canada's Export Control List Item 5505; (iv) to countries subject to U.S. economic sanctions and embargoes; and (v) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items. Client hereby represents and covenants that: (i) to the best of Client's knowledge Client is eligible to receive the Products under Applicable Law; (ii) Client will import, export, or re-export the Products to, or use the Products in, any country or territory only in accordance with Applicable Law; and (iii) Client will ensure that Client's Users use the Products in accordance with the foregoing restrictions.

5.3 Third Party Software and Open Source Components. The Software may contain open source components or other third party software of which the use, modification, and distribution is governed by license terms (including limitations of liability) set out in the applicable documentation (paper or electronic) or read me files.

5.4 Restrictions; Acceptable Use Policies. Client shall: (i) use the Products exclusively for authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others, including privacy and anti-spamming laws; (ii) not reverse engineer, disassemble, or decompile any Products or prepare derivative works thereof; (iii) not copy, modify, transfer, display, or use any portion of the Products except as expressly authorized in this Agreement or in the applicable documentation; (iv) not contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or intellectual property rights, title, or interest of TAN in and to any Products; (v) not obliterate, alter, or remove any proprietary or intellectual property notices from the Products in physical or electronic forms; (vi) not use the Products to transmit, publish, or distribute any material or information: (a) 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; (b) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the Products; or (c) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (vii) not attempt to gain access to any systems or networks that connect thereto except for the express purpose of using the Products for their intended use; (viii) not rent, lease, sublicense, resell, or provide access to the Products on a time-share or service bureau basis; and (ix) not input credit card information into the Products or solicit the input of such information other than in pre-defined fields within the Products that are intended for that purpose.

6. TERMINATION

6.1 Termination. This Agreement will terminate:

(a) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within thirty (30) days after receiving written notice thereof; and

(b) without limiting (a), at the option of TAN if Client breaches its payment obligations, provided that the right of termination will be in addition to all other rights and remedies available to the parties for breach or default by the other.

6.2 Suspension of Obligations. If either party should materially default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its obligations under this Agreement, without liability, until the other party's default is remedied, provided however that this Section will not permit Client to suspend its obligation to make any payments due for Products or Services that are unrelated to any default alleged against TAN.

6.3 Return of Materials. In the event of termination of this Agreement for any reason whatsoever, Client will immediately (i) return to TAN all physical copies of Products delivered by TAN to Client or otherwise in Client's possession or control, or (ii) if expressly permitted by TAN, destroy all physical copies of the Products not returned to TAN and delete all electronic copies of the Products from its systems and certify in writing to TAN that such actions have all been completed.

7. AUDIT AND MONITORING RIGHTS

TAN may, upon a minimum of twenty-four (24) hours written notice to Client, attend upon Client's premises and verify that the Products are being used only as permitted hereby. Such inspections shall be limited to a maximum of twice per calendar year, and will be performed only during Client's

regular business hours and conducted in a manner as to minimize, to the extent reasonable, interference with Client's business. Further, TAN may, using automatic means which do not interfere with the use of the Products by Client or Users other than as described in this provision, monitor at any time usage of the Products by Client and or its Users including through monitoring of the number of copies of any particular Module(s) in Concurrent Use.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 **Warranty of Title.** TAN warrants that it has all rights necessary to make the grant of license herein by having all right, title, and interest in and to the Products (other than Third Party Products) or as licensee of all such rights from the owner thereof.

8.2 **Intellectual Property.** TAN and its licensors shall retain all right, title, and interest in and to the Products and the results of the Services and to all software, trademarks, service marks, logos, and trade names and other worldwide proprietary rights related thereto ("**Intellectual Property**"). Client shall use the Intellectual Property only as provided by TAN, and shall not alter the Intellectual Property in any way, or act or permit action in any way that would impair TAN's or its licensors' rights in its Intellectual Property. Client acknowledges that its use of the Intellectual Property shall not create in Client or any other person any right, title, or interest in or to such Intellectual Property. Any goodwill accruing from the use of the Intellectual Property shall inure solely to the benefit of TAN or its licensors, as applicable.

9. INDEMNIFICATION

(a) Each party (the "**Indemnifying Party**") shall defend, settle, and pay damages (including reasonable attorneys' fees) ("**Damages**") relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against the other party hereto (the "**Indemnified Party**") to the extent that such Claim is based upon provision, by the Indemnifying Party, of materials, products, or services as part of such party's obligations hereunder 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) If any Claim that TAN is obligated to defend, settle, and pay damages to Client under this Section 9(a) has occurred or, in TAN's opinion, is likely to occur, TAN may, at its option and expense either (1) obtain for Client the right to continue to use the applicable Software, (2) replace or modify the Software so it becomes non-infringing, without materially adversely affecting the Software's specified functionality, or (3) if (1) or (2) are not readily available after using reasonable commercial efforts or, if neither of the foregoing options is commercially reasonable, refund a pro-rata portion of the fees paid by Client based on its lost use and terminate this Agreement. TAN shall not be obligated to defend, settle, or pay Damages for any Claims to the extent based on: (x) any Client or third party intellectual property or software

incorporated in or combined with the Software where in the absence of such incorporated or combined item, there would not have been infringement, but excluding any third party software or intellectual property incorporated into the Software at TAN's discretion; (y) Software that has been altered or modified by Client, by any third party or by TAN at the request of Client (where TAN had no discretion as to the implementation of modifications to the Software or documentation directed by Client), where in the absence of such alteration or modification the Software would not be infringing; or (z) use of any version of the Software with respect to which TAN has made available a non-infringing updated, revised or repaired subsequent version or other applicable update, patch or fix.

