

PRODUCT AND SERVICES AGREEMENT

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	City of Chandler	ADDRESS:	175 S. Arizona Avenue, 3rd Floor, Chandler, AZ 85225
CONTACT NAME:	Christina Pryor	TELEPHONE:	480 782 2403
EMAIL:	Christina.pryor@chandleraz.gov		

OVERVIEW OF AGREEMENT
This Agreement consists of this cover page, the Schedule, the General Terms, and the following:
Recreation Management Product Attachment
Third Party Hardware Product Attachment
Exhibit A, Service Level Agreement
Exhibit B, Service Level Remedies

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 Active hereby agree to be bound by this Agreement. By signing below, Client acknowledges and confirms that it has read this Agreement.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: <u>Kevin Farmer</u>
Name: <u>Kevin Hartke</u>	Name: <u>Kevin Farmer</u>
Title: <u>Mayor</u>	Title: <u>Vice President of Sales</u>
Date: _____	Date: <u>October 19, 2023</u>

APPROVED AS TO FORM:

City Attorney

JHB

ATTEST:

City Clerk

Active Network, LLC
5850 Granite Parkway, Suite 1200, Plano, TX 75024
Telephone: (469) 291-0300

Products and Services General Terms

Client's relationship with Active and Client's use of Active's products and services (including Client's licensing of Active's SaaS, Client's use of Services, and/or Client's purchase or leasing of Hardware) are subject to the terms and conditions set forth herein and are between Client and Active. Capitalized terms are defined in [Section 7](#) below, unless otherwise defined within the body of this Agreement, the applicable Product Attachment, or Schedule. In order to use the Products, Client must first agree to this Agreement. Client represents and warrants that Client has the necessary and full right, power, authority, and capability to accept this Agreement, to bind Client's organization, and to perform Client's obligations hereunder. Client can accept this Agreement by: (a) clicking to accept or agree to this Agreement, where this option is made available to Client by Active in the user interface for any Product; (b) signing a document where a link to this Agreement appears in an order form, Schedule, or other document provided to Client by Active; (c) by signing this Agreement, if there is a designated area to sign; or (d) by actually using the Products. In the case of (d), Client understands and agrees that Active will treat Client's use of the Products as acceptance of this Agreement from that point onwards. Client may not use the Products and may not accept this Agreement if (i) Client is not of legal age to form a binding contract with Active, or (ii) Client is a person barred from receiving the Products under the laws of the United States or other countries, including the country in which Client is a resident or from which Client uses the Products. Client may not use the Products if Client does not accept this Agreement. By accepting this Agreement, Client agrees as follows:

1. AGREEMENT STRUCTURE AND SCOPE.

1.1. General Terms and Incorporation of Product Terms. This Agreement establishes the general terms and conditions to which the parties have agreed to in order to facilitate the licensing of SaaS and the provision of Products. Additional Product-specific terms and conditions are set forth in one or more documents referenced in the applicable Schedule, each of which is incorporated herein (each, a "**Product Attachment**"). All references to the "**General Terms**" mean this document, exclusive of Product Attachments and Schedules.

1.2. Incorporation of Schedules. The parties may enter into new Schedules from time to time. Each Schedule incorporates the terms of these General Terms and the applicable Product Attachment.

1.3. Incorporation of EULAs. Client's use of any Third Party Products hereunder may be subject to, and Client will comply with, this Agreement and any applicable Third Party EULA(s).

1.4. Incorporation of Exhibits. Client's use of any payment processing services hereunder will be subject to, and Client will comply with, this Agreement and an applicable Exhibit(s).

1.5. Affiliates. Client's Affiliates may order Products from Active (or one of Active's Affiliates) by entering into a Schedule. In the event that a Client Affiliate enters into a Schedule with Active (or an Affiliate of Active), reference in this Agreement to "**Client**" and "**Active**" will mean the respective entity that accepts (as described in the Preamble) the applicable Schedule. Each such Schedule will be deemed to be a separate agreement.

2. FINANCIAL TERMS.

2.1. Fees; Payment Terms; Currency. Fees, currency, and payment terms are specified in the applicable Schedule. Unless otherwise specified in the Schedule, all amounts owed by Client that are not directly collected by Active are due from Client within 30 days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. Past due fees will accrue interest at the lesser of the annual rate of 10% per annum or the maximum amount permitted by applicable law. In the event of any non-payment or delay in paying a fee that results in litigation, the prevailing party may recover the prevailing party's reasonable attorney's fees and legal expenses incurred in the litigation. Except as otherwise expressly provided in a Schedule, Active may modify the fees once per calendar year upon 30 days' notice, provided that any such increase will not exceed 12.5% over the then-current transaction fees or 5% over the then-current subscription fees.

2.2. Additional Payment Terms. If Active reasonably believes that a transaction by Client, Licensee, or End User, as applicable, may be fraudulent or otherwise contrary to law, Active must provide Client with prior written notice and an opportunity to cure any alleged transaction that may be unlawful within 90 days of the written notice. If Client fails to timely cure the alleged unlawful transaction within 90 days after written notice, Active may issue an invoice or offset an equivalent amount from Client's account or any payment Active owes to Client and return the value to the End User (as set forth below) and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

2.3. Credit Card Surcharging. All fees described in the applicable Schedule are in consideration of the SaaS 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.

2.4. Reserved.

3. LIMITED RIGHTS AND OWNERSHIP; INDEMNIFICATION.

3.1. Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Active and its licensors. Client acknowledges that: (a) all Protected Materials are licensed and not sold; (b) Client acquires only the right to use the Products in accordance with this Agreement, and Active and/or its licensors will retain sole and exclusive ownership of and all right, title, and interest in the Products, including the following: (i) all Intellectual Property embodied or associated with the Products, (ii) all deliverables and work product associated with the Products, and (iii) all copies and derivative works thereof; and (c) the Products, including the source and object codes, logic, and structure, contain and constitute valuable trade secrets of Active and its licensors.

