



Agenda Item Action Request
Apex Town Council

ITEM TYPE: CONSENT
No. 07

Meeting Date: 07/17/2012

Requestor: Parks, Recreation and Cultural Resources Department

Presenter(s): John Brown, Parks and Recreation Director

Item Description

Motion to approve Active Network Agreement and authorization of Town Manager to sign all relative documents.

Information Detail

Recommend Approval: <u>Yes</u>	By: <u>Parks, Recreation, Cultural Resources Department</u>
<u>Yes</u>	<u>Information Technology Department</u>

This is the legal agreement covering the switch over of Class Software and Active Network. This was discussed during the budget workshop and has the support of Parks, Recreation and Cultural Resources and Information Technology. Among other advantages, this switchover will allow mobility in checking:

- Boating Permits
- Fishing Licenses
- Picnic Shelter Reservations
- Pass / Revenue for Dog Parks
- Mobile Registration / Team Checks
- Mobile Team Schedule Check

IT Comments Regarding Changeover

- i. No hardware outlay for dedicated server.
- ii. No hardware maintenance costs.
- iii. No need to provide space /air con/etc. for server.
- iv. Users and citizens have access to live / real time information.
- v. Access from most other operating systems (PC, Mac, Linnux).
- vi. Data backup not needed. Automated nightly backups are taken centrally.
- vii. If computer breaks or is stolen, no confidential information is lost. You can simply move to another computer and continue.
- viii. All software updates (not only for Practice Manager but also for Microsoft Windows and Microsoft Word) are performed centrally as soon as they become available.
- ix. No need to run fiber to any of the parks along as there is wireless data connection.

Other Locations that use this service:

Burlington NC Parks & Rec	Emerald Isle, NC Parks & Rec	Person County, NC Parks & Rec
City of Harrisburg, NC	Henderson County, NC	Town of Warsaw, NC
City of Rocky Mount, NC	Onslow County, NC	Washington NC Parks & Rec
Concord NC Parks and Recreation	Orangeburg S.C. Parks & Rec	Town of Winterville, NC

Attachments

- Active Network Agreement

Approved as to Form: Yes, N/A (used when legal has reviewed verbiage of cover sheet, ordinance, etc.)

Software as a Service Agreement

This Software as a Service Agreement ("Agreement") is made effective as of May 7, 2012 (the "Effective Date") and entered into between The Active Network, Inc., 10182 Telesis Court, San Diego, CA 92121 ("TAN" or "we" or "us") and Town of Apex ("you" or "your" or "Client"). The parties agree as follows:

1. **Services.** TAN will provide you access to its software as a solution product ("Software") as well as services and support ("Services") related to your events, camps, licenses, classes, tickets, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "Events"). The features, services, options, and fees are described more fully in schedule(s) to this Agreement (each, a "Schedule"). The initial Schedule is attached hereto as Exhibit A. Each additional Schedule must be signed by both parties and will be governed by this Agreement. You agree to provide us with certain information relating to your organization as necessary for us to provide the Software and Services. Software provided under this Agreement is deemed delivered when made available to you.

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

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

c) You will make reasonable efforts to promote and encourage the use and availability of the Software in connection with the promotion of your Events for which you are using the Software and Services. You will include TAN's name and logo in newsletters, printed registration forms or mailings provided by you to prospective participants (e.g., by inserting the following statement in any online or print media related to your Event: "Online Registration Powered by Active.com"). TAN will be the sole and exclusive provider of registration services similar to the Software and Services provided to Client hereunder for each Event for which you are using TAN's Software and Services during the term of this Agreement.

d) You agree to receive notifications regarding free product, promotional items, and giveaways at your Event(s) or facility(ies), but you may opt not to receive the items from TAN. Registrants of your Events may opt-in to receive information, items, or promotions/deals from TAN; we will be responsible for providing customer service for any such offers.

e) Each party agrees to comply with all applicable laws, rules, and regulations relating to such party's obligations hereunder.

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

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

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

c) TAN reserves the right to modify the fees once per calendar year, provided that any increase will not exceed twelve and a half percent (12.5%). TAN shall notify Client at least thirty (30) days in advance of any such change. If we modify the fees, you can terminate this

Agreement at that time by providing written notice within thirty (30) days following the date the change is implemented.

d) As the seller of record, you will be solely responsible for, and will pay, any and all use, excise, sales or privilege taxes, duties, value added taxes, fees, assessments, or similar liabilities, chargeable by a governmental authority as a result of any Software or Service provided under this Agreement. Taxes on TAN's net income are excluded.