(c) Client agrees to defend, settle, and pay Damages relating to Claims to the extent based on (i) injury or death to a person or damage to property resulting from the participation in an event or activity operated by Client in connection with the Products and/or Services; (ii) any claim brought by a Third Party Beneficiary or brought in connection with TAN's payment to a Third Party Beneficiary of any fees due hereunder in accordance with this Agreement; and/or (iii) Client's or any of its User's breach of Section 5.

(d) **Indemnification Claims Procedure.** Each party's obligations under this Section are conditioned upon (1) 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; (2) sole control over the defense or settlement of such Claim by the Indemnifying Party; and (3) 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.

(e) For the purposes of this Section 9, reference to TAN shall also include its suppliers and licensors.

(f) Notwithstanding the foregoing, Client shall not be bound by the terms of this Section 9 to the extent precluded by applicable law (e.g., sovereign immunity of a governmental entity).

10. GENERAL

10.1 **Entire Agreement.** This Agreement, including all attachments and referenced Appendices, Schedules and exhibits, constitutes the complete and exclusive statement of the agreement between TAN and Client with respect to the subject matter hereof. It supersedes and replaces all oral or written RFPs, proposals, prior agreements, and other prior or contemporaneous communications between the parties concerning the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties, except that TAN may fill future purchase or other orders for further goods or services available under this Agreement and, if TAN does so, the provisions of this Agreement will contain the only

commercial terms applicable to such transaction despite such purchase or other order stating otherwise. Any addendum attached hereto shall form an integral part of this Agreement and, in the event of any inconsistency between these General Terms and any addendum, the provisions of the addendum shall prevail. Any 'click-wrap' agreement, terms of use, electronic acceptance or other terms and conditions which attempt to govern the subject matter of this Agreement that either party might be required to acknowledge or accept before entering into this Agreement are of no force and effect as between Client and TAN and are superseded by this Agreement.

10.2 Force Majeure. Dates or times by which either party is required to perform under this Agreement, excepting the payment of any fees or charges due hereunder, will be postponed automatically to the extent that any party is prevented from meeting them by causes beyond its reasonable control, provided such party promptly notifies the other thereof and makes reasonable efforts to perform.

10.3 Notices. All notices and requests in connection with this Agreement will be given to the respective parties in writing and will be deemed given as of the first business day of the notified party following the day the notice is faxed or sent via overnight courier, providing a hard copy acknowledgment of such successful faxed notice transmission or evidence of such couriering, as applicable, is retained. Notice may also be deposited in the mails, postage pre-paid, certified or registered, return receipt requested, and addressed to the parties as indicated on the face of this Agreement or such other address of which the party gives notice in accordance herewith, and receipt of any such notice will be deemed to be effective as of the third business day following such deposit.

10.4 Governing Law. This Agreement shall be governed by the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this Agreement. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Los Angeles County, California.

10.5 Attorney Fees. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

10.6 Affiliates. During the term of this Agreement, Client or Client's Affiliates may order additional Products and/or Services from TAN or one of TAN's Affiliates by entering into a Schedule. In the event that Client or Client's Affiliate enters into a Schedule with TAN or an Affiliate of TAN, reference in this Agreement to "Client" and "TAN" shall mean the respective entity that executed the applicable Schedule. A breach of this Agreement by TAN's Affiliate or Client's Affiliate shall not affect the rights, privileges, or obligations of TAN or Client, as applicable, or any other Affiliate not in breach of this Agreement.

Last revised May 21, 2013

10.7 Non-Assignability. Neither party may assign its rights or obligations arising out of this Agreement without the other party's prior written consent, except that (i) TAN may assign this Agreement to one of its affiliates or in connection with any sale or security interest involving all or substantially all of its assets or any other transaction in which more than fifty percent of its voting securities are transferred; and (ii) Client automatically assigns this Agreement to the purchaser of all or substantially all of Client's assets or equity securities or to any successor by way of any merger, consolidation or other corporate reorganization of Client. In the event that any such assignment is made by Client pursuant to (ii), Client must provide TAN with written notice of such event within thirty (30) days of such assignment. TAN shall have thirty (30) days from its receipt of such notice to terminate this Agreement without further liability or obligation to Client.

10.8 Term and Survival. The term of this Agreement shall commence on the Effective Date set out on the cover page hereof and shall continue as set forth in Sections 17 or 24.1, as applicable, or until terminated in accordance with Section 6. Sections 1.1, 4, 5.4, 6.3, 8.2, 9, 10.0, 28.1, and 28.2 of this Agreement, along with all unpaid payment obligations, will survive termination and expiration of this Agreement.

10.9 No Authority to Bind. Neither party shall incur any obligations for or in the name of the other party, or have the authority to bind or obligate the other party. Neither party shall make, issue or authorize any statements (whether oral or written) in contravention of the foregoing.

10.10 Counterparts. This Agreement may be executed in separate counterparts and delivered by facsimile or such other electronic means as are available to the Parties. Such counterparts taken together shall constitute one and the same original document.

10.11 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions shall remain in full force and effect.

10.12 Cooperative Procurement. Upon consent by TAN, this Agreement may be used for permitted cooperative procurement by any public or municipal body, entity, agency or institution. If so authorized, and in order to forego a related entity RFP or similar competitive bidding process, this Agreement may be extended to such other entities indicated above for the procurement of similar products and/or services provided to Client herein and at fees in accordance with this Agreement unless separately negotiated between such other entities and TAN. Further related entities participating in a cooperative procurement process shall place their own orders directly with TAN and will fully and independently administer their use of this Agreement to include such contractual obligations as those entities and TAN deem appropriate without direct administration from the original Client.

