

RESOLUTION NO. 2015-55

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A SOFTWARE AGREEMENT WITH ACTIVE NETWORK, LLC TO PROVIDE REGISTRATION, FEE COLLECTION AND REMITTANCE SERVICES, AND SUPPORT RELATED TO EVENTS, CAMPS, CLASSES, TICKETS, CONTESTS, PERMITS, FACILITY/EQUIPMENT USE, MEMBERSHIPS, RESERVATIONS, AND/OR DONATIONS, IN CONNECTION WITH THE ACTIVITIES OR SERVICES ORGANIZED OR HOSTED BY THE PARKS AND RECREATION DEPARTMENT, FOR AN INITIAL TERM OF THREE YEARS WITH AN OPTION TO AUTOMATICALLY RENEW FOR TWO SUCCEEDING TERMS OF ONE YEAR EACH, UNLESS TIMELY NOTICE OF TERMINATION IS PROVIDED, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

WHEREAS, Active Network, LLC 's hosting facilities are equipped with state-of-the-art technology, guaranteeing the Software's reliability, availability, performance and data security;

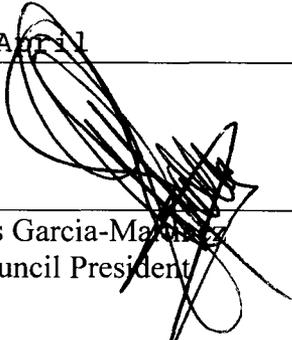
WHEREAS, Active Network, LLC will provide the City with ongoing support including software configuration and installation, monitoring connectivity and functionality, general maintenance, online support system, and technical support as detailed in the Software Service Agreement; and

WHEREAS, it is in the best interest of the welfare of the community to enter into this Software Agreement with Active Network, LLC, Inc. to support and facilitate the registration, and fee collection for events, camps, classes, tickets, contests, permits, facility/equipment use, memberships, reservations, donations, and all other paid activities organized, sponsored or hosted at City parks and recreation facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Software Agreement with Active Network, LLC to provide registration, fee collection and remittance services, and support related to events, camps, classes, tickets, contests, permits, facility/equipment use, memberships, reservations, and/or donations, in connection with the activities or services organized or hosted by the parks and recreation department, for an initial term of three years with an option to automatically renew for two succeeding terms of one year each, unless timely notice of termination is provided, in substantial conformity with the agreement attached hereto and made a part hereof as Exhibit "1".

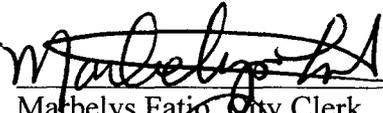
PASSED AND ADOPTED this 14 day of April, 2015.



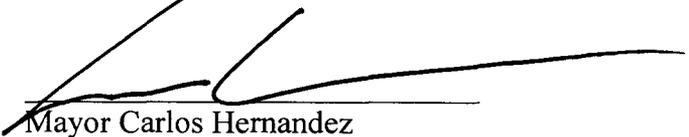
Isis Garcia-Martinez
Council President

Attest:

Approved on this 17 day of April, 2015.



Marbelys Fatjo, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



Lorena E. Bravo, City Attorney

Resolution was adopted by a 6-0-1 vote with Council Members Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez, & Lozano voting "Yes", & Councilmember Caragol, absent.

**Software as a Service Agreement
Contract # 00035962**

This Software as a Service Agreement ("Agreement") is made effective as of March 20, 2015 (the "Effective Date") and entered into between Active Network, LLC, 10182 Telesis Court, San Diego, CA 92121 ("Active" or "we" or "us") and City of Hialeah ("you" or "your" or "Client"). The parties agree as follows:

1. Services. At the discretion of the City of Hialeah, Active will provide services and support ("Services") related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "Events"), including without limitation access to its software as a solution product ("Software"). The features, services, options, and fees may be described more fully in an applicable schedule, quote, pricing form, order form, or similar document (each, a "Schedule"). Each Schedule will reference this Agreement or Contract Number above (if applicable), must be signed by Client and will be governed by and incorporated into this Agreement. You agree to provide us with certain information relating to your organization as necessary for us to provide the Software and Services. Software provided under this Agreement is deemed delivered when made available to you.