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

5. **Disclaimer of Warranty/Limitation of Liability.** TAN EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS. SOFTWARE AND SERVICES ARE PROVIDED TO YOU ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TAN SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR LOST PROFIT DAMAGES. TAN'S TOTAL AGGREGATE LIABILITY FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY YOU AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

6. **Indemnification.** TAN (the "Indemnifying Party") shall defend, settle, and pay damages (including reasonable attorneys' fees) ("Damages") relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("Claims") against the Client (the "Indemnified Party") to the extent that such Claim is based upon: (i) the Indemnifying Party's violation of any applicable law, rule, or regulation; and/or (ii) provision, by the Indemnifying Party, of materials, products, or services as part of such party's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used in accordance with this Agreement.

For the purposes of Sections 5 and 6, reference to TAN shall also include its suppliers and licensors.

7. **Term and Termination.** The term of this Agreement shall be for three (3) years from the Effective Date with automatic renewals for three (3) year terms thereafter, unless either party gives written notice to the other party to terminate this Agreement no less than sixty (60) days prior to the expiration of the then-current term. Either party may terminate this Agreement: (a) upon a material breach by the other party, if such breach is not cured within thirty (30) days following written notice to the breaching party; or (b) where the other party is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days.

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

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

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

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

e) Sections 2, 3, 5, 7, and 8 of this Agreement and any fees owed by you shall survive any termination or expiration of this Agreement.

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

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

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

SIGNATURE PAGE

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

TAN

By: _____
(Signature)

Print Name and Title

Date: _____

CLIENT

(Town of Apex)

E-Mail

By: _____
(Signature)

Phone: _____

Address

Print Name and Title

City, State and Zip

Checks payable to

Event URL (Web site)

Date: _____

Add pre-audit certificate.

SCHEDULE 1

The Active Network
10182 Telesis Court, 1st floor
San Diego, CA, 92121, United States

Date: 12/14/2011
Expires: 03/12/2012
Quote : 19824-1

Customer:
David Wood
TOWN OF APEX
APEX, NC

Bill To:
TOWN OF APEX
53 Hunter Street
APEX, NC US

Ship To:
TOWN OF APEX
PO BOX 250
Apex, NC 27502 United States

Sales Representative:

Payment Terms: 30 NET

Line	Product	Units	Qty	Discount	Unit Price Selling (USD)	Total Price Selling (USD)
1.0	ActiveNet - Activity Registration	Ea	1		\$0.00	\$0.00
2.0	ActiveNet - Facility Reservation	Ea	1		\$0.00	\$0.00
3.0	ActiveNet - Membership	Ea	1		\$0.00	\$0.00
4.0	ActiveNet - League Scheduling	Ea	1		\$0.00	\$0.00
5.0	ActiveNet - Point of Sale	Ea	1		\$0.00	\$0.00
6.0	ActiveNet - Public Access	Ea	1		\$0.00	\$0.00
7.0	ActiveNet - Senior Professional Services: Class Conversion Planning	Hr	16		\$175.00	\$2,800.00
8.0	ActiveNet - Senior Professional Services: Business Process Review	Hr	8		\$175.00	\$1,400.00
9.0	ActiveNet - Documentation Services	Hr	4		\$100.00	\$400.00
10.0	ActiveNet - Standard Professional Services: General Settings Training	Hr	8		\$100.00	\$800.00
11.0	ActiveNet - Standard Professional Services: CRM Center Interface Training	Hr	4		\$100.00	\$400.00
12.0	ActiveNet - Standard Professional Services: Facility Reservations Training	Hr	16		\$100.00	\$1,600.00
13.0	ActiveNet - Standard Professional Services: Resource Scheduler Calendar Interface Training	Hr	4		\$100.00	\$400.00