APPENDIX 1: TERMS APPLICABLE ONLY TO HOSTED SOFTWARE

11. HOSTED SOFTWARE

11.1 TAN will provide Client with access to hosted versions of the Products identified in the applicable Schedule and associated Online Services, and TAN hereby grants to Client a limited, non-exclusive, non-transferable license to use the Hosted Software in accordance with the applicable documentation.

11.2 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 from TAN. Client's customers who register for, sign up, or otherwise interact with the Online Services ("End Users") may opt-in to receive information, items, or promotions/deals from TAN, in which case, TAN will be responsible for fulfillment and for providing customer service for any such offers.

11.3 Client acknowledges that TAN: (a) does not monitor or police communications or data transmitted through the Hosted Software or Online Services by Client or any third party, or any communications or data transmitted by any third party suppliers through the Hosted Software or Online Services; (b) shall not be responsible for the content of any such communication or transmission; (c) shall have no liability of any kind with respect to any materials or information that Client inputs into or transmits, publishes, or distributes through the Hosted Software or Online Services; and (d) may remove or modify any such communication or transmission deemed offensive for which TAN has received more than one complaint.

12. SUPPORT FOR HOSTED SOFTWARE

TAN will, during all periods in respect of which Client has subscribed for Hosted Software, provide Support to Client (and, where applicable, directly to users of Client's own services and products who access the Hosted Software) in accordance with applicable sections of the Support and Maintenance Handbook.

13. LICENSE AND BRANDING

TAN hereby grants to Client a limited, non-exclusive, non-transferable license to display, reproduce, distribute, and transmit in digital form TAN's name and logo in connection with promotion of the Online Services only in the manner approved of by TAN during the term of this Agreement. Client hereby grants to TAN a limited non-transferable license to use, display, reproduce, distribute, adapt and transmit in digital or printed form information provided by Client relating to its organization, including its name, trademarks, service marks and logo, in connection with the implementation and promotion of the Online Services; provided, however, that such use shall be as necessary to TAN's performance under this Agreement. Client will use reasonable efforts to encourage adoption of the Online Services, including displaying TAN's name and logo, in the form supplied by TAN from time to time and in a manner approved by TAN, in any medium used by Client to promote its programs or services to prospective participants.

14. INFORMATION COLLECTION AND AUTHORIZED USERS

TAN may collect certain information from individuals as part of a registration process. Client may login to TAN's data management system to access this information. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder); (ii) applicable Payment Card Industry Data Security Standards; and (iii) TAN's privacy policy as published on its website. Client is solely responsible for the security of its login information, authorization credentials, and similar access information (collectively "Login Information") and for the use or misuse of such Login Information. Client agrees to only allow access to and use of the Products to its authorized users. Client acknowledges and agrees that TAN may provide access to or use of the Software and Services to anyone utilizing Client's Login Information or who is otherwise authorized by Client to use or access the Software and Services on Client's behalf. Client is responsible for such users' compliance with the terms and conditions of this Agreement. TAN may suspend or terminate any such user's access to the Software and Services upon notice to Client if TAN reasonably determines that any such user has violated the terms and conditions of this Agreement or is otherwise using the Products for suspect purposes. Client will immediately either notify TAN in writing or disable such user's access if any previously authorized Client user is no longer authorized to use the Login Information or otherwise use or access the Software and Services. TAN may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiary and affiliate entities, 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 TAN for any claims arising from TAN providing, denying, suspending, or modifying access to or use of the Software and Services of any individual as directed by Client or by someone who TAN reasonably, under the circumstances, believes is authorized to act on behalf of Client.

15. FEES FOR HOSTED SOFTWARE

15.1 **Transaction fees.**

(a) Client shall pay to TAN the Hosted Software service fees ("**Service Charge(s)**") as set out in the applicable Schedule. Exhibit A is not applicable to concession entries. Should Client decide to utilize concession entries, an additional

Schedule will be added to this Agreement detailing the concession fee structure.

(b)   In cases where TAN's banking or financial partners or similar service providers impose changes in processing costs payable by TAN, TAN reserves the right to modify Service Charges to reflect such changes. TAN further reserves the right to modify the Service Charges once per calendar year, provided that any increase will not exceed twelve and a half percent (12.5%).

(c)   TAN will be responsible for collecting all payments processed through the Online Services and all Service Charges assessed by TAN. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, TAN will pay Client sums due to Client based on the total registration fees collected, net of TAN's Service Charges as set forth in the applicable Schedule and any other deductions provided herein.

(d)   If Client enters transactions at fee amounts less than those actually charged to Client's Users, thus reducing or avoiding applicable Service Charges, such action shall constitute a material breach of this Agreement.

(e)   TAN shall not be responsible for processing or making any refunds. In the event Client initiates a refund, a fee may be charged by TAN to Client as set out in the applicable Schedule. TAN may set off against user fees collected by TAN to the amount of any credit card chargebacks and associated fees applicable to user transactions and to reimburse itself for any overdue fees owed to TAN by Client. To the extent that such funds are not available for set off, Client shall promptly reimburse TAN for any deficiency.

(f)   In the event Client is entering into this Agreement and using the Hosted Software for the benefit of a third-party event or organization ("**Third Party Beneficiary**"), Client agrees that TAN may send fees collected by TAN directly to the Third Party Beneficiary.

15.2 Subscription fees.

To the extent set forth in the applicable Schedule, Client shall pay to TAN the Hosted Software subscription fees ("**Subscription Fees**") for the term of this Agreement established in Section 17 below. Client will be invoiced for their first year Subscription Fees upon the first live operational use of the Hosted Software ("**Go-Live Date**"), with subsequent annual Subscription Fees being invoiced upon each anniversary of Go-Live Date. Payment will be made Net thirty (30) days from invoice date.