3.2. Restrictions. Unless otherwise set forth in a EULA, Product Attachment, or Schedule, Client will not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party: (a) knowingly sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Protected Materials; (b) knowingly decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Products in whole or in part, for competitive purposes or otherwise; (c) knowingly allow access to,

provide, divulge, or make available the Protected Materials to any user other than those who are licensed pursuant to this Agreement to have such access; (d) knowingly write or develop any derivative works based upon the Products; (e) knowingly modify, adapt, translate, or otherwise make any changes to the Products or any part thereof; (f) knowingly use the Protected Materials to provide processing services to third parties, or otherwise use the same on a service bureau basis; (g) knowingly disclose or publish, without Active's prior written consent, (i) performance or capacity statistics, or the results of any benchmark test performed on the Products, or (ii) the terms (but not the existence) of this Agreement or other valuable trade secrets of Active or its licensors; (h) knowingly without Active's prior written consent, perform or disclose or cause to be performed or disclosed any information related to any security penetration or similar tests; (i) knowingly disclose or otherwise use or copy the Protected Materials except as expressly permitted herein; (j) knowingly remove from any Products identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices' functionality or features; (k) knowingly contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or Intellectual Property rights, title, or interests of Active in and to any Products; (l) knowingly use the Products for other than authorized and legal purposes, consistent with this Agreement and all applicable laws, regulations, and the rights of others; (m) knowingly take any steps to avoid or defeat the purpose of security measures associated with the Products, such as sharing of login and password information, or attempt to circumvent any use restrictions; or (n) except as expressly permitted by this Agreement, knowingly use the Protected Materials for hosting purposes. Further, Client will: (o) not knowingly use the SaaS to transmit, publish, or distribute any material or information: (i) 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; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable person would consider private in nature; (p) not knowingly attempt to gain access to any systems or networks that connect to the Services or SaaS except for the express purpose of using the SaaS for their intended use; (q) not knowingly engage in any activity that interferes with or disrupts the SaaS; and (r) not knowingly use the SaaS in violation of the CAN-SPAM Act, Canadian Anti-Spam Legislation, or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.

3.3. Enforcement. Client shall use all commercially reasonable efforts to (a) ensure that Client users of Products comply with the terms and conditions of this Agreement; (b) promptly notify Active of any actual or suspected violation thereof; and (c) cooperate with Active with respect to any investigation and enforcement of this Agreement.

3.4. Active Indemnification. Active agrees to defend, settle, and pay damages (including reasonable attorneys' fees) relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Client to the extent that such Claim is based upon: (i) Active's proprietary Products (excluding Professional Services and Third Party Products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement, or (ii) Active's gross negligence or willful misconduct.

3.5. Client Indemnification. To the extent not prohibited by law, Client will defend, indemnify, and hold Active harmless from and against any and all third party claims, demands, causes of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Active to the extent that such Claim is based upon (a) any actual, alleged or anticipated breach by Client of this Agreement; (b) injury or death to a person or damage to property resulting from the participation in an Event operated by Client in connection with the Services and/or SaaS; (c) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (d) use or unauthorized disclosure of Participant Information (as defined in the Product Attachment) by Client or other third parties to whom access is given to Participant Information as provided hereunder; (e) Client's use of the Services and/or SaaS in violation of Section 3.2 of these General Terms; and/or (f) any claims for refunds or chargeback requests from End Users.

4. DISCLAIMERS AND LIMITATION OF LIABILITY.

4.1 EXCEPT AS OTHERWISE SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, CLIENT ACKNOWLEDGES AND AGREES THAT THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES, IF ANY, SET FORTH HEREIN AND IN THE PRODUCT ATTACHMENTS ARE LIMITED TO THEIR EXPRESS TERMS AND ARE IN LIEU OF, AND ACTIVE, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY (a) WARRANTY THAT THE PRODUCTS ARE ERROR-FREE OR "BUG"-FREE, ACCURATE, SECURE, OR RELIABLE; (b) WARRANTY THAT THE PRODUCTS WILL OPERATE WITHOUT INTERRUPTION; (c) WARRANTY THAT ALL ERRORS WILL BE CORRECTED OR THAT THE PRODUCTS WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (d) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (e) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (f) WARRANTY THAT THE PRODUCTS WILL MEET CLIENT'S REQUIREMENTS. ACTIVE WILL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, STATUTE, TORT, OR OTHERWISE), INCLUDING DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT ACTIVE HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOWEVER, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION ONLY APPLIES WHERE ALLOWED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO TWO (2) TIMES (I) THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SPECIFIC PRODUCT UNDER THE APPLICABLE SCHEDULE GIVING RISE TO SUCH CLAIMS DURING THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE LESS ANY AMOUNTS PAID BY ACTIVE WITH RESPECTIVE TO LIABILITIES UNDER THIS AGREEMENT, OR (II) IF NO SUCH PAYMENTS HAVE BEEN MADE OR SUCH AMOUNTS CANNOT BE CALCULATED, 10,000 U.S. DOLLARS (OR THE EQUIVALENT THERETO AS DETERMINED BY THE APPLICABLE COUNTRY'S CURRENCY), AS APPLICABLE. NOTWITHSTANDING THE ABOVE, IF CLIENT RESIDES OUTSIDE OF THE U.S., THIS DOES NOT AFFECT ACTIVE'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE, NOR FOR FRAUDULENT MISREPRESENTATION, MISREPRESENTATION AS TO A FUNDAMENTAL MATTER, OR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

4.2 RESERVED.

4.3 RESERVED.

4.4 FOR THE PURPOSES OF THIS SECTION 4 AND ANY INDEMNIFICATION PROTECTING ACTIVE UNDER THIS AGREEMENT, REFERENCE TO ACTIVE WILL ALSO INCLUDE ITS SUPPLIERS AND LICENSORS.

5. TERM AND TERMINATION.

5.1. Term. The Term for each Product or Service offered under this Agreement will be as set forth in the applicable Product Attachment. This Agreement will continue until either party terminates all Schedules and Product Attachment as provided hereunder.

5.2. Termination. Either party may terminate this Agreement, including any or all Product Attachments and Schedules executed hereunder, immediately upon written notice: (a) in the event that the other party commits a non-remediable material breach of this Agreement and/or the applicable Product Attachment or Schedule, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of Section 2 of these General Terms which will have a 10 day cure period; or (b) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within 30 days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Where a party has the right to terminate this Agreement, such party may at its discretion either terminate the entire Agreement or the applicable Product Attachment or Schedule; provided however, that termination of a Product Attachment will automatically terminate all Schedules entered into pursuant to such Product Attachment. Product Attachments and Schedules that are not terminated will continue in full force and effect under the terms of these General Terms. Following termination of this Agreement or a Product Attachment (for whatever reason), if requested by Active, Client will certify that it has returned or destroyed all copies of the applicable Protected Materials and acknowledges that its rights to use the same are relinquished. Termination for any reason will not excuse Client's obligation to pay in full any and all amounts due, nor will termination by Active result in a refund of fees paid.

