CUSTOMER INFORMATION			
ORGANIZATION FULL LEGAL NAME:	Village of Orland Park	**ADDRESS:**	14650 Ravina Ave Orland Park, IL 60462
CONTACT NAME:	Mary Klinger	**TELEPHONE:**	708-403-6190
EMAIL:	mklinger@orland-park.il.us	**FAX:**	

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

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

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

CUSTOMER	THE ACTIVE NETWORK, INC. ("TAN")
Signature: _____ Name: _____ Title: _____ Date: _____	Signature: _____ Name: _____ Title: _____ Date: _____

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

GENERAL TERMS

GENERAL TERMS: TERMS APPLICABLE TO ALL PRODUCTS AND SERVICES

1. INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

(k) "**Licensed Software**" means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and are identified in the Pricing Form as licensed (or sublicensed) to Customer by TAN in connection with this Agreement, and/or which are in the future provided to

Customer by TAN under any circumstances unless provided under a separate licensing agreement.

(l) "**Maintenance**" means the provision of error investigation and repair services as set out in sections 22 through 25, Maintenance Exhibit 3, and the provision of new Versions and Releases in respect of the Licensed Software all as more particularly set out in the Support and Maintenance Handbook.

(m) "**Module**" means a single module element of Licensed Software listed in the Pricing Form.

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

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

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

(q) "**Pre-Agreed Services**" means Services which are expressly listed in the Pricing Form as being acquired hereunder by Customer.

(r) "**Pricing Form**" means the itemized pricing form attached as Exhibit 1 to the Agreement listing the products and services provided by TAN to the Customer under this Agreement

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

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

(u) "**Related Third Party Documentation**" means any end specifications, manuals, instructions, and other materials, and any copies of any of the foregoing, in any medium, related to the Third Party Products and supplied by TAN to Customer with the Third Party Products.

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

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

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

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

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

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

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

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

(dd) "**Third Party Products**" means those hardware, firmware and/or software products, provided to TAN by third parties, listed in 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.

(ee) "**Third Party Products Support**" means assistance to isolate the source of problems and/or to troubleshoot difficulties resulting from sources other than TAN products or services, such as general network support (for example network access, printing, backup & restoration); PC hardware trouble shooting; PC setup, configuration and optimization; network operating system configuration and functionality; basic Microsoft Corporation "Windows" functionality (for example, using File Manager or Explorer), modem configuration & setup; data corruption due to lack of disk space; and loss of supervisor or other password, all as further set out in the Support and Maintenance Handbook.

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

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

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

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

2. CHARGES AND PAYMENTS

2.1 **Taxes and Other Charges.** Customer will pay all shipping & handling costs and, unless exempted by law and unless a valid tax exemption certificate has been provided to TAN prior to invoicing, all applicable sales, use, withholding and excise taxes, and any other assessments against Customer in the nature of taxes, duties or charges however designated on the Services and Products or their license or use, on or resulting from this Agreement, exclusive of taxes based on the net income of TAN. Sales and any other applicable taxes, duties, or any other charges in the nature of taxes and duties are not included unless specifically identified as line items in the Pricing Form.

2.2 **Currency.** Unless otherwise indicated in the Pricing Form, all prices are in the currency of the country in which the Customer is located.

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

2.4 **Invoices/Payment.** TAN will provide invoices to Customer for all amounts owing by Customer hereunder. Such invoices are to be provided as indicated in the attached Schedules or Pricing Form, and subsequently due within 30 days from the date of invoice.

3. CUSTOMER INFORMATION; CONFIDENTIALITY

3.1 **Customer Information.** In order to assist TAN in the successful provision or services and products to Customer, Customer shall provide to TAN all information relating to Customer's organization, technology platforms, systems

configurations, and business processes and otherwise relating to Customer as is reasonably requested by TAN from time to time.

3.2 **Confidential Information.**

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

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

4. WARRANTY

Limited Warranty of Software. TAN warrants that when utilized by Customer in a manner authorized hereunder, the Software will conform to the functional specifications set out in the user documentation accompanying the Software for ninety (90) days from delivery of the Software ("Warranty Period"). Delivery shall be deemed to have occurred upon TAN's email transmission of an FTP link to Customer permitting download of the Software from TAN's designated online site, or where delivered in the form of physical media, F.O.B. origin. TAN's sole obligation and liability hereunder with respect to any failure to so perform will be to use reasonable efforts to remedy any

non-conformity which is reported to TAN in writing by Customer within that Warranty Period. In the event TAN is unable to remedy such non-conformity within a reasonable time using reasonable efforts, a) in respect to the Licensed Software TAN may refund to Customer the license fee pertaining to the Licensed Software, subject to Customer's return of the Licensed Software, and this Agreement will be automatically terminated, or b) in respect to Hosted Software TAN may refund to Customer the fees paid by the Customer to TAN for Services provided to implement the Hosted Software, and this Agreement will be automatically terminated . All warranty service will be performed at service locations designated by TAN. This Limited Warranty is void if failure of the Software has resulted from accident, abuse or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer.

5. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

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

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

5.3 **NO INDIRECT DAMAGES.** WITHOUT LIMITING THE GENERALITY OF SECTIONS 5.1 AND 5.4, IN NO EVENT WILL TAN BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

5.4 **LIMITS ON LIABILITY.** IF, FOR ANY REASON, TAN BECOMES LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE

FORM OF ACTION (IN CONTRACT OR TORT OR OTHERWISE), THEN:

(a) THE AGGREGATE LIABILITY OF TAN TO CUSTOMER AND ALL OTHER PARTIES IN CONNECTION WITH THE PRODUCTS AND THE SERVICES WILL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID TO TAN HEREUNDER, DURING THE TWO YEARS PRECEDING THE LAST INCIDENT GIVING RISE TO THE LIABILITY; AND

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

5.5 **SEPARATE ENFORCEABILITY.** SECTIONS 5.1 THROUGH 5.4 ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

6. RESTRICTIONS

6.1 **U.S. GOVERNMENT RESTRICTED RIGHTS**. The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) (1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c) (1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is The Active Network, Inc., 10182 Telesis Court, San Diego, California, United States, 92121.

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

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

7. TERMINATION

7.1 **Termination.** This Agreement will terminate:

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

(b) without limiting (a), at the option of TAN if Customer breaches section 2 of this Agreement, provided that the right of termination will be in addition to all other rights and remedies available to the parties for breach or default by the other.

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

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

8. AUDIT AND MONITORING RIGHTS

TAN may, upon a minimum of 24 hours written notice to Customer, attend upon Customer's premises and verify that the Products are being used only as permitted hereby. Such inspections shall be limited to a maximum of twice per calendar year, and will be performed only during Customer's regular business hours and conducted in a manner as to minimize, to the extent reasonable, interference with Customer's business. Further, TAN may, using automatic means which do not interfere with the use of the Products by Customer or Users other than as described in this provision, monitor at any time usage of the Products by Customer and or its Users including through monitoring of the number of copies of any particular Module(s) in Concurrent Use.

9. INTELLECTUAL PROPERTY RIGHTS

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

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

9.3 **Restrictions.** Customer will not any time whether before or after the termination of this Agreement:

(a) reverse engineer, disassemble, or decompile any Products or prepare derivative works thereof;

(b) copy, transfer, display, or use the Products except as expressly authorized in this Agreement or in the applicable documentation;

(c) disclose, furnish, or make accessible to anyone any confidential information received from TAN or make any use thereof other than as expressly permitted under this Agreement, which confidential information is deemed to include the source and executable code of the Software and all related documentation;

(d) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or intellectual property rights, title, or interest of TAN in and to any Products; or

(e) obliterate, alter, or remove any proprietary or intellectual property notices from the Products in physical or electronic forms.

10. INDEMNIFICATION

(a) **TAN Indemnity.** TAN agrees to indemnify, defend and hold harmless Customer, its officers, directors, employees and agents from and against all damages and costs (including reasonable attorneys' fees) finally awarded against Customer (or finally settled upon) and arising from or relating to: (i) any violation of law or claim of personal injury or tangible personal property damage arising, in whole or in part, out of or in connection with the gross negligent or wilful misconduct of TAN; and (ii) any claim brought against Customer by a third party alleging that the Licensed Software directly infringes any patent, copyright, trademark or other intellectual property right or misappropriates any trade secret. If any claim that TAN is obligated to defend has occurred or, in TAN's opinion, is likely to occur, TAN may, at its option and expense either (1) obtain for Customer the right to continue to use the applicable Software, (2) replace or modify the Software so it becomes non-infringing, without materially adversely affecting the Software's specified functionality, or (3) if (1) or (2) are not readily available after using reasonable commercial efforts or, if neither of the foregoing options is commercially reasonable, refund a pro-rata portion of the fees paid by Customer based on its lost use and terminate this Agreement. Notwithstanding the foregoing, TAN shall not indemnify, defend or hold harmless Customer for any claims solely based on: (x) any Customer or third party intellectual property or software incorporated in or combined with the Licensed Software where in the absence of such incorporated or combined item, there would not have been infringement, but excluding any third party software or intellectual property incorporated into the Software at TAN's discretion; (y) Software which has been altered or modified by Customer, by any third party or by TAN at the request of Customer (where TAN had no discretion as to the implementation of modifications to the Software or documentation directed by Customer), where in the absence of such alteration or modification the Software would not be infringing; or (z) use of any version of the Software with respect to which TAN has made available a non-infringing updated, revised or repaired subsequent version or other applicable update, patch or fix;