16. EXCLUSIVITY FOR HOSTED SOFTWARE.

During the term of this Agreement, TAN will be the sole and exclusive provider of registration and other services similar to the Hosted Software provided to Client hereunder for the events or transactions for which Client is using TAN's Software and Services.

17. TERM FOR HOSTED SOFTWARE

Unless otherwise provided in the applicable Schedule, TAN shall provide to Client, and Client shall license from TAN, the Hosted Software commencing on the Effective Date of this Agreement, and remaining in full force for a period of three (3) years from the Go-Live Date of the Hosted Software (the "**Initial Term**"), with the option to renew for three (3) one (1) year terms (each a "**Renewal Term**") upon Client providing written notice of its intent to renew the Hosted Software no less than ninety (90) days prior to the end of the Initial Term or Renewal Term, as applicable.

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APPENDIX 2: TERMS APPLICABLE ONLY TO LICENSED SOFTWARE AND ASSOCIATED SUPPORT AND MAINTENANCE SERVICES

18. ACCESS TO SYSTEM AND OTHER CLIENT OBLIGATIONS

18.1 **Access.** Client will provide, at no cost to TAN:

(a)   subject to the security requirements of Client, 24-hour access to Client's system via either an always-available telephone circuit or an always available internet connection to enable TAN or its designated representative to perform any of the obligations placed upon TAN by this Agreement; and

(b)   subject to the security requirements of Client, remote dial up/internet access methods approved by TAN to allow TAN to remotely diagnose and correct errors in the Licensed Software and provide other Services.

18.2 **Client Obligations.** Without limiting any of Client's other obligations under this Agreement, Client will:

(a)   use its best efforts to upgrade to any new Release or Version of the Licensed Software as soon as possible after becoming aware of its availability;

(b)   ensure that at all times at least one current staff person of Client has been fully trained on the Licensed Software; and

(c)   designate by written notice a single site and single person as the point of contact for telephone or other contact, which site and/or person Client may change upon fourteen (14) days prior notice to TAN.

19. GRANT OF LICENSES AND LIMITATIONS THEREON

19.1 TAN hereby grants to Client a non-exclusive and non-transferable right and license, subject to this Agreement, to install and/or use the Licensed Software, in the manner and for the term stated in the applicable Schedule and TAN provided and related written user documentation as follows:

(a)   **Workstation-Based Modules.** In respect of each Workstation-based core Module and each Workstation-based add-on Module, Client may install and use each Module on Workstations to access the Enterprise Database on the Database Server, provided that the number of copies of any

particular Module in use does not exceed the number of licenses granted to Client therefor as set out in the applicable Schedule.

(b) **Server-based Add-on Modules.** Client may install and use each server-based Module on as many Workstations as is desired by Client, and Client may use and permit use of such Modules by its clients, all without limit to the number of Users or transactions which simultaneously use any such Module, provided however that:

(i) in respect of each TeleReg and Voice Server Module, Client may install one copy of each Module on one IVR Server, provided that the number of copies of any particular Module in use does not exceed the number of licenses granted to Client therefor as set out in the applicable Schedule, and all such Modules together may be in Concurrent Use not to exceed the number of licenses granted to Client for TeleReg Lines Modules as set out in the applicable Schedule; and

(ii) in respect of each Payment Server Module, such Modules may be in Concurrent Use not to exceed the number of licenses granted to Client for Point of Sale Modules as set out in the applicable Schedule.

(c) **Server-based On-line (Internet) Modules.** In respect of each Server-based On-line (Internet) Module, Client may:

(i) install one copy of each Module on one Internet server, provided that the number of copies of the Module in use does not exceed the number of licenses granted to Client therefor as set out in the applicable Schedule; and

(ii) subject to Section 19(d), permit Users to access and use such Modules to access the Database Server via Internet Clients connecting via a licensed Internet Server, and all such Modules together may be in Concurrent Use not to exceed the number of licenses granted to Client for Online Client Access Modules as set out in the applicable Schedule multiplied by twenty-five (25).

(d) **Cumulative Workstation-based Modules.** In respect of each Cumulative Workstation-based Module, Client may:

(i) install one copy of each Module on a single Workstation for each license granted to Client therefor as set out in the applicable Schedule; and

(ii) permit Users using such licensed Workstation(s) to use such Module(s) provided, for greater certainty, that the Modules may be in Concurrent Use not to exceed the number of licenses granted to Client therefor as set out in the applicable Schedule.

(e) Client hereby acknowledges that the mechanism utilized by the Licensed Software to control the number of Users or Online Client Access which can simultaneously access and use Server-based On-line (Internet) Modules is based upon the number of Users who have at any time logged into Client's computer network using their passwords, such that any User so logged into such network in a manner that would automatically enable the User to access and use such Modules will reduce by one the number of Users able to simultaneously access those Modules, regardless of whether or not such User is in fact accessing or using any such Module. Client hereby waives any claim, and releases TAN from any such claim and from any losses or damages Client suffers in relation thereto, in connection with the inability of Users to simultaneously access such Modules where such inability is the result of inactive logged-in Users absorbing available login access.

19.2 **Additional Copies.** Client will not make any copies of the Licensed Software except as necessary for the installation permitted hereby and except for:

(a) copies of each Module licensed hereunder for training and testing purposes, and

(b) for backup purposes, provided that all electronic copies made include screen displays of TAN's proprietary or intellectual property notices as recorded on the original copy provided by TAN and Client affixes a label to each disk, reel, or other housing for the medium on which each physical copy is recorded setting out the same proprietary and intellectual property notices as appear on the unit of Licensed Software from which the copy is made in the same manner as those notices appear on that original copy.