5.3. Suspension. Active will be entitled to suspend any or all Services or deactivate Client's account, including suspending its performance and obligation to remit payments hereunder, upon 30 days' written notice to Client and subsequent failure by Client to cure after receiving such notice, in the event Active reasonably believes that Client is in breach of this Agreement, Client's use of the Services or SaaS is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. Further, Active, in its sole discretion, may terminate Client's password, accounts (or any part thereof), and/or Client's right to use the Services, and remove and discard any and all of Client's content within the Services, at any time for any reason or no reason, including, without limitation, for lack of use, failure to timely pay any fees or other monies due Active, or if Active believes Client has violated or acted inconsistently with the letter or spirit of this Agreement. Client agrees that any termination of its use of the Services may be effected without prior notice, and acknowledges and agrees that Active may immediately deactivate or delete Client's account and all related content and files related to Client's account and/or bar any further access to such files or Services. Further, Client agrees that Active shall not be liable to Client or any third party for any termination of use of or access to the Services. All provisions of this Agreement that by their nature should survive termination of Client's right to use the Services shall survive (including, without limitation, all limitations of liability, releases, indemnification obligations, disclaimers of warranties and intellectual property protections and licenses).

5.4. Client's Termination for Convenience. Client may elect to terminate this Agreement for its convenience between May 1st and May 31st of each given calendar year that this Agreement remains in effect ("Opt-Out Period") by providing written notice to Active and payment to Active of an Early Termination Fee in the amount of \$80,000. Where the Client exercises its termination for convenience right hereunder by providing Active with written notice during the Opt-Out Period for that applicable year, this Agreement shall terminate thirty (30) days from Active's receipt of the Client's notice and payment of the Early Termination Fee. Where no such notice is received by Active during the Opt-Out Period, or such notice is received by Active after the expiration of the Opt-Out Period for that applicable year, then the Agreement shall continue and remain in effect until terminated in accordance with its terms. Notwithstanding anything to the contrary in this Agreement, in the event of a termination for convenience under this Section, Client will pay Active for the Services performed in accordance with the terms and conditions of this Agreement up to and through the date of termination in addition to the Early Termination Fee.

6. GENERAL PROVISIONS.

6.1. Force Majeure. Neither party will incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without any negligence on the part of the party seeking protection under this subsection, including internet service provider or third party payment delays or failures, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions (collectively "Force Majeure Event"). The party invoking the Force Majeure Event must provide written notice to the other party within 30 days of the Force Majeure Event. The invoking party's time to perform will be extended for a period of time that begins on the date of notice and continues for a period commensurate with the delay so caused.

6.2. Assignment. Active may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Active must provide written notice of assignment to Client as provided in this Agreement within 30 days of the assignment.

6.3. Change of Control. Client will cause each Schedule hereunder to be assigned to (a) the purchaser of all or substantially all of Client's assets or equity securities or (b) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((a) and (b) together, a "Change of Control"). Client will provide written notice to Active of any proposed or completed Change of Control as soon as permissible and in any event within 5 days of the public announcement or close of the transaction, whichever occurs first. Within the 30 day period following such notice, Active will have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee is a competitor of Active or a party with whom Active does not want to do business. Client agrees to require that the purchaser or assignee (as outlined in this Section 6.3) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule.

6.4. Export; Anti-Bribery. The Products may include encryption software or other encryption technologies that may be controlled for import, transfer, export, or other purposes under Export Laws. Client may not export, re-export, transfer, or re-transfer or assist or facilitate in any manner the export, re-export, transfer, or re-transfer of, or provide access to, any portion of the Products in violation of Export Laws, as determined by the laws under which Client operates, including: (a) to any country

on Canada's Area Control List; (b) to any country subject to U.N. Security Council embargo or action; (c) contrary to Canada's Export Control List Item 5505; (d) to countries subject to U.S. economic sanctions and embargoes; and (e) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items, including, to any person or entity appearing on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; the Bureau of Industry and Security's Denied Persons List, Entity List, or Unverified List; or the Department of State Debarred List. Client hereby represents and covenants that: (i) Client is eligible to access the Products under Export laws and all other applicable laws; and (ii) Client will import, export, re-export, transfer, or re-transfer the Products to, or use or access the Products in, any country or territory only in accordance with Export Laws and all other applicable laws. Furthermore, Client hereby represents and covenants that, in connection with its respective activities conducted under this Agreement, it will comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act of 2010, as amended, and the Convention on Combating Bribery of Foreign Public Officials and has not, and will not, make or receive, directly or indirectly, any payments or gifts, or offers or promises of payments or gifts or things of value in exchange for anything that may arise out of this Agreement in a manner that would violate these laws and rules or any other applicable anti-corruption or anti-bribery laws or regulations.

6.5. Notices. Any notices required to be given under this Agreement will be in writing sent to the address on file with Active for Client or, in the case of Active, to the address set forth in Section 7 of these General Terms to the attention of Legal Department. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or 3 days after deposited in the mail sent certified or registered.

6.6. Relationship. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

6.7. Severability. If any part or provision of this Agreement is held to be unenforceable, illegal, or invalid by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the unenforceable, illegal, or invalid provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable, illegal, or invalid provision and this Agreement will be deemed amended accordingly.

6.8. Survival. The following provisions will survive any termination, cancellation, or expiration of this Agreement: Sections 1, 2, 3.2, 3.5, 4, 5.2, 6, and 7 of these General Terms, and such other provisions that should reasonably survive termination, cancellation, or expiration hereof.

6.9. Amendments; No Waiver. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by both parties.

6.10. Entire Agreement. This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. All pre-printed terms of any Client purchase order, business processing document, or on-line terms will have no effect. There have been no material representations or statements by any person or party to this Agreement as an inducement for a party hereto to accept this Agreement other than what is expressly set forth in writing herein.