(b) **Customer Indemnity.** Except where precluded by applicable law (e.g. sovereign immunity of a governmental entity), the Customer agrees to indemnify, defend and hold harmless TAN, its officers, directors, employees, affiliate entities, subcontractors, vendors and agents from and against all damages and costs (including reasonable attorneys' fees) finally awarded against TAN (or finally settled upon) and arising from: (i) any violation of law or claim of personal injury or tangible personal property damage arising, in whole or in part, out of or in connection with the gross negligent or wilful misconduct of Customer, its employees, subcontractors or agents; (ii) any claim brought against TAN by a third party alleging that any Customer provided materials provided to TAN under this Agreement directly infringe any U.S. copyright or trademark or misappropriate any trade secret in existence as of the Effective Date; or (iii) any claim brought against TAN by a third party arising from or relating to any modification of the Licensed Software by Customer or any use of the Software other than as permitted under this Agreement. Customer shall not indemnify, defend or hold harmless TAN for any claims arising from: (A) any TAN intellectual property or software incorporated in or combined with the Customer provided materials where in the absence of such incorporated or combined item, there would not have been infringement; (B) Customer provided materials which have been altered or modified by TAN as part of this Agreement, where in the absence of such alteration or modification the Customer materials would not be infringing; (C) use of an any version of the Customer provided materials for which Customer has made available an updated, revised or repaired subsequent version; or (D) the gross negligence or wilful misconduct of TAN or any of its agents, subcontractors or employees. Upon notice of any claim of infringement or upon reasonable belief of the likelihood of such a claim, Customer shall have the right, at its option, to: (x) obtain the rights to continued use of the Customer materials by TAN; (y) substitute other suitable,

functionally-equivalent, non-infringing materials; or (z) replace or modify the Customer provided materials or their design so that they are no longer infringing.

(c) **Indemnification Claims Procedure.** Each Party's indemnification obligations hereunder are conditioned upon (A) prompt written notice of the existence of a claim, suit, action or proceeding (each a "Claim") for which a Party seeks indemnification from the other Party, provided that a failure of prompt notification shall not relieve the indemnifying Party of liability hereunder except to the extent that defenses to such Claim are materially impaired by such failure of prompt notification; (B) sole control over the defense or settlement of such Claim by the Indemnifying Party; and (C) the provision of assistance by the indemnified Party at the indemnifying Party's request to the extent reasonably necessary for the defense of such Claim.

11. GENERAL

11.1 **Entire Agreement.** This Agreement, including all attachments and referenced schedules, constitutes the complete and exclusive statement of the agreement between TAN and Customer with respect to the subject matter hereof. It supersedes and replaces all oral or written RFPs, proposals, prior agreements, and other prior communications between the parties concerning the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties, except that TAN may fill future purchase or other orders for further goods or services available under this Agreement and, if TAN does so, the provisions of this Agreement will contain the only commercial terms applicable to such transaction despite such purchase or other order stating otherwise. Any Addendum attached hereto shall form an integral part of this Agreement and, in the event of any inconsistency between these General Terms and any Addendum, the provisions of the Addendum shall prevail. Any 'click-wrap' agreement, terms of use, electronic acceptance or other terms and conditions which attempt to govern the subject matter of this Agreement that Customer might be required to acknowledge or accept before using a TAN product are of no force and effect as between Customer and TAN and are superseded by this Agreement.

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

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

11.4 **Governing Law.** This Agreement and performance hereunder will be governed by the laws of the jurisdiction in which the Customer is located as indicated on the face of this Agreement, except that (i) in the case of Louisiana, the laws of California will apply, and (ii) in the case of Québec, the laws of Ontario will apply.

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

11.6 **Non-Assignability.** Neither party may assign its rights or obligations arising out of this Agreement without the other party's prior written consent, except that TAN may assign this Agreement in connection with any sale or security interest involving all or substantially all of its assets or any other transaction in which more than fifty percent of its voting securities are transferred.