20. LICENSED SOFTWARE FEES

20.1 In respect of each Module, Client shall pay to TAN all applicable Licensed Software fees listed in the applicable Schedule upon delivery (as defined in Section 2.3) of the Licensed Software.

21. MAINTENANCE SERVICES AND LIMITED WARRANTY

21.1 TAN will develop new Releases and new Versions of Licensed Software in accordance with the procedures and other particulars set out in the Support and Maintenance Handbook attached as <u>Exhibit C</u>.

21.2 Provided that Client continues to subscribe for Support and Maintenance in respect of a particular Licensed Software Product, TAN will provide to Client, either in physical form by mail or courier or in electronic form via the Internet, new Releases and Versions (and appropriate documentation) for such Licensed Software Products on a when-and-if-available basis.

21.3 **Limited Warranty of Software.** TAN warrants that when utilized by Client in a manner authorized hereunder, the Licensed Software will conform to the functional specifications set out in the user documentation accompanying

the Software for ninety (90) days from delivery of the Licensed Software ("Warranty Period"). TAN's sole obligation and liability hereunder with respect to any failure to so perform will be to use reasonable efforts to remedy any non-conformity which is reported to TAN in writing by Client within that Warranty Period. In the event TAN is unable to remedy such non-conformity within a reasonable time using reasonable efforts, TAN may refund to Client the license fee pertaining to the Licensed Software, subject to Client's return of the Licensed Software, and this Agreement will be automatically terminated. All warranty service will be performed at service locations designated by TAN. This limited warranty is void if failure of the Licensed Software has resulted from accident, abuse or misapplication. Any replacement Licensed Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

22. EXCLUDED SUPPLIES AND SERVICES

Without limitation, the following supplies and services are excluded from Support and Maintenance:

(a) Services which are required to remedy problems that stem from changes to or defects in system configuration upon which the Licensed Software was initially installed;

(b) Services which are required to remedy problems which do not stem from any defect in Licensed Software;

(c) Services which are required to remedy problems caused by lack of training of Client's personnel or improper treatment or use of the Licensed Software;

(d) Full report customization service;

(e) Any and all hardware support, maintenance or troubleshooting issues, except as described in Section 27 regardless of the source of such hardware.

23. FEES FOR SUPPORT AND MAINTENANCE

23.1 Support and Maintenance services begin for all Licensed Software listed in the applicable Schedule on the Support and Maintenance Start Date. The cost for Support and Maintenance services is payable annually in advance and is due in its entirety thirty (30) days from date of TAN's delivered invoice. Client may elect to specify a preferred alternate Support Renewal Date by so notifying TAN in writing. If an alternate preferred Support Renewal Date is specified, the cost of Support and Maintenance will be prorated from the anniversary of the Support and Maintenance Start Date to the specified Support Renewal Date. Thereafter, the Support and Maintenance fee is payable in advance on every annual anniversary of the Support and Maintenance Start Date or, if there is a Support Renewal Date, every anniversary of the Support Renewal Date (the applicable anniversary being the "Support Renewal Date"). TAN will provide invoices to Client for all such amounts, such invoices due on the later of (a) the Support and Maintenance Start Date

or applicable Support Renewal Date, as applicable, and (b) thirty (30) days from the date of the invoice.

23.2 For the first year of this Agreement commencing with the Effective Date, Support and Maintenance pricing shall be equal to twenty-five percent (25%) of the gross software license fees. Support and Maintenance pricing for all successive years shall be equal to twenty-five percent (25%) of the gross software license pricing charged by TAN for equivalent software as of the date of each such renewal year, provided, however, that any increase in TAN's annual Support and Maintenance pricing for any renewal year shall not exceed ten percent (10%) of the renewal fees charged in the prior year. Any additional software licensed to Client by TAN will increase the total gross software license fees upon which Maintenance and Support pricing is based. TAN will provide invoices to Client for renewal fees up to sixty (60) days prior to expiration of each term.

23.3 The Support and Maintenance fees identified in the applicable Schedule are applicable only upon the date of entry into this Agreement, and are subject to change thereafter in accordance with this Agreement's terms.

23.4 In consideration of the Support and Maintenance provided hereunder, Client agrees to pay TAN the fees described in the applicable Schedule, as modified explicitly pursuant to this Agreement. In the event Client requires Support and Maintenance for additional Licensed Software, Client agrees to pay TAN the additional Support and Maintenance fees applicable based upon the fees then in effect, prorated from the date of agreement to acquire such services to the Support Renewal Date.

23.5 Unless the applicable Schedule indicates otherwise, the fees charged hereunder are applicable to Support and Maintenance of Licensed Software used with respect to only a single database of Client data. If Client, after entering this Agreement, places in service one or more additional databases to be used in relation to the Licensed Software, then for each such additional database, an additional 25% of all gross Licensed Software fees due, exclusive of such extra database fees, will be payable hereunder for Support and Maintenance. Client will notify TAN as soon as reasonably possible of the installation or use of any such additional database(s).

23.6 TAN may terminate and suspend performance of all Support and Maintenance if Client fails to pay any past due TAN invoice within thirty (30) days of written notice of such failure, in the event of any other material breach by Client which remains uncured thirty (30) days after notice thereof or if any of the Licensed Software ceases to be subject of a valid software license agreement.