6.11. No Third Party Beneficiaries. This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Active under this Agreement will apply equally to its licensors and suppliers, and the owner of the Third Party Products with respect to the Third Party Products, and such third parties are intended third party beneficiaries of this Agreement, with respect to the Third Party Products as applicable.

6.12. Governing Law and Venue. Except as set forth below, this Agreement will be governed by the laws of the State of Arizona, without giving effect to the conflict of law provisions thereof and as applicable under United States federal law. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement. THE PARTIES HERETO IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Notwithstanding the above, for purposes of this Agreement, certain of the terms and conditions will vary depending on the location of the Client. If a country or term is not specified below, then the Governing Law and Venue set forth above shall apply.

If Client's principal place of business is in:	The governing law is:	The courts having exclusive jurisdiction are:
Canada	Province of British Columbia	Province of British Columbia
United Kingdom, Ireland, Germany, France, or Austria	England	England
Singapore	Singapore	Singapore
New Zealand	England	England
Hong Kong	Hong Kong	Hong Kong
Australia	New South Wales	Sydney, New South Wales
Switzerland	England	England
Denmark	England	England
Netherlands	England	England
Spain	England	England
Sweden	England	England

6.13 Order of Precedence. To the extent any terms and conditions of these General Terms conflict with the terms and conditions of any Product Attachment, the provisions of the Product Attachment will control. To the extent any provision of these General Terms or any Product Attachment conflict with the provisions of a Third Party EULA, the Third Party EULA will control. In the event of a conflict between a Schedule and these General Terms or the applicable Product Attachment, the General Terms or the applicable Product Attachment will control, provided, however, that such standard variable terms such as price, quantity, license scope, payment terms, shipping instructions, and the like will be specified on each Schedule. Further, Client agrees and acknowledges that it shall not itself, or through any Affiliate,

employee, consultant, contractor, agent, or other third party, knowingly amend, alter, or contract away (or seek to amend, alter, or contract away) any of its rights, liabilities, or obligations under this Agreement through any means (including, but not limited to, through any waiver, contract, terms, or communication with End Users (individually and collectively, "Client Terms")). Client agrees and acknowledges that any such amendment, alteration, or contracting away of any such liabilities, or obligations under this Agreement shall be void, and of no force or effect. Active shall bear no liability or obligation to any End User under any Client Terms, and any provision of any Client Terms that is inconsistent with this Agreement, or that expressly, implicitly, or effectively imputes any liability or obligation upon Active to any End User or to any other third party shall be void, and of no force or effect.

6.14 Interpretation. Any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time. The headings and pronouns contained herein are for convenience and ease of reference only and will not affect the construction or interpretation of this Agreement. The word "including" in this Agreement means "including, without limitation." All references to days means calendar days. This Agreement will not be construed in favor of or against a party based on the author of the document.

6.15 Counterparts. These General Terms and each Product Attachment, Schedule, and any exhibits thereto may be executed in one or more counterparts, each of which will constitute an enforceable original of this Agreement, and the parties agree that electronic or digital signatures, as well as pdf scanned copies of signatures, will be as effective and binding as original signatures.

6.16 Remedies Cumulative; Injunctive Relief. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Furthermore, in the event of a breach or threatened breach of the intellectual property obligations in this Agreement, Active, in addition to any and all other rights (at law or in equity) which may be available, will have the right of injunctive relief and other appropriate equitable remedies to restrain any such breach or threatened breach, without the requirement of posting a bond.

6.17 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) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Active Network, LLC or one of its Affiliates or subsidiaries.

6.18 Conflict of Interest. Arizona Revised Statutes sec. 38-511 **applies** to this Agreement.

6.19 Insurance.

- (a) Insurance Coverage. Active will, during the term of this Agreement, at its sole cost and expense, obtain and maintain in full force and effect the insurance coverage in the minimum amounts and on the terms set forth in Exhibit C hereto ~~or such other amounts as may be set forth in a Schedule~~. All insurance required hereunder to be carried by Active (as well as any subcontractors or agents) will be with sound and reputable insurers.
- (b) Insurance Certificates. Active will provide Client with a copy of all applicable certificates of insurance upon Client's request no more than once per calendar year, including those evidencing that Client has been included as an additional insured to applicable policies where required hereunder. Certificates are to be delivered to Client prior to delivery of the Products and Services hereunder, and annually thereafter, upon at least thirty (30) days prior written notice from Client to Active.
- (c) Deleted.
- (d) Deleted.
- (e) Deleted.

7. DEFINITIONS.

"Active" means Active Network, LLC, or, if Client's principal place of business is in Canada, The Active Network, Ltd., together with their Affiliates, with a principal place of business at 5850 Granite Parkway, Suite 1200, Plano, TX 75024.

"Affiliates" of a designated corporation, company, partnership, 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 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.

"Agreement" means these General Terms, together with all Product Attachments and Schedules accepted by the parties (as described in the Preamble).

"Client" means the individual who accepts this Agreement (as described in the Preamble) and any business entity on behalf of which such individual accepts this Agreement.

"Documentation" means the user instructions, release notes, manuals, or on-line help files in the form generally made available by Active, regarding the use of the applicable SaaS or Services, as updated by Active from time to time.

"Effective Date" means the date of last signature on page one of this Agreement.

"Export Laws" means export control laws and regulations of the countries and/or territories in which Active operates or in which the Products are used, accessed, or from which the Products are provided.

"Hardware" means computer hardware, equipment, and/or utilities supplied by Active pursuant to a Schedule.

"Intellectual Property" means any and all intellectual property and proprietary rights (in whole or in part) recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed, or recorded, including inventions, technology, patent rights (including patent applications, divisions, and disclosures), copyrights and all works of authorship (whether or not copyrightable), moral rights, trade secrets, trademarks and other indicators of source (and the goodwill associated therewith), service marks, trade dress, logos, methodologies, procedures, processes, know-how, tools, utilities, techniques, protocols, various

concepts, ideas, methods, models, templates, software, source code, algorithms, tools, utilities, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, layouts, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which Active has created, acquired, or otherwise has rights in, and may, in connection with the Products or the performance of Services hereunder, create, employ, provide, modify, create, acquire, or otherwise obtain rights in, and in each case includes any derivative works, alterations, and other modifications using, incorporating, based on, or derived from the foregoing.