11.7 **Term and Survival.** The term of this Agreement shall commence on the Effective Date set out on the cover page hereof and shall continue as set forth in Sections 18.1 or 25.1, as applicable, or until terminated in accordance with Section 7. Sections 1.1, 5, 7.3, 9.2, 9.3, 10, 11, 29.1, and 29.2 of this Agreement, along with all unpaid payment obligations, will survive termination and expiration of this Agreement.

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

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

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

11.11 **Cooperative Procurement.** Upon consent by TAN, this Agreement may be used for permitted cooperative procurement by any public or municipal body, entity, agency or institution. If so authorized, and in order to forego a related entity RFP or similar competitive bidding process, the Agreement may be extended to such other entities indicated above for the procurement of similar products and/or services provided to Customer herein and at fees in accordance with the Agreement unless separately negotiated between such other

entities and TAN. Further related entities participating in a cooperative procurement process shall place their own orders directly with TAN and will fully and independently administer their use of the Agreement to include such contractual as those entities and TAN deem appropriate without direct administration from the original Customer.

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SCHEDULE A: TERMS APPLICABLE ONLY TO HOSTED SOFTWARE

12. HOSTED SOFTWARE

12.1 TAN will provide Customer with access to hosted versions of the products identified in the Pricing Form and associated Online Services, and TAN hereby grants to Customer a limited, non-exclusive, non-transferable license to use the Hosted Software in accordance with the applicable documentation.

12.2 Customer elects to receive notifications of free product, promotional items and giveaways through the TAN program known as ActiveRewards. TAN will offer the Customer (and for the purposes of clarification not to your users directly) opportunities for free product, promotional items and giveaways at your event(s) or facility(ies) as applicable, the exact manner and type of which will be mutually agreed upon by you and TAN upon your acceptance of a particular program.

12.3 Customer understands that some TAN products may contain TAN or third party promotions or offers to users and such offers will be made to individuals on an opt-in basis. TAN (and any such third party) shall be responsible for administration and customer service issues on any such offer or promotion.

13. SUPPORT FOR HOSTED SOFTWARE

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

14. LICENSE AND BRANDING

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

15. INFORMATION SECURITY AND PRIVACY FOR HOSTED SOFTWARE

TAN will collect information, including names, addresses, gender, phone numbers, email addresses, birth dates, financial information (for payment purposes) and other such information from individuals using the Online Services as is reasonably required to provide the Services. TAN will store such information on a secure remote server using reasonable safeguards in accordance with TAN's published online privacy policies and in compliance with all applicable laws, codes of practice, and other legal obligations associated with the collection, use, and disclosure of personal information. Customer may access this information by downloading it from TAN's servers using a Customer assigned private password and "login" identifier. Upon request TAN will make such information available to Customer via e-mail, fax or airmail. Customer will be responsible for protecting the privacy and security of any information that Customer retrieves from TAN's servers and shall prevent any unauthorized or illegal use or dissemination of such information and shall be solely responsible for ensuring compliance with any applicable data and privacy protection laws, codes of practice, and other legal obligations associated with the collection, use, and disclosure of personal information by Customer, including such disclosure to TAN as is necessary for TAN to provide the Services and Products to Customer. Customer and/or its clients shall exclusively own the personal data collected by TAN in connection with the Hosted Software; provided, however, TAN is granted a royalty-free, perpetual, non-exclusive right and license to use, reproduce, distribute and adapt the collected data as is necessary for TAN to perform its obligations under this Agreement, including for purposes of communicating with Customer or Customer's clients as necessary, fulfilling requests for products and services requested from Customer or Customer's clients, providing customized content and advertising provided in connection with the Hosted Software, conducting internal TAN research intended to improve the products and services provided by TAN and its affiliates, and to provide anonymous and aggregated reporting of non-individual data for internal and external clients of Customer or TAN. Any use of such data will conform with applicable laws related to personal privacy and best practices around permissive marketing, such as use of "opt-in" and/or "opt-out" notifications and rights.

16. FEES FOR HOSTED SOFTWARE

16.1 **Transaction fees.**

(a)   Customer shall pay to TAN the Hosted Software service fees ("**Service Charge(s)**") as set out in the Pricing Form

(b)   In cases where TAN's banking or financial partners or similar service providers impose changes in processing costs payable by TAN, TAN reserves the right to modify Service Charges. TAN shall notify Customer at least ninety (90) days in advance of any such changes. Customer agrees to such changes

unless Customer provides TAN with written objection to such charges within thirty (30) days from the date such change is implemented. In the event Customer notifies TAN of its objection to the changes as noted above, Customer's sole remedy shall be to immediately terminate the Agreement as applied to the Hosted Software, subject to payment of any fees due prior to such notice of termination.