14.0	ActiveNet - Standard Professional Services: Activity Registrations Training	Hr	16	\$100.00	\$1,600.00
15.0	ActiveNet - Standard Professional Services: Membership Training	Hr	16	\$100.00	\$1,600.00
16.0	ActiveNet - Standard Professional Services: POS Training	Hr	8	\$100.00	\$800.00
17.0	ActiveNet - Standard Professional Services: League Scheduling Training	Hr	8	\$100.00	\$800.00
18.0	ActiveNet - Standard Professional Services: Public Access Training	Hr	16	\$100.00	\$1,600.00
19.0	ActiveNet - Standard Professional Services: Online Interactive Map Training	Hr	4	\$100.00	\$400.00
20.0	ActiveNet - Standard Professional Services: Project Planning	Hr	9	\$100.00	\$900.00
21.0	ActiveNet - Daily Onsite Fee (min 3 days) Excludes Flight Costs	Day	5	\$500.00	\$2,500.00

Category Subtotal

ActiveNet.SaaS.Online Transactions	Subtotal (Selling Price)	\$0.00
ActiveNet.Service.Consulting - Hosted	Subtotal (Selling Price)	\$15,500.00
ActiveNet.Service.Reimbursed Travel	Subtotal (Selling Price)	\$2,500.00
Charges		\$0.00
Tax		
	COUNTY (Rate 2%)	\$0.00
	STATE (Rate 4.75%)	\$0.00

Total(USD)	\$18,000.00
-------------------	--------------------

Ongoing Fees:

ActiveNet Offline Service Charges

Cash and check payments entered by Customer staff through the offline interface will be assessed a 2.0% Service Charge. Non-monetary transactions will be exempt from this Service Charge.

An additional ECP (electronic check payment) Service Charge of 1.5% will be applied to offline ECP payments. Refunds to ECP will be assessed a \$0.10 refund fee.

All other payments will be assessed an additional Service Charge of 2.5% +\$0.25 and any refunds of such payments will be assessed a \$0.10 refund fee.

All offline Service Charges will be paid for by the Customer and will be absorbed in offline transaction totals.

ActiveNet Online Service Charges

Payments entered directly by participants through the online interface will be assessed a Service Charge of equal to 6.5% of the payment plus \$0.50 for payments less than \$150.00, 3.5% of the payment plus \$5.00 for payments less than \$500.00 but

equal to or more than \$150, and 2.5% of the payments, plus \$10.00 for payments greater than \$500. A minimum Service Charge of \$2.00 will be assessed on all online payments.

All online Service Charges will be paid for by the participant in addition to transaction totals.

We may change the Service Charge at any time and you agree to such change unless you provide us with written objection to such change within 30 days from the date such change is first implemented. We will be responsible for collecting all registration fees charged by you and all Service Charges assessed by us. All registration fees, except Service Charges, are your exclusive property. Any registration fees collected by us will be sent to you twice a month and Service Charges shall be retained by us. Active shall not be responsible for processing or making any refunds. All credit card refunds processed will be assessed a \$.10 fee charged by Active to you. Active may reimburse itself for any credit card charge backs and associated fees out of registration fees collected by it. In the event such funds are not available, you agree to reimburse Active for any charge backs or refunds.

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.

Onsite Services

Quoted prices for onsite services do not include airfare. If onsite services are required, economy airfare will be assessed and invoiced separately. Onsite services are billed in minimum, 8 hour daily increments.

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.

Customer Name: TOWN OF APEX

Signature: _____

Name: _____

Title: _____

Effective Date: _____

End of Quote

**THIRD PARTY PRODUCTS ADDENDUM
TO HOSTED SOFTWARE & SERVICES AGREEMENT**

This Addendum to the Hosted Software & Services Agreement (“**Addendum**”) is entered into by and between Town of Apex (“**Customer**”) and The Active Network, Inc. (“**TAN**”) as of _____ (the “**Effective Date**”). Customer and TAN are also singularly referenced herein as a “**Party**” and collectively as the “**Parties**.”

- A. Customer and TAN previously entered into that certain Hosted Software & Services Agreement attached hereto (the “**Agreement**”) that provided Online Registration and Marketing Services.
- B. Customer and TAN now desire to supplement and amend certain terms and conditions of the Agreement, pursuant to the terms and conditions set forth in this Addendum.

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

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

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

3. **General.**

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

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

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

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

TAN:
by its authorized signatory

Town of Apex:
by its authorized signatories

Per: _____

Per: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget Control Act.