2. License to Intellectual Property/Promotion. a) Active retains all right, title, and interest in and to its Software and Services and any underlying software subject to the limited license provided by this Agreement.

b) Active hereby grants to you a limited, non-exclusive, non-transferable license (i) to use the Software and Services solely in accordance with the Schedule and this Agreement, and (ii) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this Section 2. You hereby grant to Active a limited license to use information provided by you relating to your organization, which may include your organization's name, trademarks, service marks, and logo, in connection with the promotion of your organization or Events.

(c) Reserved.

(d) You agree to receive notifications regarding free product, promotional items, and giveaways at your Event(s) or facility(ies), but you may opt not to receive the items from Active.

Active will be the sole and exclusive provider of registration services similar to the Software and Services provided to Client hereunder for each Event for which you are using Active's Software and Services during the term of this Agreement. e) Each party agrees to comply with all applicable laws, rules, and regulations relating to such party's obligations hereunder.

3. Information Collection. At no additional cost to the City of Hialeah, Active collects certain information from individuals as part of the registration process for your Events. You may login to our data management system to access this information. You are responsible for the security of your login information and for the use or misuse of such information by users authorized by you to use the Software and Services. You will immediately notify Active in writing if any such users are no longer authorized. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing disclosure and retention of records (such as the Florida Public Records law), online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder), and security of confidential personal information; (ii) applicable Payment Card Industry Data Security Standards; (iii) Active's privacy policy as published on its website; and (iv) collection, disclosure and management of information will be subject to any applicable public records law.

4. Fees. a) Client will pay the fees as more fully described in the applicable Schedule. For registration Software, unless otherwise set forth on the applicable Schedule, Active will collect registration fees

charged by you from individuals who register for your Events online, for the purposes of card association rules, as a merchant of record but not a seller of record. Active will remit those sums to you, net of chargebacks and any other offsets, bi-weekly unless otherwise set forth in the applicable Schedule, less Active's service fees as set forth in the applicable Schedule. Active may suspend its performance hereunder, including remitting payments, in the event it reasonably believes that the Software or Services are being used for fraudulent or other suspect purposes. If you have agreed to a minimum volume commitment in a Schedule, Active also has the right to charge fees owed to it by you if your organization does not meet the agreed volume commitments and may collect those fees by issuing an invoice or by offsetting the deficiency from any account balance you maintain with Active. Any minimum volume commitment calculations will begin on the date that the Software is live for your Events. Active may also reimburse itself for any chargebacks, returned items or overdue fees owed by you out of the registration fees it collects on your behalf by offsetting your account.] If the Schedule indicates that you are paying on a subscription basis, you will be invoiced for the first year of subscription fees upon the first live operational use of the Software ("Go-Live Date"), with subsequent annual subscription fees being invoiced upon each anniversary of Go-Live Date. Payment of subscription fees are due within thirty (30) days of your receipt of an invoice. All fees and prices are in United States Dollars unless otherwise specified.

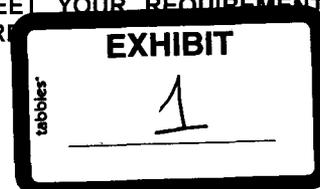
b) All fees that are not directly collected by Active as part of registration fees will be due from you within thirty (30) days from the end of the remittance cycle during which the fees accrued. These fees are displayed on your account statement. Past due fees shall accrue interest at the annual rate of ten percent (10%) per annum. In the event of delay in paying a fee, you agree to reimburse Active for any fees incurred in its collection efforts. Active may suspend or deactivate your account if your account is more than thirty (30) days past due. Any offsetting of charge backs returned items or overdue fees owed by City of Hialeah to Active will be itemized and actively reflected on reports.

c) Active reserves the right to modify the fees once per calendar year, provided that any increase will not exceed twelve and a half percent (12.5%). Active shall notify Client at least thirty (30) days in advance of any such change. If we modify the fees, you can terminate this Agreement at that time by providing written notice within thirty (30) days following the date the change is implemented.

d) As the seller of record, you will be solely responsible for, and will pay, any and all use, excise, sales or privilege taxes, duties, value added taxes, fees, assessments, or similar liabilities, chargeable by a governmental authority as a result of any Software or Service provided under this Agreement. Taxes on Active's net income are excluded. All fees described in the applicable Schedule are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any end user.

e) In the event you are entering into this Agreement and seeking the Services for the benefit of a third-party event or organization ("Third Party Beneficiary"), you agree that we may send registration fees collected by us directly to the Third Party Beneficiary.