(c) TAN will be responsible for collecting all payments processed through the Online Services and all Service Charges assessed by TAN. All payments are Customer's exclusive property and will be sent to Customer twice a month (or as otherwise indicated in the Pricing Form) while Service Charges shall be retained by TAN.

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

(e) TAN shall not be responsible for processing or making any refunds. All refunds for payments processed will be assessed a $.10 fee charged by TAN to Customer. TAN may set off against user fees collected by TAN to the amount of any credit card charge backs and associated fees applicable to user transactions and to reimburse itself for any overdue fees owed to TAN by Customer. To the extent that such funds are not available for set off, Customer shall promptly reimburse TAN for any deficiency.

16.2 **Subscription fees.**

Customer shall pay to TAN the Hosted Software subscription fees ("**Subscription Fees**") set out in the Pricing Form and for the term of this Agreement established in Section 18 below. Customer will be invoiced for their first year Subscription Fees upon the first live operational use of the Hosted Software ("Go-Live Date"), with subsequent annual Subscription Fees being invoiced upon each anniversary of Go-Live Date. Payment will be made Net 30 days from invoice date.

17. EXCLUSIVITY FOR HOSTED SOFTWARE

TAN will, during all periods for which Customer has subscribed for Hosted Software, be the sole and exclusive provider to Customer of the Hosted Software and Online Services, or any products or services substantially similar thereto, for the part of Customer's organization utilizing the Hosted Software and Online Services.

18. TERM FOR HOSTED SOFTWARE

Unless otherwise provided in the Pricing Form, TAN shall provide to Customer, and Customer shall purchase from TAN, the Hosted Software commencing on the Effective Date of this Agreement, and remaining in full force for a period of three (3) years from the Go-Live Date of the Hosted Software (the "**Initial Term**"), with automatic renewals for three (3) year terms (each a "**Renewal Term**") thereafter until either party gives written notice to terminate the Hosted Software no less than twelve (12) months prior to the end of the Initial Term or Renewal Term, as applicable.

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SCHEDULE B: TERMS APPLICABLE ONLY TO LICENSED SOFTWARE AND ASSOCIATED SUPPORT AND MAINTENANCE SERVICES

19. ACCESS TO SYSTEM AND OTHER CUSTOMER OBLIGATIONS

19.1 **Access**. Customer will provide, at no cost to TAN:

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

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

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

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

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

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

20. GRANT OF LICENSES AND LIMITATIONS THEREON

20.1 TAN hereby grants to Customer a non-exclusive and non-transferable right and license, subject to this Agreement, to install and/or use the Licensed Software, in the manner and for the term stated in the Pricing Form (Exhibit 1) and TAN provided and related written user documentation as follows:

(a) **Workstation-Based Modules.** In respect of each Workstation-based core Module and each Workstation-based add-on Module, Customer may install and use each Module on Workstations to access the Enterprise Database on the Database Server, provided that the number of copies of any particular Module in use does not exceed the number of licenses granted to Customer therefore as set out in the Pricing Form.

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

(i) in respect of each TeleReg & Voice Server Module, Customer may install one copy of each Module on one

IVR Server, provided that the number of copies of any particular Module in use does not exceed the number of licenses granted to Customer therefore as set out in the Pricing Form, and all such Modules together may be in Concurrent Use not to exceed the number of licenses granted to Customer for TeleReg Lines Modules as set out in the Pricing Form; and

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

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

(i) install one copy of each Module on one Internet server, provided that the number of copies of the Module in use does not exceed the number of licenses granted to Customer therefore as set out in the Pricing Form; and

(ii) subject to 20(d), permit Users to access and use such Modules to access the Database Server via Internet Clients connecting via a licensed Internet Server, and all such Modules together may be in Concurrent Use not to exceed the number of licenses granted to Customer for Online Client Access Modules as set out in the Pricing Form multiplied by twenty-five (25).

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

(i) install one copy of each Module on a single Workstation for each license granted to Customer therefore as set out in the Pricing Form; and

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

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

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

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

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

21. LICENSED SOFTWARE FEES

21.1 In respect of each Module, Customer shall pay to TAN all applicable Licensed Software fees listed in the Pricing Form upon delivery (as defined in Section 2.3) of the Licensed Software.

22. MAINTENANCE SERVICES

22.1 TAN will develop new Releases and new Versions of Licensed Software in accordance with the procedures and other particulars set out in the Support and Maintenance Handbook attached as Exhibit 3.