By: _____
Lee Smiley, Finance Director

Town of Apex

APPENDIX: TERMS APPLICABLE ONLY TO THIRD PARTY PRODUCTS AND SERVICES

1. PURCHASE AND SALE; DELIVERY

(a) **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 Exhibit A in the volumes and at the prices described therein. For purposes of this Addendum, "Third Party Products" means those hardware, firmware and/or software products, provided to TAN by third parties, listed in the Pricing Form, together with all user manuals and other documents accompanying the delivery of the Third Party Products, provided that the Third Party Products shall not include software developed by TAN.

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

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

1.4 **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 2.2.

1.5 **Additional Third Party Products.** Customer may purchase Third Party Products in addition to those listed in the Exhibit A 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 Exhibit A on the date of execution of Exhibit A 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.

2. CHARGES AND PAYMENTS

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

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

(a) the prices described in Exhibit A 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 Exhibit A 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 Exhibit A, 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 Exhibit A, 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.

3. SUPPORT FOR THIRD PARTY PRODUCTS

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

4. PROPRIETARY RIGHTS

4.1 **Third Party Proprietary Rights.** 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.

4.2 **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.

5. WARRANTY

5.1 **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.

5.2 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.

Exhibit A

The Active Network
 10182 Telesis Court, Suite 100
 San Diego, CA, 92121, United States

Date: 06/22/2012
Expires 09/19/2012
Quote: : 27662-1

Customer:
 MIKE BOYD
 TOWN OF APEX

Bill To:
 TOWN OF APEX
 PARKS, RECREATION & CULTURAL RESOURCES
 P.O. BOX 250
 APEX, NC 27502
 UNITED STATES

Ship To:
 TOWN OF APEX
 53 HUNTER STREET
 APEX, NC 27502
 UNITED STATES

Sales Representative: Onizuka, Janette Marie (Kim)

Payment Terms: 30 NET

Line	Product	Units	Qty	Discount	Unit Price Selling (USD)	Total Price Selling (USD)
1.0	ActiveNet - STAR TSP143U Thermal, autocutter, USB - cable included	Ea	4		\$309.00	\$1,236.00
2.0	ActiveNet - STAR TSP100 Thermal Receipt Paper (3 1/8 x 220)	Ea	1		\$75.00	\$75.00
3.0	Class - Standard IPAD w/PCI PED cert USB HID w/Magensa.net Key	Ea	4		\$265.00	\$1,060.00
4.0	ActiveNet - Microsoft LifeCam Cinema	Ea	1		\$85.00	\$85.00
5.0	Class - APG Cash Drawer to Star Printer Cable	Ea	4		\$15.00	\$60.00

Category Subtotal

ActiveNet.Hardware.HW Other	Subtotal (Selling Price)	\$85.00
ActiveNet.Hardware.Printer	Subtotal (Selling Price)	\$1,236.00
ActiveNet.Hardware.Scanner	Subtotal (Selling Price)	\$1,060.00
ActiveNet.Hardware.Supplies	Subtotal (Selling Price)	\$75.00
Class.Hardware.Supplies	Subtotal (Selling Price)	\$60.00

Charges

\$0.00

Tax

COUNTY (Rate 2%)	\$50.32
STATE (Rate 4.75%)	\$119.51

Total(USD) **\$2,685.83**

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.

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.

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.

Customer Name: TOWN OF APEX

Signature: _____

Name: _____

Title: _____

Effective Date: _____

End of Quote

Software as a Service Agreement

This Software as a Service Agreement ("Agreement") is made effective as of August 1, 2012 (the "Effective Date") and entered into between The Active Network, Inc., 10182 Telesis Court, San Diego, CA 92121 ("TAN" or "we" or "us") and Town of Apex ("you" or "your" or "Client"). The parties agree as follows:

1. **Services.** TAN will provide you access to its software as a solution product ("Software") as well as services and support ("Services") related to your events, camps, licenses, classes, tickets, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "Events"). The features, services, options, and fees are described more fully in schedule(s) to this Agreement (each, a "Schedule"). The Initial Schedule is attached hereto as Exhibit A. Each additional Schedule must be signed by both parties and will be governed by this Agreement. You agree to provide us with certain information relating to your organization as necessary for us to provide the Software and Services. Software provided under this Agreement is deemed delivered when made available to you.
2. **License to Intellectual Property/Promotion.** a) TAN retains all right, title, and interest in and to the Software and Services and any underlying software subject to the limited license provided by this Agreement.
b) TAN hereby grants to you a limited, non-exclusive, non-transferable license (i) to use the Software and Services solely in accordance with the Schedule and this Agreement, and (ii) to display, reproduce, distribute, and transmit in digital form TAN's name and logo solely for the purposes set forth in this Section 2. You hereby grant to TAN a limited license to use information provided by you relating to your organization, which may include your organization's name, trademarks, service marks, and logo, in connection with the promotion of your organization or Events.
c) You will make reasonable efforts to promote and encourage the use and availability of the Software in connection with the promotion of your Events for which you are using the Software and Services. You will include TAN's name and logo in newsletters, printed registration forms and mailings provided by you to prospective participants (e.g., by inserting the following statement in any online or print media related to your Event: "Online Registration Powered by Active.com"), TAN will be the sole and exclusive provider of registration services similar to the Software and Services provided to Client hereunder for each Event for which you are using TAN's Software and Services during the term of this Agreement.
d) You agree to receive notifications regarding free product, promotional items, and giveaways at your Event(s) or facility(ies), but you may opt not to receive the items from TAN. Registrants of your Events may opt-in to receive information, items, or promotional deals from TAN; we will be responsible for providing customer service for any such offers.
e) Each party agrees to comply with all applicable laws, rules, and regulations relating to such party's obligations hereunder.
3. **Information Collection.** TAN collects certain information from individuals as part of the registration process for your Events. You may login to our data management system to access this information. You are responsible for the security of your login information and for the use or misuse of such information by users authorized by you to use the Software and Services. You will immediately notify TAN in writing if any such users are no longer authorized. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder); (ii) applicable Payment Card Industry Data Security Standards; and (iii) TAN's privacy policy as published on its website.
4. **Fees.** a) Client will pay the fees as more fully described in the applicable Schedule. For registration Software, unless otherwise set forth on the applicable Schedule, TAN will collect registration fees charged by you from individuals who register for your Events online, for the purposes of said association rules, as a merchant of record but not a seller of record. TAN will remit those sums to you, net of chargebacks and any other offsets, bi-weekly unless otherwise set forth in the applicable Schedule, less TAN's service fees as set forth in the applicable Schedule. TAN may suspend its performance hereunder, including remitting payments, in the event it reasonably believes that the Software or Services are being used for fraudulent or other suspect purposes. If you have agreed to a minimum volume commitment in a Schedule, TAN also has the right to charge fees owed to it by you if your organization does not meet the agreed volume commitments and may collect those fees by issuing an invoice or by offsetting the deficiency from any account balance you maintain with TAN. Any minimum volume commitment calculations will begin on the date that the Software is live for your Event(s). TAN may also reimburse itself for any chargebacks, returned items or overdue fees owed by you out of the registration fees it collects on your behalf by offsetting your account. If the Schedule indicates that you are paying on a subscription basis, you will be invoiced for the first year of subscription fees upon the first live operational use of the Software ("Go-Live Date"), with subsequent annual subscription fees being invoiced upon each anniversary of Go-Live Date. Payment of subscription fees are due within thirty (30) days of your receipt of an invoice. All fees and prices are in United States Dollars unless otherwise specified.
b) All fees that are not directly collected by TAN as part of registration fees will be due from you within thirty (30) days from the end of the remittance cycle during which the fees accrued. These fees are displayed on your account statement. Past due fees shall accrue interest at the annual rate of ten percent (10%) per annum, in the event of delay in paying a fee, you agree to reimburse TAN for any fees incurred in its collection efforts. TAN may suspend or deactivate your account if your account is more than thirty (30) days past due.
c) TAN reserves the right to modify the fees once per calendar year, provided that any increase will not exceed twelve and a half percent (12.5%). TAN shall notify Client at least thirty (30) days in advance of any such change. If we modify the fees, you can terminate this

Version: 11/11/11

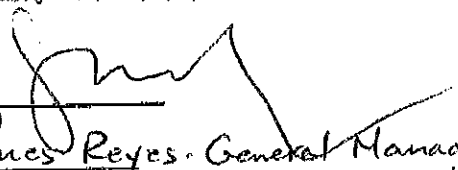
Agreement at that time by providing written notice within thirty (30) days following the date the change is implemented.