5. Disclaimer of Warranty/Limitation of Liability. ACTIVE EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS. SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS-IS" BASIS WITHOUT



**Software as a Service Agreement
Contract # 00035962**

WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACTIVE SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR LOST PROFIT DAMAGES. ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY YOU AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

6. 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: (i) the Indemnifying Party's violation of any applicable law, rule, or regulation; and/or (ii) 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. Any indemnification by City of Hialeah in this agreement is subject to the limitations provided by Florida statute 768.28, including but not limited to, the cap on damages, regardless of whether the nature of the claim or suit is in contract or negligence, equity or at law.

b) You shall further 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 operated by you. For the purposes of Sections 5 and 6, reference to Active shall also include its suppliers and licensors.

7. Term and Termination. The term of this Agreement shall be for three (3) years from the Effective Date with automatic renewals for three (3) year terms thereafter, unless either party gives written notice to the other party to terminate this Agreement no less than twelve (12) months prior to the expiration of the then current term. Either party may terminate this Agreement: (a) upon a material breach by the other party, if such breach is not cured within thirty (30) days following written notice to the breaching party; or (b) where the other party is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days.

8. Miscellaneous. a) Any notices required to be given under this Agreement shall be in writing sent to the address set forth below for Client or, in the case of Active, to the address set forth above to the attention of General Counsel. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or three (3) days after deposited in the mail sent certified or registered.

b) This Agreement is non-assignable without the written consent of the other party, except that Active may assign without consent: (i) its rights to receive payments; or (ii) the Agreement to an affiliate or in connection with any sale of or any other transaction involving the transfer of more than fifty percent of its voting securities or assets. Any assignment in violation of this Agreement will be void.

c) This Agreement shall be governed by the laws of the State of Florida 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.

d) This Agreement contains the entire understanding of the parties regarding the subject matter hereof and can only be modified or amended by a subsequent written agreement executed by both

parties. 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, including without limitation that certain Class Software Services Agreement (the "Class Software Services Agreement") between Class Software Solutions Ltd. (Active's predecessor in interest) and Client dated as of February 14, 2001. The Class Software Services Agreement shall automatically terminate on the Effective Date of this Agreement without further action by the parties.

e) Sections 2, 3, 5, 6, and 8 of this Agreement and any fees owed by you shall survive any termination or expiration of this Agreement.

f) If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

g) No waiver of any provision of this Agreement or any attachment shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

h) Neither party will be deemed to be in default hereunder, or will be liable to the other, for failure to perform any of its obligations under this Agreement to the extent that such failure results from any event or circumstances beyond that party's reasonable control.

Software as a Service Agreement
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SIGNATURE PAGE

By signing this Agreement, each party represents and warrants that it has the necessary and full right, power, authority, and capability to enter into this Agreement and to perform its obligations hereunder.

ACTIVE NETWORK, LLC

By: _____
(Signature)

Print Name and Title

Date: _____

CLIENT

City of Hialeah _____
(Full Legal Entity Name)

E-Mail

By: _____
(Signature)

Phone: _____

Print Name and Title

Address

Checks payable to

City, State and Zip

Event URL (Web site)

Date: _____



Schedule

Company Address 10182 Telesis Ct., Suite 100
San Diego, CA 92121
US

Created Date 6/11/2014
Quote Number 00035692
Expiration Date 8/11/2014
Currency USD

Prepared By Danny Hooper
E-mail danny.hooper@activenetwork.com

Contact Name Ken Soler
Phone 1 (305) 687-2650
Email ksoler@hialeahfl.gov

Bill To Name City of Hialeah
Bill To Contact Ken Soler
Bill To Address RECREATION COMMUNITY SERV
HIALEAH, FL 33010 United States

Ship To Contact Ken Soler
Ship To Address RECREATION COMMUNITY SERV
HIALEAH, FL 33010 United States