"Maintenance Services" means the provision of Updates and Upgrades related to the SaaS all as more particularly set out in the applicable Product Attachment and/or Schedule.

"Preamble" means the first paragraph of these General Terms.

"Products" means, collectively, SaaS, Services, Hardware, and all other services, products, or materials provided by Active to Client under the terms of this Agreement.

"Professional Services" means the implementation, site planning, configuration, integration, and deployment of the SaaS, training, project management, or other consulting services.

"Protected Materials" means Products, except for Hardware.

"SaaS" means (a) the software as a service which is hosted by Active or its hosting providers and which is accessed by Client and its users via the internet; (b) Active's web sites; and (c) associated services, as more fully described in the applicable Product Attachment. SaaS functionality is subject to change from time to time at Active's sole discretion.

"Services" means, collectively, (a) Professional Services; (b) Maintenance Services; (c) Support Services; and (d) any other services set forth in a Schedule.

"Schedule" means the document, schedule, quote, pricing form, web page, order form, or similar document and the terms and conditions contained therein "accepted" (as described in the Preamble) by the parties that describes order-specific information, such as a description of Products ordered, features, options, license details, and fees.

"Support Services" means the provision of technical assistance for SaaS or Hardware as further described in an applicable Product Attachment and/or Schedule.

"Taxes" means any and all applicable taxes, including sales, use, excise, withholding, assessments, stamp, transfer, value-added, duties, tariffs, export charges, import charges, and other taxes or assessments (however designated) imposed by any foreign, federal, provincial, state, or local governmental authority upon or applicable to Products arising out of this Agreement, other than those based on Active's net income.

"Third Party EULA" means the end user license agreement, if any, that accompanies the Third Party Products, which governs the use of or access by Client to the applicable Third Party Products.

"Third Party Products" means those hardware, firmware and/or software products, including updates and enhancements thereto, if any, owned by third parties, together with all user manuals and other documents accompanying the delivery of the Third Party Products.

"Updates" means bug fixes, patches, error corrections, minor releases, or modifications or revisions that enhance existing performance of the SaaS that are provided as part of Maintenance Services. Updates exclude Upgrades.

"Upgrades" means a new SaaS release that contains major functionality enhancements or improvements; and which is designated by an incremental increase in the release number to the left of the decimal point (by way of example only, release 5.0 designates an Upgrade from release 4.x). Upgrades exclude new products, modules or functionality for which Active generally charges a separate fee.

Recreation and Membership Management Product Attachment

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

1. SERVICES. Active will provide 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 SaaS. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Services and SaaS. SaaS provided hereunder are deemed delivered when access is made available to Client.

2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

2.1. Active hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license during the Term of this Product Attachment (a) to use the SaaS for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with Client's Event(s) solely in accordance with the Agreement and the Schedule, which for purposes hereof will include the support and maintenance handbook applicable to the Products (available for review in the Client portal), as may be updated from time to time, and (b) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this Section 2. Client hereby grants to Active a limited license to use information provided by Client relating to Client's organization and Event, which may include content regarding the Event, Client's organization's name, trademarks, service marks, and logo (collectively, the "**Marks**"), in connection with the promotion of Client's organization or Events and the Services that Active provides.

2.2. Client will make reasonable efforts to promote and encourage the use and availability of the SaaS in connection with the promotion of Events. During the Term of this Product Attachment, Active will be the sole and exclusive provider of registration software and other services similar to the SaaS and Services provided to Client hereunder for all of Client's Events for which registration begins during the Term of this Product Attachment until the Event occurs. For clarity, if an Event occurs after this Agreement is terminated, other than for Active's uncured material breach, and registration for such Event begins during the Term of this Agreement, then Active SaaS shall be used. Client expressly understands and agrees that the exclusivity set forth in this Section 2.2 **Error! Reference source not found.** is consideration in exchange for the pricing and other benefits being provided to Client hereunder. Without limiting the foregoing, Client will not enter into any agreement, arrangement, or relationship with any other party that offers online registration or transaction processing services similar to the SaaS provided to Client hereunder.

2.3. Active may present commerce offers to users who register for, sign up, or otherwise use the SaaS in connection with the Events ("**End Users**"). Any such End Users may opt in to receive information, items, or promotions/deals from Active or third parties, in which case, Active or such third party will be responsible for fulfillment and providing customer service for any such offers. Client will not present any competing offers to End Users.

3. INFORMATION COLLECTION.

3.1. Active collects certain information from End Users, individuals, and/or Licensees as part of the registration process for Events (collectively, "**Participant Information**"). Client may login to Active's data management system to access the Participant Information. Client is responsible for the security of its login information and for the use or misuse of such information. Client will immediately disable a user's access who is using the SaaS on its behalf or notify Active in writing if any such user is no longer authorized or is using such information without Client's consent. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiaries, and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives, to the extent not prohibited by law, covenant not to sue and agree to defend, indemnify, and hold harmless Active from any claims arising from Active providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client. In the event of any dispute between two or more parties as to account ownership, Client agrees that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties. Client agrees not to use the SaaS or Services to collect or elicit (a) any special categories of data (as defined in the General Data Protection Regulation, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Active, and in such event, only in pre-defined fields within the SaaS that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the SaaS that are intended for that purpose.

3.2. Both parties agree to use the Participant Information in compliance with (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy and personal information (e.g., by including an appropriate CAN-SPAM Act and Canadian Anti-Spam Legislation opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Active's privacy policy, as published on its website or otherwise provided by Active from time to time.

4. FEES.

4.1. Client will pay the fees as more fully described in the applicable Schedule. Unless otherwise set forth in the applicable Schedule, Active will charge registration fees to individuals who register for the Events or purchase goods or services online, and will process and collect such fees as a payment facilitator according to the card networks. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay Client sums due to Client based on the total fees collected, net of Active's service fees as set forth in the applicable Schedule and any other deductions provided herein. The applicable currency will be set forth in the Schedule.

4.2. Any minimum volume commitment will be set forth in the applicable Schedule. The minimum volume calculation will begin on the date of the first live operational use of the SaaS for the Event(s) ("**Go-Live Date**"). If the Schedule indicates that Client is paying on a subscription basis, Client will be invoiced for the first month of subscription fees upon the Go-Live Date, with subsequent subscription fees being invoiced monthly.