- d) As the seller of record, you will be solely responsible for, and will pay, any and all use, excise, sales or privilege taxes, duties, value added taxes, fees, assessments, or similar liabilities, chargeable by a governmental authority as a result of any Software or Service provided under this Agreement. Taxes on TAN's net income are excluded.
- e) In the event you are entering into this Agreement and seeking the Services for the benefit of a third-party event or organization ("Third Party Beneficiary"), you agree that we may send registration fees collected by us directly to the Third Party Beneficiary.
5. **Disclaimer of Warranty/Limitation of Liability.** TAN EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS. SOFTWARE AND SERVICES ARE PROVIDED TO YOU ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TAN SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR LOST PROFIT DAMAGES. TAN'S TOTAL AGGREGATE LIABILITY FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY YOU AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.
6. **Indemnification.** TAN (the "Indemnifying Party") shall defend, settle, and pay damages (including reasonable attorneys' fees) ("Damages") relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("Claims") against the Client (the "Indemnified Party") to the extent that such claim is based upon: (i) the Indemnifying Party's violation of any applicable law, rule, or regulation; and/or (ii) provision, by the Indemnifying Party, of materials, products, or services as part of such party's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used in accordance with this Agreement. For the purposes of Sections 6 and 6, reference to TAN shall also include its suppliers and licensors.
7. **Term and Termination.** The term of this Agreement shall be for three (3) years from the Effective Date with automatic renewals for three (3) year terms thereafter, unless either party gives written notice to the other party to terminate this Agreement no less than sixty (60) days prior to the expiration of the then-current term. Either party may terminate this Agreement, (a) upon a material breach by the other party, if such breach is not cured within thirty (30) days following written notice to the breaching party; or (b) where the other party is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days.
8. **Miscellaneous.** a) Any notices required to be given under this Agreement shall be in writing sent to the address set forth below for Client or, in the case of TAN, to the address set forth above to the attention of General Counsel. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or three (3) days after deposited in the mail sent certified or registered.
b) This Agreement is non-assignable without the written consent of the other party, except that TAN may assign without consent: (i) its rights to receive payments; or (ii) the Agreement to an affiliate or in connection with any sale of or any other transaction involving the transfer of more than fifty percent of its voting securities or assets. Any assignment in violation of this Agreement will be void.
c) This Agreement shall be governed by the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this Agreement. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in San Diego County, California. 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.
d) This Agreement contains the entire understanding of the parties regarding the subject matter hereof and can only be modified or amended by a subsequent written agreement executed by both parties.
e) Sections 2, 3, 6, 7, and 8 of this Agreement and any fees owed by you shall survive any termination or expiration of this Agreement.
f) If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.
g) No waiver of any provision of this Agreement or any attachment shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
h) Neither party will be deemed to be in default hereunder, or will be liable to the other, for failure to perform any of its obligations under this Agreement to the extent that such failure results from any event or circumstance beyond that party's reasonable control.

SIGNATURE PAGE

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

TAN

By: 
(Signature)

James Reyes, General Manager
Print Name and Title

Date: Aug 2, 2012

CLIENT

TOWN OF APEX
(Town of Apex)

By: 
(Signature)

Bruce A. Redford, Town Manager
Print Name and Title

Town of Apex
Checks payable to

Date: 7-30-12

STAFF CONTACT

David Wood
David.Wood@apexnc.com
E-Mail

Phone: 919-249-3351

P.O. Box 260
Address
Apex, NC 27602
City, State and Zip

Event URI, (Web site)

Pre-Audit Certificate:

This instrument has been pre-audited in the manner required by the Local Government Budget Control Act.