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

23. EXCLUDED SUPPLIES AND SERVICES

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

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

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

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

(d) Full report customization service;

(e) Any and all hardware support, maintenance or troubleshooting issues, except as described in section 28 regardless of the source of such hardware.

24. FEES FOR SUPPORT AND MAINTENANCE

24.1 Support and Maintenance services begin for all Licensed Software listed in the Pricing Form on the Support and Maintenance Start Date. The cost for Support and Maintenance

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

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

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

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

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

24.6 TAN may terminate and suspend performance of all Support and Maintenance if Customer fails to pay any past due

TAN invoice within 30 days of written notice of such failure, in the event of any other material breach by Customer which remains uncured 30 days after notice thereof or if any of the Licensed Software ceases to be subject of a valid Software License Agreement.

24.7 If at any time after Customer has initially licensed any of the Licensed Software from TAN, Customer's right to receive Support and Maintenance, or comparable services, from TAN under this Agreement or a comparable agreement has lapsed for any reason whatsoever, voluntarily or otherwise, and Customer wishes to receive Support and Maintenance from TAN, Customer will pay to TAN, prior to re-instatement of Support and Maintenance services:

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

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

25.   TERM FOR SUPPORT AND MAINTENANCE

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

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SCHEDULE C: TERMS APPLICABLE ONLY TO THIRD PARTY PRODUCTS AND SERVICES

26.   PURCHASE AND SALE; DELIVERY

26.1 **Purchase Commitment and Price.** TAN hereby agrees to sell to Customer, and Customer hereby agrees to purchase from TAN, the Third Party Products listed in the Pricing Form in the volumes and at the prices described therein.

26.2 **Delivery.** TAN will ship all or any part of the Third Party Products to Customer 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 Customer 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.

26.3 **Changes by Customer to Delivery Schedule.** Following delivery by Customer of any purchase order documentation described in section 26.2, no changes by Customer 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.

26.4 **Acceptance of Purchase Orders.** Purchase orders delivered by Customer 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 Customer, 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 27.2.

26.5 **Additional Third Party Products.** Customer may purchase Third Party Products in addition to those listed in the Pricing Form 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 Pricing Form on the date of execution of Pricing Form 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 Customer without any liability to Customer whatsoever for such discontinuance.

27. CHARGES AND PAYMENTS

27.1 **Prices.** The pricing applicable to Third Party Products is as set out in the Pricing Form in the form finally agreed to by the Parties.

27.2 **Pricing Variability.** Customer acknowledges that:

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

(b) Customer hereby agrees that after the expiry of such initial six-month period or, in case of Customer seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed Pricing Form, 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 Pricing Form, TAN will notify Customer of any such different pricing and Customer will accept such different pricing, as mutually agreed between Customer and TAN, in writing.

28. SUPPORT FOR THIRD PARTY PRODUCTS

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

29. PROPRIETARY RIGHTS

29.1 **Third Party Proprietary Rights and Indemnity by Customer.** Customer 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. Customer 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 Customer 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 Customer hereunder has been installed, used, or otherwise treated by Customer or any client or customer of Customer in violation of the proprietary rights of any third party or on an allegation that Customer or any client or customer of Customer has disclosed or used any confidential business or technical information connected with any Third Party Product, provided that TAN will notify Customer in writing promptly after the claim, suit, or proceeding is known to TAN and will give Customer such information and assistance as is reasonable in the circumstances. Customer will have sole authority to defend or settle any such claim at Customer's expense. Customer 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.

29.2 **Third Party Products which are Software.** Customer 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.

30. WARRANTY

30.1 **Warranty.** TAN warrants to Customer 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.

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

GENERAL TERMS

EXHIBIT 1

PRICING FORM   Quote **10020 - 1**

The Active Network
10182 Telesis Court, 1st floor   **Date:**   **08/24/2011**
San Diego, CA, 92121, United States   **Expires:** **11/30/2011**

<u>**Customer:**</u>
Mary Klinger
Village of Orland Park
Orland Park,Will

<u>**Bill To:**</u>	<u>**Ship To:**</u>
Attn: Mary Klinger	**Attn: Mary Klinger**
Village of Orland Park	**Village of Orland Park**
14650 Ravina Avenue	14650 Ravina Avenue
Orland Park, IL 60462	Orland Park, IL 60462

Sales Representative: Steve Arsenault   **Payment Terms:** 30 NET

Line	Product	Units	Qty	Unit Price Selling (USD)	Total Price Selling (USD)
1.0	Class Hybrid - Hosted Internet Registration	Ea	1	$0.00	$0.00
2.0	Class Hybrid - Documentation Services	Hr	16	$125.00	$2,000.00
3.0	Class Hybrid - Senior Professional Services	Hr	40	$175.00	$7,000.00
4.0	Project Planning Fee	Hr	1	$400.00	$400.00
5.0	Class - CISCO 861 Firewall	Ea	1	$365.00	$365.00