4.3. If (a) there are any overdue or overage amounts owed by Client; or (b) there are returned charges or items, including those resulting from any error or complaint related to an Event, Active has the right to charge fees owed to Active by Client by issuing an invoice, or by offsetting the deficiency from any account balance Client maintains with Active or any payment Active owes Client.

4.4. In the event Client is entering into this Product Attachment and using the Services and/or SaaS for the benefit of a third-party Event or organization ("**Third Party Recipient**"), Client agrees that Active can remit amounts directly to the Third Party Recipient identified by Client. In addition, Client will cause each Third Party Recipient to agree to and comply with provisions that are at least as protective of Active as Sections 3 and 4 of the General Terms in Client's agreement with such Third Party Recipient. Should Client fail to obtain such agreement to such provisions and the failure results in costs or damages to Active, to the extent not prohibited by law, Client agrees to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys' fees. In addition, Client is responsible and liable for each Third Party Recipient's compliance with the terms and conditions of the Agreement.

4.5. It is Client's responsibility to notify End Users of Client's refund policy. Client must ensure that Client's refund policies are consistent with the Agreement. Client agrees that all fees for a given Event are earned by Client only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to Client will be net of all service fees, reversals, refunds, disputed charges, chargebacks and other deductions whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event or otherwise. No payments will be made to Client with respect to any Event that is cancelled. If payments have already been made by Active to Client for a cancelled Event or if Active reasonably determines that it is prudent or otherwise necessary to pay a refund to or honor a chargeback request from an End User, Active may issue an invoice or offset an equivalent amount from Client's account or payment owed by Active to Client and return the value to the End User, and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

5. TERM AND TERMINATION.

5.1. Unless otherwise set forth in the applicable Schedule, this Product Attachment will commence on the Effective Date and will continue in effect until the earlier to occur of (i) its termination in accordance with the terms and conditions below and (ii) the third anniversary of the Effective Date (the "**Initial Term**"). This Product Attachment shall renew following the Initial Term for subsequent renewal terms thereafter of two (2) years (the "**Renewal Term(s)**", and, together with the Initial Term, the "**Term**") by mutual written agreement of the Parties. In no event shall the Initial Term and Renewal Term(s) of the Agreement exceed five (5) years. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Services and/or SaaS that are related to or interoperable with Services or SaaS set forth in a previously entered into Schedule, the Term of such subsequent Schedule will be concurrent and coterminous with the Term of the previously entered into Schedule.

5.2. If Client has entered into a sub-merchant agreement for payment processing services, and such agreement is terminated by the applicable acquiring bank, Active may terminate this Product Attachment and the effected Schedule.

6. NON-APPROPRIATION.

Client's obligations and all amounts payable hereunder are contingent upon sufficient appropriations therefore by Client's Governing Body. If sufficient appropriations are not made, Client will notify Active of the same, and this Agreement will terminate forthwith. Client represents that it intends to fulfill its obligations under this Agreement and reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, Client shall use its best efforts to satisfy any requirement for payment from any other source of funds legally available for this purpose. Notwithstanding the foregoing, Client shall notify Active within ten (10) days of any action by Client's governing body not to appropriate funds for payment of Client's obligations hereunder, and will provide with such notice a copy of the resolution, minutes or recording of such action.

7. MISCELLANEOUS.

7.1. Sections Error! Reference source not found. and 7 of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

7.2. The "**Liquidated Damage Amount**" equals the "Annual Projected Contract Value" (to the extent such amount is specified in the applicable Schedule(s)) times the number of years in the then-current Term, minus the amount of revenue already paid to Active during the then-current Term, net of all refunds, credit card chargebacks, and all other deducted amounts. Client agrees that (a) it will pay Liquidated Damages to Active if (i) Client breaches its exclusivity obligations under Section 2.2 of this Product Attachment; (ii) Active terminates a Schedule and/or the Agreement in accordance with Section 5.2 of the General Terms; (iii) Client fails to cause an assignment as specified in Section 6.2 of the General Terms; and/or (iv) Active terminates a Schedule and/or the Agreement pursuant to Section 6.3 of the General Terms; (b) all Liquidated Damage Amounts set forth in the Agreement will automatically reset during each Renewal Term; (c) Active may offset any Liquidated Damages Amount set forth in the Agreement from any account balance Client maintains with Active or any payment Active owes Client; (d) because of the difficulty in making a precise determination of actual damages incurred by Active, the Liquidated Damage Amount will be assessed, not as a penalty, but as a reasonable approximation of costs incurred by Active and Active's loss of revenue; and (e) that in any suit or other action or proceeding involving the assessment or recovery of

liquidated damages, the reasonableness of the Liquidated Damage Amount will be presumed and the liquidated damages assessed will be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Agreement.

8. CLIENT DATA.

8.1. As used in this Agreement, "Client Data" means information obtained from Client that is not generally available to the public, including business, administrative and financial data, intellectual property and personnel data. Except as specifically provided in this Agreement, Active or its subcontractors must not divulge Client Data to any third party without the Client's prior written consent. Active or its subcontractors must not use the Client Data for any purposes except to perform the services required under this Agreement. For the avoidance of doubt, these prohibitions do not apply to the following data: (a) data which was known to Active or its subcontractors prior to its performance under this Agreement (unless such data was acquired in connection with work performed for the Client and otherwise meets the definition of Client Data); or (b) data which was acquired by Active or its subcontractors in its performance under this Agreement and which was disclosed to Active or its subcontractors by a third party, who to the best of Active's or its subcontractors knowledge and belief, had the legal right to make such disclosure and Active or its subcontractors are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which Active or its subcontractors are subject. Moreover, for the avoidance of doubt, nothing in this paragraph shall be interpreted to prohibit Active or its subcontractors from sharing Client Data with attorneys or other service providers subject to a professional obligation of secrecy where such disclosures are necessary for the establishment, defense, or prosecution of legal claims, with or without prior notice to or consent from the Client.

8.2. In the event Active or its subcontractors are required or requested to disclose Client Data to a third party other than an attorney or other professional services provider as contemplated by the last sentence of Section 8.1, Active must first notify the Client as set forth in this Section of the request or demand for the Client Data. Active or its subcontractors must give the Client sufficient facts so that the Client can be given an opportunity to first give its consent or take such action that the Client may deem appropriate to protect such Client Data from disclosure.