23.7 If at any time after Client has initially licensed any of the Licensed Software from TAN, Client's right to receive Support and Maintenance, or comparable services, from TAN under this Agreement or a comparable agreement has lapsed for any reason whatsoever, voluntarily or otherwise, and Client wishes to receive Support and Maintenance from TAN,

Client will pay to TAN, prior to re-instatement of Support and Maintenance services:

(a) a reinstatement fee equal to the greater of 50% of the current annual support fee or the sum of the unpaid support fees that would have been payable hereunder had this Agreement been in force during the time in which Support and Maintenance rights had so lapsed to the date of reinstatement, and

(b) at least one additional year of Support and Maintenance from the date of reinstatement.

24. TERM FOR SUPPORT AND MAINTENANCE

24.1 **Term.** TAN shall provide to Client, and Client shall purchase from TAN, Support and Maintenance for a period commencing on the Support and Maintenance Start Date and, subject to termination as provided herein, continuing until the following Support Renewal Date or anniversary of the Support and Maintenance Start Date, with automatic renewals for one (1) year terms thereafter until either party gives written notice to terminate Support and the Maintenance no less than ninety (90) days prior to the end of the then-current term, provided however that the fees payable in respect of the Services and the Products may be revised by TAN in accordance with this Agreement.

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APPENDIX 3: TERMS APPLICABLE ONLY TO THIRD PARTY PRODUCTS AND SERVICES

25. PURCHASE AND SALE; DELIVERY

25.1 **Purchase Commitment and Price.** TAN hereby agrees to sell to Client, and Client hereby agrees to purchase from TAN, the Third Party Products listed in a Schedule in the volumes and at the prices described therein.

25.2 **Delivery.** TAN will ship all or any part of the Third Party Products to Client as soon as reasonably practicable (or, if the below-described purchase order documentation does not seek immediate shipping, at the time TAN considers reasonable in order to meet the desired delivery date described) after receipt by TAN of a purchase order from Client specifying the particular Third Party Products sought, the number of such Third Party Products sought, the price payable therefor, and the desired date and location of delivery thereof. Any such purchase order must, at a minimum, reference quantity, description and price.

25.3 **Changes by Client to Delivery Schedule.** Following delivery by Client of any purchase order documentation described in Section 25.2, no changes by Client to the shipment schedule described therein will be permitted unless TAN is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

25.4 **Acceptance of Purchase Orders.** Purchase orders delivered by Client to TAN in respect of Third Party Products

are not binding upon TAN until accepted by TAN in writing. In any case, despite any indication to the contrary contained in any such purchase order documentation, no terms or conditions on purchase order documentation issued by Client, other than the information required by TAN as set forth expressly in this Agreement, will be binding upon TAN, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that TAN may accept or otherwise approve such purchase orders. TAN reserves the right to refuse any such purchase order for any reason not contrary to this Agreement, including without limitation pricing differences as described in Section 26.2.

25.5 **Additional Third Party Products.** Client may purchase Third Party Products in addition to those listed in a Schedule by issuing additional purchase order documentation as described herein, provided that the supply (or non-supply) of such additional Third Party Products will be subject to this Agreement as though such additional Third Party Products had been included in a Schedule on the date of execution of such Schedule subject to the following:

(a) the price for such additional Third Party Products is subject to agreement between the parties each in their own absolute discretion, and

(b) TAN shall have the right to discontinue delivery of such additional Third Party Products upon at least ninety (90) days written notice to Client without any liability to Client whatsoever for such discontinuance.

26. CHARGES AND PAYMENTS

26.1 **Prices.** The pricing applicable to Third Party Products is as set out in the applicable Schedule in the form finally agreed to by the parties.

26.2 **Pricing Variability.** Client acknowledges that:

(a) the prices described in a Schedule are applicable for six (6) months after the date of execution hereof, and such prices are based upon Client taking delivery of the full number of any particular Third Party Product listed in the applicable Schedule in a single shipment; and

(b) Client hereby agrees that after the expiry of such initial six-month period or, in case of Client seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed a Schedule, the actual prices may be higher. Prior to shipment of any Third Party Products that would be subject to pricing that differs from that described in the applicable Schedule, TAN will notify Client of any such different pricing and Client will accept such different pricing, as mutually agreed between Client and TAN, in writing.

27. SUPPORT FOR THIRD PARTY PRODUCTS

For the purpose of isolating support issues and responsibility in respect of Third Party Products and their interaction with any Products, TAN will provide initial first-tier support, to a maximum of fifteen (15) minutes per support inquiry, for

Third Party Products, as further specified in the Support and Maintenance Handbook.

28. PROPRIETARY RIGHTS

28.1 Third Party Proprietary Rights and Indemnity by Client. Client acknowledges that any Third Party Products supplied by TAN hereunder are supplied by TAN as a reseller thereof and that the Third Party Products are subject to the intellectual property rights of the various third party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights. Client will maintain in confidence and not use or disclose any and all confidential business or technical information connected with any Third Party Product except as specifically permitted by a party having legal control of such rights, and Client will defend, indemnify and hold harmless TAN for any claim based on an allegation that any Third Party Product provided to Client hereunder has been installed, used, or otherwise treated by Client or any client or customer of Client in violation of the proprietary rights of any third party or on an allegation that Client or any client or customer of Client has disclosed or used any confidential business or technical information connected with any Third Party Product.

28.2 Additional Terms. Client acknowledges that the possession, installation and use of Third Party Products may be subject to additional terms and conditions accompanying such Third Party Products at the time of delivery.

29. WARRANTY

29.1 Warranty. TAN warrants to Client that TAN has the right to deliver the Third Party Products subject to any documentation accompanying such Third Party Products at the time of delivery and/or any licensing mechanisms, physical, electronic or otherwise, included in any Third Party Products that are software.