Category Subtotal		
Class Hybrid.SaaS.Online Transactions	Subtotal (Selling Price)	$0.00
Class Hybrid.Service.Consulting - Hosted	Subtotal (Selling Price)	$9,400.00
Class.Hardware.HW Other	Subtotal (Selling Price)	$365.00
Charges		$0.00
Tax		
	CITY (Rate 0%)	$0.00
	COUNTY (Rate 0%)	$0.00
	STATE (Rate 0%)	$0.00
Total(USD)		**$9,765.00**

General

Sales taxes, where applicable, are not included and prices are in the currency of the country of installation (subject to change without notice). Hardware, operating system, 3rd party software and site preparation are not included unless otherwise noted.

Services

On-site services are exclusive of airfare.

Services hourly

On-site services billed in minimum 8 hour daily increments.

Hardware

All hardware sales are final. Hardware is covered by standard manufacturer's warranty. Equipment that is defective upon arrival will be replaced. RMA process will apply for items after support has indicated there are no alternatives. Customer must notify TAN in writing of any defective hardware within 7 days of its receipt. Any notices received after 7 days concerning defective hardware will be null and void and will not be accepted for return or replacement by TAN. Thereafter, the standard manufacturer's warranty will apply.

ONGOING FEES:

Transactions entered directly by participants online will be assessed the customary Service Charge by TAN to online registrants, as described below. Each online registrant will pay the event registration fee charged by Customer and Customer will pay a Service Charge equal to $2.50 plus 3% with a minimum Service Charge of $2.50. TAN may change the Service Charges at any time and Customer agree to such change unless Customer provides TAN with written objection to such change within 30 days from the date such change is first implemented. TAN will be responsible for collecting all registration fees charged by Customer and all Service Charges assessed by TAN. All registration fees, except Service Charges, are Customer's exclusive property. Any registration fees collected by TAN will be sent to Customer twice a month and Service Charges shall be retained by TAN. TAN shall not be responsible for processing or making any refunds. All credit card refunds processed by Customer will be assessed a $.10 fee charged by TAN to Customer. TAN may reimburse itself for any credit card chargebacks and associated fees out of registration fees collected by it. In the event such funds are not available, Customer agrees to reimburse TAN for any chargebacks or refunds.

Method of Payment:

☐ **Invoice Me** **Purchase Order Number:**_____

☐ **Credit Card** ☐ **Visa** ☐ **MasterCard** ☐ **American Express**

Credit Card Number:_____ **Expiration Date:** _____

I hereby Agree to Pay above quote with the stated Method.

End of Quote

active NETWORK

Class™ Program & Facility Management Software
2012 Maintenance & Support Worksheet
　　Effective January 1, 2012 - December 31, 2012

Agency:　Village of Orland Park　　　　　　　Customer # 4836　　　　　Contact:　Accounts Payable

Address:　14700 S. Ravinia Avenue　　　　City:　Orland Park　　　　　　　　　　　　　　　　Prov/State:　IL