8.3. Active will, at Client's request, deliver to Client a file containing Client Data for download in a commercially-reasonable standard format, such as comma separated value (.csv) or extensible markup language (.xml), along with attachments in their native format as stored by Active, within a reasonable time upon Active's receipt of Client's written notice requesting the same made not more than thirty (30) days after the termination of this Agreement for any reason. Upon conclusion of thirty (30) days, inclusive, after termination of this Agreement for any reason, Active will have no obligation to maintain or provide such Client Data to Client and Active shall thereafter delete all Client Data in Active systems or otherwise in Active's possession or under Active's control. If requested by Client, Active will certify that it has returned or destroyed all copies of the applicable Client Data using commercially reasonable measures and acknowledges that its rights to use the same are relinquished.

8.4. Client Data, whether electronic format or hard copy, must be secured and protected with reasonable measures at all times by Active and any of its subcontractors. When Active no longer needs City Data to accomplish the purpose for which it was collected, or to satisfy any legally applicable retention requirements, Active must redact or destroy the Client Data through appropriate and secure methods that ensure the Client Data cannot be viewed, accessed, or reconstructed.

8.5. In the event of a Security Breach involving Active's systems and Client Data, Active will notify Client without undue delay following its internal confirmation that such Client Data has been involved in a Security Breach, provided that such notification will not conflict with or compromise Active's efforts to (i) cooperate with law enforcement, (ii) protect Client Data or confidential information belonging to Active or any third party, or (iii) remediate and/or mitigate the Security Breach and further provided that Active will notify Client at the same time Active notifies other similarly situated and similarly impacted customers. "Security Breach" means (i) any unauthorized use of, loss of, access to or disclosure of, Client Data; provided that an incidental disclosure of or incidental access to Client Data by Active or its authorized parties, where no reasonable suspicion exists that such disclosure or access involves theft, or is fraudulent, criminal or malicious in nature, shall not be considered a "Security Breach" hereunder.

8.6. Back Up Scheduling. Commencing on the Go Live Date and continuing for the remainder of the term of the Agreement, Active, or its subcontractors will provide and administer a backup solution for the Client in order to facilitate data recovery by backing up the Client Data (including, but not limited to, an off-line "snap-shot" of the database being used to store Client Data) at the end of each business day. The backup solution will allow for the following with respect to the Client Data :

- Allow Client Data recoverability daily for the prior two weeks backups;
- Allow Client Data recoverability weekly for the previous calendar month; and
- Allow Client Data recoverability monthly for six (6) previous months

THIRD PARTY HARDWARE PRODUCT ATTACHMENT

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

1. PURCHASE AND SALE; DELIVERY.

1.1 Active hereby agrees to sell to Client, and Client hereby agrees to purchase from Active, the Third Party Products listed in the applicable Schedule in the volumes and at the prices described therein. For purposes of this Product Attachment, "**Third Party Products**" means those hardware, firmware and/or software products, provided to Active by third parties, listed in the 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 Products developed by Active.

1.2 Active 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 Active considers reasonable in order to meet the desired delivery date described) after receipt by Active 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 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 Active is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

1.4 Purchase orders delivered by Client to Active in respect of Third Party Products are not binding upon Active until accepted by Active 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 Active as set forth expressly in this Agreement, will be binding upon Active, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that Active may accept or otherwise approve such purchase orders. Active 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 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) Active 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.

2.2 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 Client acknowledges that: (a) the prices described in the Schedule are applicable for thirty (30) days 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 thirty (30) day 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, Active will notify Client of any such different pricing and Client will accept such different pricing, as mutually agreed between Client and Active, 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, Active will provide initial first-tier support, to a maximum of fifteen (15) minutes per support inquiry.

4. PROPRIETARY RIGHTS.

4.1 Client acknowledges that any Third Party Products supplied by Active hereunder are supplied by Active 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 Active 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 Active will notify Client in writing promptly after the claim, suit, or proceeding is known to Active 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. To the extent not prohibited by law, Client will indemnify and hold Active 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 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 Active who possess the rights to control such possession, installation and use.

5. WARRANTY.

5.1 Active warrants to Client that Active 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 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 Active on account of any warranty, express or implied, which may apply to any Third Party Product. If Client notifies Active of a defect or nonconformity within thirty (30) days of the date of delivery of such Third Party Product, Active will assist Client in troubleshooting such Third Party Product in accordance with Section 3. If such defect or

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nonconformity cannot be remedied during such troubleshooting and such Third Party Product is still under the Third Party Product warranty, Active 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 Active from Client of the defect or nonconformity following the initial thirty-day (30) period, Active'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.

**EXHIBIT A
SERVICE LEVEL AGREEMENT**

AVAILABILITY/UPTIME OF THE SOFTWARE

1. **Service Level Commitment.** The Software will have an Actual Uptime greater than or equal to 99.5% of the total possible minutes of system availability of the Software during each calendar month.

2. **Definitions.** Capitalized terms are defined below, unless otherwise defined within the body of the Agreement, the applicable Attachment, or Schedule.

2.1 "Actual Uptime" means, with respect to a particular calendar month, the percentage derived by dividing the total possible minutes of system availability of the Software during such month ("x") minus the total minutes of Downtime during such month ("y"), divided by the total possible minutes of system availability of the Software during such month ("x"), expressed as follows:

$$\text{Actual Uptime} = \left[\left(\frac{x - y}{x} \right) * 100 \right] \geq 99.5\%$$

2.2 "Downtime" means sustained Unavailability for 15 or more consecutive minutes, unless the Unavailability is the result of an Excused Outage.

2.3 "Emergency Maintenance" means maintenance performed by Active that occurs outside of the Regularly Scheduled Maintenance Period and Non-Regularly Scheduled Maintenance.

2.4 "Excused Outage" means an interruption of Client's use of the Software as a result of Regularly Scheduled Maintenance, Non-Regularly Scheduled Maintenance, Emergency Maintenance, Client's changes to Client's environment, Client's deferral or denial of Active's reasonable request that would otherwise prevent performance issues or system damage, outages caused by Client or Client's users, telecommunications or Internet services outages, software or hardware not provided and controlled by Active (including third party software or sites that are accessed or linked through the Software), or outages caused by circumstances beyond Active's reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems or denial-of-service attacks.