Product	Product Type	Quantity	UOM	Sales Price	Fee %	Total Price
ACTIVE Net - (credit card refunds - flat fee)	SaaS	1	Ea	0.10		0.10
ACTIVE Net - ACH Remittance- Every 1 week	Service	1	Ea			
ACTIVE Net - ACTIVE Advantage - opt out	SaaS	1	Ea			
ACTIVE Net - Activity Registration	SaaS	1	Ea			
ACTIVE Net - Activity Registration Services	Service	16	Hr	150.00		2,400.00
ACTIVE Net - Class Customer Loyalty - Professional Services Conversion to ACTIVE Net Credit	Service	1	Hr	-15,750.00		-15,750.00
ACTIVE Net - Flexibility Registration/Daycare	SaaS	1	Ea			
ACTIVE Net - Flexible Registration Services	Service	16	Hr	150.00		2,400.00
ACTIVE Net - General Settings Services	Service	8	Hr	150.00		1,200.00
ACTIVE Net - Go-Live Prep./Assistance Services	Service	8	Hr	150.00		1,200.00
ACTIVE Net - Magazine Offer - opt out	SaaS	1	Ea			
ACTIVE Net - Marketing Services	Service	8	Hr	150.00		1,200.00
ACTIVE Net - Membership	SaaS	1	Ea			
ACTIVE Net - Membership Registration Services	Service	16	Hr	150.00		2,400.00
ACTIVE Net - Point of Sale	SaaS	1	Ea			
ACTIVE Net - Point of Sale Services	Service	8	Hr	150.00		1,200.00
ACTIVE Net - Professional Services - Class-to-ACTIVE Net Upgrade Launch Meeting	Service	8	Hr	150.00		1,200.00
ACTIVE Net - Project Administration Services	Service	10	Hr	150.00		1,500.00
ACTIVE Net - Project Management Services	Service	8	Hr	150.00		1,200.00
ACTIVE Net - Public Access	SaaS	1	Ea			
ACTIVE Net - Public Access Services	Service	16	Hr	150.00		2,400.00
ACTIVE Net - Public Interface - (\$1.00 Service Charge Minimum)	SaaS	1	Ea			
ACTIVE Net - Public Interface - Online Transaction Fee	SaaS	1	%		5.00	
ACTIVE Net - Public Interface Fee Set up - passed to online registrant	SaaS	1	Ea		5.00	
ACTIVE Net - Resource Reservation Services	Service	16	Hr	150.00		2,400.00
ACTIVE Net - Resource/Facility Reservation	SaaS	1	Ea			
ACTIVE Net - SaaS						
ACTIVE Net - Staff Interface - ECP Transaction - % fee	SaaS	1	%		0.50	
ACTIVE Net - Staff Interface - Payment Processing Fee - Credit Card	SaaS	1	%		3.00	
ACTIVE Net - Staff Interface - Technology Fee	SaaS	1	%		2.00	
ACTIVE Net - Standard IPAD w/PCI PED cert USB HID w/Magensa.net Key	Hardware	3	Ea	291.50		874.50
ACTIVE Net - System Administrator Training Services	Service	8	Hr	150.00		1,200.00

Total Price USD 7,024.50

Hardware Total 874.50

Service Total 6,150.00



All fees described herein are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User.

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

Quote Acceptance Information

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PO# (if applicable): _____

THIRD PARTY PRODUCTS ADDENDUM TO SOFTWARE AS A SERVICE AGREEMENT

This Addendum to the Software as a Service Agreement (“**Addendum**”) is entered into by and between City of Hialeah (“**Client**”) and The Active Network, Inc. (“**TAN**”) as of March 20, 2015 (the “**Effective Date**”). Client and TAN are also singularly referenced herein as a “Party” and collectively as the “Parties.”

- A. This Addendum is made part of that certain Software as a Service Agreement dated as of March 20, 2015 between Client and TAN (the “**Agreement**”) that provides Software and Services.
- B. Client and TAN now desire to supplement and amend certain terms and conditions of the Agreement, pursuant to the terms and conditions set forth in this Addendum.

NOW, THEREFORE, in consideration of the mutual covenants, recitals and promises contained in this Addendum and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereto hereby agree as follows:

1. **Changes to the Agreement.** The Appendix attached hereto is hereby incorporated by reference into the Agreement.

2. **Agreement Remains in Effect.** Except as expressly described herein, the Agreement remains in full effect according to its terms. The Agreement and this Addendum, as well as any exhibits attached to each respectively, shall be read in concert to the fullest extent possible and be considered collectively as a singular agreement. In the event any of the terms and conditions of the Agreement conflict with the terms and conditions of this Addendum, the terms and conditions of this Addendum shall prevail only as to the subject matter expressly stated herein.