Postal/Zip:　60462　　　　　　　　　　　Phone Number:　　　　　　　　　　　　　　Type:　　COM

SOFTWARE MODULES	Current Software List Price	Prior Term No. of Licenses	Additional Licenses	Total Software Licenses	Additional License Fee Total $	Total Software License $	Maintenance Fee 25%	Total Maintenance Fee
1 - DESKTOP MODULE PRICING								
Program Registration (per user)/ Registration (include Flex Reg)	$2,100	12		12		$25,200	25%	$6,300
Facility Booking (per user)/ Reservation (includes Quick Rez)	$2,100	10		10		$21,000	25%	$5,250
Memberships (per user)	$2,100	10		10		$21,000	25%	$5,250
Point of Sale (per user)	$2,700							
Point of Sale without Touch Screen (per user)	$2,100	11		11		$23,100	25%	$5,775
Point of Sale (per user) Include POS Touch Screen	$3,000							
Calendar (per user)	$600							
Randomization (per user)	$6,000							
Sports Scheduling (per user)/ League Scheduling	$2,100							
Reports (per user)	$300		1	1	300	$300	25%	$75
Report Inquiry	$600	1		1		$600	25%	$150
Crystal Report Developer	$600							
2 - ADD ON MODULE PRICING								
Payment Server (server)	$6,000	1		1		$6,000	25%	$1,500
Payment Server - EFT only	$2,100							
Integrated Workstation Debit Card (per workstation)	$300							
POS Touch Screen (per user)	$600	3		3		$1,800	25%	$450
Membership Scanning Station (per user)	$600	12		12		$7,200	25%	$1,800
Multilingual (x total FB & PR licenses)	$600							
Multilingual - Front Desk	$300							
Tender Retail Licence - Multi Merchant	$300	2		2		$600	25%	$150
Wireless Station	$120							
Affinity (server)	$6,000							
3 - INTERNET MODULE PRICING								
Internet Program Registration Server (server) / Registration Online	$6,000							
Internet Facility Booking Server (server) / Reservation Online	$6,000							
Membership Renewal Online	$6,000							
Internet Facility Availability Server (server) /	$6,000							
Internet Sports Scheduling Server (server) / League Scheduling Online	$6,000							
Internet Client Logins (per 25 pack) / Online Client Access	$15,000							
Multilingual Online	$6,000							
Internet Kiosk (per kiosk)	$2,100							
Internet Maps (server)	$3,000							
4 - TELEPHONE MODULE PRICING								
IVR Program Registration Server (server) / Tele-Reg	$6,000	1		1		$6,000	25%	$1,500
IVR Client Logins (min. 4 lines) (per line)	$2,100	4		4		$8,400	25%	$2,100
5 - DATASYNC TOOLS								
BankSync (server)	$6,000							
BrochureSync (server)	$3,000	1		1		$3,000	25%	$750
CustomerSync (server)	$6,000							
FinanceSync (server) / Finance Link	$3,000	1		1		$3,000	25%	$750
PortalSync (server)	$6,000							
AGS Software Modules								
Payment Manager / Point of Sale (per user) Include POS Touch Screen	$3,500							
Receivables (per user)	$1,750							
Payment Server Open API (server)	$5,000							
Payment Server / per AppSync (server/each connector)	$5,000							
Internet Payment Manager Server (server)	$10,000							
IVR Payment Manager Server (server)	$10,000							
AppSync (server/each connector)	$15,000							
AssetSync (server)	$5,000							
					$　300.00	$ 127,200.00		$31,800

Total Cost		$　,31,800.00

Notes:

1　Please note that as of 1/1/08, Active's software list price was increased by as much as 20%. In order to mitigate the respective increase in Maintenance and Support Renewal Fees, Active will increase prior term maintenance fees by 5% per year until new maintenance fee is reached.

2　Sales taxes, where applicable, are not included.

3　Prices are in the currency of the country of installation and subject to change without notice.

Please contact Christale Singh at christale.singh@activenetwork.com with any questions regarding this quote

Previous Term Charge	$	31,275.00
5% Annual Increase	$	62.50
Previous Term Adjusted Maintenance Fee	$	31,327.50
Current Term Additional License Maintenance Fee	$	75.00
Accreditation Discount	15.00% $	(4,710.38)
Total Charges:	$	26,692.13

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EXHIBIT 2

SERVICES EXHIBIT

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EXHIBIT 3

MAINTENANCE EXHIBIT

active NETWORK　　　　　　　　　**SUPPORT AND MAINTENANCE HANDBOOK**

ANNUAL SUPPORT AND MAINTENANCE

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

- Unlimited technical support between 6:00am 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:
    - Site has 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
    - Support calls during extended support hours are for 'system down' problems that result in a 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. All other calls placed during extended support hours will be billed to the customer.

- Access to the Active Network'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 i.e. 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 i.e. 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

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

- New releases and version of the software and free assistant in planning upgrades

ANNUAL 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 highly 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 The Active Network 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. The Active Network 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	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	Serious issues significantly impacting use of the system but do not prevent core functions from being fulfilled	2 business day
Priority 3	All other issues, except those classified as D (Low); i.e. how-to questions, reporting/reconciliation issues	3 business days
Priority 4	Issues that are not time-sensitive or may be undertaken as customer service initiatives outside the scope of this Agreement	None
Guaranteed Uptime	For Hosted Customers	95%

SERVICES NOT INCLUDED

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

- Services which are required to remedy problems that stem from changes to or defects in system configuration upon which the software was originally installed

- Services which are required to remedy problems which do not stem from any defect in the software

- Services which are required to remedy problems caused by lack of training of the customer'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 the support and maintenance portion of the Active contract:

- The use of any other application that modifies data in the database, whether created by you or otherwise

- The use or creation of any other application that competes with or replaces a module that is offered by the Active Network to work with either the application or the application's database

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)	✓	