29.2 Warranties Provided by Third Party Suppliers. Third Party Products are warranted by the manufacturers or licensors thereof in accordance with the warranty statements accompanying delivery of the Third Party Products, and Client agrees that Client will rely solely on such Third Party Product warranties and Client shall make no claim against TAN on account of any warranty, express or implied, which may apply to any Third Party Product.

EXHIBIT A

PRICING FORM

Company Address	10182 Telesis Ct., Suite 100 San Diego, CA 92121 US		Created Date	9/11/2013	
			Quote Number	00014388	
Prepared By	Steve Arsenault		Contact Name	Steve Scott	
Phone	1 (800) 661-1196 #1332		Email	stephen.scott@longbeach.gov	
E-mail	steve.arsenault@activenetwork.com				
Bill To Name	City of Long Beach		Ship To Contact	Steve Scott	
Bill To Contact	Steve Scott		Ship To Address	2760 Studebaker Rd	
Bill To Address	2760 Studebaker Rd Long Beach, CA 90816 United States			Long Beach, CA 90816 United States	

Product	Product Type	Quantity	UOM	Sales Price	Fee %	Total Price
ActiveNet - ($0-$149 online credit card transaction - % fee)	SaaS	1.00	%		4.50	
ActiveNet - ($0-$149 online credit card transaction - flat fee)	SaaS	1.00	Ea	USD 0.50		USD 0.50
ActiveNet - ($150-$499 online credit card transaction - % fee)	SaaS	1.00	%		3.50	
ActiveNet - ($150-$499 online credit card transaction - flat fee)	SaaS	1.00	Ea	USD 5.00		USD 5.00
ActiveNet - ($500+ online credit card transaction - % fee)	SaaS	1.00	%		2.50	
ActiveNet - ($500+ online credit card transaction - flat fee)	SaaS	1.00	Ea	USD 10.00		USD 10.00
ActiveNet - (ECP transaction - flat fee)	SaaS	1.00	Ea	USD 0.15		USD 0.15
ActiveNet - (credit card refunds - flat fee)	SaaS	1.00	Ea	USD 0.10		USD 0.10
ActiveNet - (offline cash/check transactions - % fee)	SaaS	1.00	%		1.50	
ActiveNet - (offline credit card processing - % fee)	SaaS	1.00	%		2.25	
ActiveNet - ACH Remittance- Every 1 week	Service	1.00	Ea			
ActiveNet - Activity Registration	SaaS	1.00	Ea			
ActiveNet - Daily Onsite Fee (min 3 days)	Service	35.00	Day	USD 500.00		USD 17,500.00
ActiveNet - Daycare	SaaS	1.00	Ea			
ActiveNet - Facility Reservation	SaaS	1.00	Ea			
ActiveNet - Membership	SaaS	1.00	Ea			
ActiveNet - Online Quick Reserve	SaaS	1.00	Ea			
ActiveNet - Point of Sale	SaaS	1.00	Ea			
ActiveNet - Professional Services - Activity Registration	Service	24.00	Hr	USD 100.00		USD 2,400.00
ActiveNet - Professional Services - Business Process Review	Service	48.00	Hr	USD 200.00		USD 9,600.00
ActiveNet - Professional Services - CRM Center Interface	Service	8.00	Hr	USD 100.00		USD 800.00
ActiveNet - Professional Services - Customer Import (One-Time)	Service	16.00	Hr	USD 180.00		USD 2,880.00

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ACTIVE network.

ActiveNet - Professional Services - Financial Export	Service	16.00	Hr	USD 180.00		USD 2,880.00
ActiveNet - Professional Services - Flexible Registration	Service	16.00	Hr	USD 100.00		USD 1,600.00
ActiveNet - Professional Services - General Settings	Service	8.00	Hr	USD 100.00		USD 800.00
ActiveNet - Professional Services - Go-Live Prep./Assistance	Service	16.00	Hr	USD 100.00		USD 1,600.00
ActiveNet - Professional Services - Lighting Integration (Musco)	Service	8.00	Hr	USD 250.00		USD 2,000.00
ActiveNet - Professional Services - Membership Registration	Service	32.00	Hr	USD 100.00		USD 3,200.00
ActiveNet - Professional Services - Point of Sale	Service	32.00	Hr	USD 100.00		USD 3,200.00
ActiveNet - Professional Services - Process Documentation	Service	16.00	Hr	USD 100.00		USD 1,600.00
ActiveNet - Professional Services - Project Administration	Service	30.00	Hr	USD 100.00		USD 3,000.00
ActiveNet - Professional Services - Project Management	Service	60.00	Hr	USD 100.00		USD 6,000.00
ActiveNet - Professional Services - Public Access	Service	16.00	Hr	USD 100.00		USD 1,600.00
ActiveNet - Professional Services - Reporting	Service	8.00	Hr	USD 100.00		USD 800.00
ActiveNet - Professional Services - Resource Reservation	Service	24.00	Hr	USD 100.00		USD 2,400.00
ActiveNet - Professional Services - Resource Reservation: "Interactive Maps Interface"	Service	4.00	Hr	USD 100.00		USD 400.00
ActiveNet - Professional Services - Resource Reservation: "Resource Scheduler Interface"	Service	8.00	Hr	USD 100.00		USD 800.00
ActiveNet - Professional Services - System Administrator Training	Service	16.00	Hr	USD 100.00		USD 1,600.00
ActiveNet - Professional Services - Training Manual	Service	40.00	Hr	USD 100.00		USD 4,000.00
ActiveNet - Public Access	SaaS	1.00	Ea			
ActiveNet - Quick Reserve	SaaS	1.00	Ea			

Hardware Total	USD 0.00	Total Price	USD 70,660.00
Software Total	USD 0.00		
Service Total	USD 70,660.00		
Maintenance Total	USD 0.00		
SaaS Total	USD 0.00		
Other Total	USD 0.00		

'Sales Tax not included in total price. Sales tax, where applicable, will be added to your invoice.