3. **General.**

3.1 **Miscellaneous.** If any one or more of the provisions of this Addendum is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Addendum, and this Addendum shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The captions used in this Addendum are for convenience and reference only and will not be deemed to limit, characterize or in any way affect any other provision contained herein. All provisions of this Addendum will be enforced and construed as if no caption had been used. This Addendum will be assigned automatically and only upon the assignment of the Agreement according to its terms.

3.2 **Entire Agreement.** The Agreement, this Addendum and any exhibits attached to each respectively constitute the entire agreement between the Parties with respect to the subject matter thereof and supersede all previous negotiations, comments and writings by the Parties with respect to the subject matter referenced in each. The Agreement and this Addendum may be changed only by a written agreement signed by both Parties. No oral agreement or conversation with any officer, agent or employee of Client, either before or after the execution of the Agreement or this Addendum, shall affect, alter or modify the obligations hereunder.

3.3 **Counterparts and Facsimile:** This Addendum may be executed by the Parties in separate counterparts, which counterparts when combined are hereby deemed to constitute a single document, and the Parties may execute this Addendum by facsimile and such facsimile(s) will have the same effect as an originally executed document.

The Parties hereto have executed this Addendum effective as of the Effective Date.

TAN:
by its authorized signatory

CLIENT:
by its authorized signatory

Per: _____

Per: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX: TERMS APPLICABLE ONLY TO THIRD PARTY PRODUCTS AND SERVICES

1. PURCHASE AND SALE; DELIVERY

1.1 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 the applicable Schedule in the volumes and at the prices described therein. For purposes of this Addendum, "Third Party Products" means those hardware, firmware and/or software products, provided to TAN by third parties, listed in the Pricing Form, 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.

1.2 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 therefore, and the desired date and location of delivery thereof. Any such purchase order must, at a minimum, reference quantity, description and price.

1.3 Changes by Client to Delivery Schedule. Following delivery by Client of any purchase order documentation described in section 1.2, 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.

1.4 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 2.2.

1.5 Additional Third Party Products. Client may purchase Third Party Products in addition to those listed in the 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 the Schedule on the date of execution of 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.

2. CHARGES AND PAYMENTS

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

2.2 Pricing Variability. Client acknowledges that:

(a) the prices described in the 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 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 the 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 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.

3. 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.

4. PROPRIETARY RIGHTS

4.1 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 or settle any claim made or any suit or proceeding brought against TAN insofar as such claim, suit, or proceeding is 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, provided that TAN will notify Client in writing promptly after the claim, suit, or proceeding is known to TAN and will give Client such information and assistance as is reasonable in the circumstances. Client will have sole authority to defend or settle any such claim at Client's expense. Client will indemnify and hold TAN harmless from and against any and all such claims and will pay all

damages and costs finally agreed to be paid in settlement of such claim, suit or proceeding.

4.2 Third Party Products which are Software. Client acknowledges that the possession, installation and use of all Third Party Products which are software shall be governed by the terms of the software license(s) of the persons other than TAN who possess the rights to control such possession, installation and use.

5. WARRANTY

5.1 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.

5.2 Warranties Provided by Third Party Suppliers. Third Party Products are warranted by the manufacturers, suppliers 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. Client agrees not to make a claim against TAN on account of any warranty, express or implied, which may apply to any Third Party Product. If Client notifies TAN of a defect or nonconformity within thirty (30) days of the date of delivery of such Third Party Product, TAN will assist Client in troubleshooting such Third Party Product in accordance with Section 3. If such defect or nonconformity cannot be remedied during such troubleshooting and such Third Party Product is still under the Third Party Product warranty, TAN shall contact the applicable manufacturer, supplier or licensor of such Third Party Product to coordinate any returns or refunds. If a notice of a defect or nonconformity is received by TAN from Client of the defect or nonconformity following the initial the 30-day period, TAN's sole obligation and liability will be to provide support in accordance with Section 3. Returns and refunds are at the sole discretion of the applicable manufacturer, supplier or licensor.



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:
 - If self-hosted, the site must have remote access and Internet email capability for extended support hours
 - Support calls placed during extended support hours must be placed by an authorized contact person
 - 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:**
 - Assistance troubleshooting Third Party Products (e.g., Crystal Reports, Citrix client)
 - 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

ANNUAL SUPPORT AND MAINTENANCE FOR NON-HOSTED CUSTOMERS

The following supplies and services are included in Support and Maintenance for non-hosted customers:

- New releases and version of the Software and free assistance in planning upgrades

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)	✓	