2.5 "Monthly invoiced service charges" are the charges invoiced for the month in which the failure of availability occurred.

2.6 "Non-Regularly Scheduled Maintenance" means maintenance performed by Active outside of the Regularly Scheduled Maintenance Period for which Active will endeavor to provide Client with at least twenty-four (24) hours prior written notification.

2.7 "Regularly Scheduled Maintenance" means the amount of Downtime resulting from maintenance performed during the Regularly Scheduled Maintenance Period.

2.8 "Regularly Scheduled Maintenance Period" means the time period that Active reserves for Scheduled Maintenance, which will occur outside of Client's normal business hours.

2.9 "Unavailability" means that Client's users are not able to complete transactions using the Software.

EXHIBIT B
PLATFORM SERVICE LEVEL REMEDIES

Should Active fail to maintain availability of the hosted Software (for these remedy purposes the hosted Software is limited to the production system software, database, telecommunications and information technology infrastructure Active hosts and operates for Client) as set forth in Table A below in a calendar month, Client may continue to use the hosted Software but receive a service credit as specified in Table A.

The remedies described in this paragraph shall be the sole remedies available to Client for breach of this SLA.

1. **Availability.** Active shall make the hosted Software available 99.5% of the time, except as provided below. Availability will be calculated per calendar month, as follows, where:

- a. total means the total number of minutes in the calendar month;
- b. non-excluded means non-availability that is not excluded; and
- c. excluded means:
 - 1) Any planned non-availability of which Active gives twenty-four (24) or more hours' notice. Active will use commercially reasonable efforts to schedule all planned non-availability during the hours from 6:00 p.m. Friday to 3:00 a.m. Monday, U.S. Pacific Time.
 - 2) Any period of unavailability lasting less than fifteen (15) minutes.
 - 3) Any unavailability caused by circumstances beyond TAN's reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Active employees), denial-of-service attacks, or third-party Internet service provider failures or delays.

2. Should Active fail to make the hosted Software available as set forth in Section 1 above in a calendar month, Client may continue to use the hosted Software but receive a refund as identified in Table A.

"Monthly invoiced service charges" are the charges invoiced for the month in which the failure of availability occurred.

Table A - Platform Service Levels Agreement

Availability%	SLA Remedies
Less than or equal to 99.50%	None
Between 99.49 and 98.00 %	5% of Monthly Invoiced Service Charges
Between 97.99 and 97.00 %	10% of Monthly Invoiced Service Charges
Less than 97.00 %	15% of Monthly Invoiced Service Charges

3. **Reporting, Claims and Notices.** To facilitate Client's claim to a remedy under this SLA, Client shall notify the Active Account Manager of the Client's request to obtain any credits against Monthly Invoiced Service Charges.

EXHIBIT C INSURANCE REQUIREMENTS

A. Minimum Scope and Limits of Insurance: Active must provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Said insurance must also include coverage for products completed operations, , personal injury, property damage, and advertising injury.

Products – Completed Operations Aggregate	\$4,000,000
Each Occurrence	\$2,000,000

The limits set forth immediately above may be satisfied through any combination of primary insurance and umbrella liability insurance. The policy must be endorsed to include the following as additional insured: "The City of Chandler, its agents, representatives, officers, directors, officials, employees, and volunteers shall be included as an additional insured with respect to liability arising out of the activities performed by Active." This endorsement may not contain an exclusion or limitation of completed operations coverage as regards the additional insured except with respect to the stated aggregate limits of liability.

2. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Chandler.

3. Tech E&O and Network Security & Privacy Liability Insurance (Cyber)

In addition to the insurance requirements set forth in the Agreement, Active agrees to provide the following insurance coverage and limits of coverage as part of this Agreement.

For Service Contracts over \$500,001 minimum limits:

Per Loss	\$5,000,000
Aggregate	\$5,000,000

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Agreement. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Active warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained for an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed. If such insurance is maintained on an occurrence form basis, Active shall maintain such insurance for an additional period of one (1) year following termination of Agreement. If such insurance is maintained on a claims-made basis, Active shall maintain such insurance for an additional period of three (3) years following termination of the Agreement. If Active contends that any of the insurance it maintains pursuant to other sections of this clause satisfies this requirement (or otherwise insures the risks described in this section), then Active shall provide proof of same. The insurance shall provide coverage for the following risks:

- 3.1 Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form.
- 3.2 Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure.
- 3.3 Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.

- B. Additional Insurance Requirements: The policies must contain, or be endorsed to contain, the following provisions: Active's insurance coverage must be primary insurance and non-contributory with respect to the obligations that Active has undertaken under this Agreement. The policies must contain a severability of interest clause and waiver of subrogation against the Client, its officers, officials, agents, volunteers, and employees, for losses arising from work performed by Active under this Agreement.
- C. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must provide thirty (30) days prior written notice of cancellation to the Client except for non-payment of premium for which a ten (10) day notice will be provided. Such notice must be sent directly to the addresses listed below and must be sent by certified mail, return receipt requested:

City of Chandler
Attention: Purchasing Division
P.O. Box 4008, Mail Stop 901
Chandler, Arizona 85244-4008
Phone: (480) 782-2400
Email: purchasing@chandleraz.gov

With a copy to:

Office of the City Attorney
Attention: Risk Management
175 South Arizona Avenue
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85244-4008
Phone: (480) 782-4640
Fax: (480) 782-4652
Email: legal.notices@chandleraz.gov

- D. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Client in no way warrants that the above-required minimum insurer rating is sufficient to protect Active from potential insurer insolvency.
- E. Verification of Coverage: Active must furnish Client with certificates of insurance (ACORD form or equivalent approved by Client) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by Client before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to reasonably provide evidence of renewal is a material breach of this Agreement. All certificates required by this Agreement must be sent directly to the City of Chandler Information Technology Department with a copy to Risk Management as the addresses listed in Section C. The Agreement number and description are to be noted on the certificate of insurance.
- F. Approval: Any modification or variation from the insurance requirements in this Agreement must have prior approval from the Office of the City Attorney, whose decision will be final, but not unreasonably withheld. Such action will not require a formal contract amendment but may be made by administrative action.