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network.

Quote Acceptance Information

Signature: _Pk H Wel_

Printed Name: _Patrick H. West_

Title: _City Manager_

Date: _1-7-14_

PO# (if applicable): _____

APPROVED AS TO FORM

Dec. 13 , 20_13_

CHARLES PARKIN, City Attorney

By _[signature]_

GARY J. ANDERSON
DEPUTY CITY ATTORNEY

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EXHIBIT B

SERVICES EXHIBIT

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EXHIBIT C

MAINTENANCE EXHIBIT

SUPPORT AND MAINTENANCE

The following supplies and services are included in Support and Maintenance:

- Unlimited technical support between 5:00am and 6:00pm Pacific Time, Monday through Friday via telephone (800.663.4991), email or web portal (http://support.theactivenetwork.com)

- Unlimited phone support for System Down issues on a **24 hours x 7 days a week** basis, provided that:
  - o If self-hosted, the site must have remote access and Internet email capability for extended support hours
  - o Support calls placed during extended support hours must be placed by an authorized contact person
  - o The type of support call is an urgent issue that includes site down, revenue impacting, or customer facing issues that have no reasonable work-around

- Access to Active's secure customer care web portal, discussion forums, knowledgebase and online training materials

- Regular documentation and communication

- **Support also includes, if such assistance can be provided in 15 minutes or less:**
  - o Assistance troubleshooting Third Party Products (e.g., Crystal Reports, Citrix client)
  - o Assistance to isolate and/or troubleshoot difficulties resulting from sources other than Active Network products and services, such as:
    - General network/internet support (e.g., network access, printing, internet access)
    - PC hardware troubleshooting
    - PC setup, configuration and optimization
    - Network operating system configuration and functionality
    - Basic Microsoft Windows functionality (i.e. Windows Explorer or Internet Explorer)
    - Loss of supervisor or other password

SUPPORT AND MAINTENANCE FOR HOSTED CUSTOMERS

The following supplies and services are included in Support and Maintenance:

- Installation of new Software releases

- Monitoring of connectivity and critical functionality at all times (24hr x 365 days/year) by skilled personnel using an extensive series of automated probes from multiple locations

- Response to site-down/critical issues within one hour, with reasonable efforts to advise your organization of the current status and expected resolution time

- Service agreements between Active and critical vendors essential to the continuing successful operation of

> the hosted environment
>
> - Scheduled maintenance to increase performance, fix defects or update applications, with reasonable efforts to notify your organization of scheduled maintenance times and potential impacts to service
> - Urgent maintenance (done to correct network, hardware or Software issues that are likely to cause significant service disruption and that require immediate action), which may temporarily degrade service or cause outages. Active may undertake urgent maintenance at any time deemed necessary and shall provide status updates to your organization as soon as possible.

SUPPORT ISSUE PRIORITIES AND TIMELINES

TICKET RESOLUTION TARGETS

- New support incidents are assigned one of the following levels, each with its respective standard ticket resolution target:

Call Priority Level	Description	Standard Completion Target
Priority 1 – System Outage	Fatal issues that result in the customer's inability to fulfill critical business functions (i.e., those pertaining to core functionality such as processing registrations, memberships, rentals) and that have no reasonable work-around	1 business Day
Priority 2 – High Business Impact	Serious issues significantly impacting use of the system but do not prevent core functions from being fulfilled (i.e., Customer cannot perform critical business functions; Customer experiences severe site degradation)	2 business day
Priority 3 – Medium Business Impact	All other issues, except those classified as low; (e.g., how-to questions, reporting/reconciliation issues, general questions, work around options)	3 business days
Priority 4 – Low Business Impact	Issues that are not time-sensitive or may be undertaken as customer service initiatives outside the scope of this Agreement (i.e., feature requests or low priority questions)	None
Guaranteed Uptime	For clients licensing Hosted Software	99%

SERVICES NOT INCLUDED

The following supplies and services are excluded from Support and Maintenance:

- Services required to remedy problems that stem from changes to or defects in system configuration upon which the Software was originally installed
- Services required to remedy problems which do not stem from any defect in the Software
- Services required to remedy problems caused by lack of training of Client's personnel
- Improper treatment or use of the Software
- Onsite or remote training services
- Full report customization service
- Database-specific services or assistance

RESTRICTIONS
The following actions will void Active's obligations under this Support and Maintenance Handbook: • The use of any other application that modifies data in the database, whether created by you or otherwise • The use or creation of third party applications that work in connection with Active's application or application database without prior written notification and consent from Active

HOLIDAY HOURS (US AND CANADA)		
Holiday	Open with reduced staff	Closed
New Year's Day (January 1st)		✓
Martin Luther King Day (3rd Monday in January)	✓	
President's Day (3rd Monday in February)	✓	
Good Friday (Friday before Easter)	✓	
Victoria Day (3rd Monday in May)	✓	
Memorial Day (Last Monday in May)	✓	
Canada Day (July 1st)	✓	
Independence Day (July 4th)	✓	
Civic holiday (1st Monday in August)	✓	
Labor Day (1st Monday in September)		✓
Canadian Thanksgiving/Columbus Day (2nd Monday in October)	✓	
Remembrance Day/Veteran's Day (November 11th)	✓	
US Thanksgiving (4th Thursday in November)	✓	
Day after US Thanksgiving (4th Friday in November)	✓	
Christmas Day (Dec. 25th)		✓
Boxing Day (December 26th)	✓	
New Year's Eve (December 31st)	✓	