By: 
Lee Smiley, Finance Director, Town of Apex

SCHEDULE 1

1788 Active Network
 10182 Telesis Court, 1st floor
 San Diego, CA, 92121, United States

Expires: 03/12/2012
 Quote: 19824-1

Customer:
 David Wood
 TOWN OF APEX
 APEX, NC

Bill To:
 TOWN OF APEX
 53 Hunter Street
 APEX, NC US

Ship To:
 TOWN OF APEX
 PO BOX 250
 Apex, NC 27502 United States

Sales Representative:

Payment Terms: 30 NET

Line	Product	Units	Qty	Discount	Unit Price Selling (USD)	Total Price Selling (USD)
1.0	ActiveNet - Activity Registration	Ea	1		\$0.00	\$0.00
2.0	ActiveNet - Facility Reservation	Ea	1		\$0.00	\$0.00
3.0	ActiveNet - Membership	Ea	1		\$0.00	\$0.00
4.0	ActiveNet - League Scheduling	Ea	1		\$0.00	\$0.00
5.0	ActiveNet - Point of Sale	Ea	1		\$0.00	\$0.00
6.0	ActiveNet - Public Access	Ea	1		\$0.00	\$0.00
7.0	ActiveNet - Senior Professional Services: Class Conversation Planning	Hr	16		\$175.00	\$2,800.00
8.0	ActiveNet - Senior Professional Services: Business Process Review	Hr	8		\$175.00	\$1,400.00
9.0	ActiveNet - Documentation Services	Hr	4		\$100.00	\$400.00
10.0	ActiveNet - Standard Professional Services: General Settings Training	Hr	8		\$100.00	\$800.00
11.0	ActiveNet - Standard Professional Services: CRM Center Interface Training	Hr	4		\$100.00	\$400.00
12.0	ActiveNet - Standard Professional Services: Facility Reservations Training	Hr	16		\$100.00	\$1,600.00
13.0	ActiveNet - Standard Professional Services: Resource Scheduler Calendar Interface Training	Hr	4		\$100.00	\$400.00

14.0	ActiveNet - Standard Professional Services: Activity Registrations Training	Hr	16	\$100.00	\$1,600.00
15.0	ActiveNet - Standard Professional Services: Membership Training	Hr	16	\$100.00	\$1,600.00
16.0	ActiveNet - Standard Professional Services: POS Training	Hr	8	\$100.00	\$800.00
17.0	ActiveNet - Standard Professional Services: League Scheduling Training	Hr	8	\$100.00	\$800.00
18.0	ActiveNet - Standard Professional Services: Public Access Training	Hr	16	\$100.00	\$1,600.00
19.0	ActiveNet - Standard Professional Services: Online Interactive Map Training	Hr	4	\$100.00	\$400.00
20.0	ActiveNet - Standard Professional Services: Project Planning	Hr	9	\$100.00	\$900.00
21.0	ActiveNet - Daily Onsite Fee (min 3 days) Excludes Flight Costs	Day	5	\$500.00	\$2,500.00

Category Subtotal

ActiveNet.SaaS.Online Transactions	Subtotal (Selling Price)	\$0.00
ActiveNet.Service.Consulting - Hosted	Subtotal (Selling Price)	\$15,600.00
ActiveNet.Service.Reimbursed Travel	Subtotal (Selling Price)	\$2,500.00
Charges		\$0.00
Tax		
	COUNTY (Rate 2%)	\$0.00
	STATE (Rate 4.75%)	\$0.00



Ongoing Fees:

ActiveNet Offline Service Charges

Cash and check payments entered by Customer staff through the offline Interface will be assessed a 2.0% Service Charge. Non-monetary transactions will be exempt from this Service Charge.

An additional ECP (electronic check payment) Service Charge of 1.5% will be applied to offline ECP payments. Refunds to ECP will be assessed a \$0.10 refund fee.

All other payments will be assessed an additional Service Charge of 2.5% +\$0.25 and any refunds of such payments will be assessed a \$0.10 refund fee.

All online Service Charges will be paid by the Customer and will be included in offline transaction totals

ActiveNet Online Service Charges

Payments entered directly by participants through the online Interface will be assessed a Service Charge of equal to 8.5% of the payment plus \$0.50 for payments less than \$150.00, 3.5% of the payment plus \$5.00 for payments less than \$500.00 but

equal to or more than \$150, and 2.5% of the payments, plus \$10.00 for payments greater than \$500. A minimum Service Charge of \$2.00 will be assessed on all online payments.

All online Service Charges will be paid for by the participant in addition to transaction totals.

We may change the Service Charge at any time and you agree to such change unless you provide us with written objection to such change within 30 days from the date such change is first implemented. We will be responsible for collecting all registration fees charged by you and all Service Charges assessed by us. All registration fees, except Service Charges, are your exclusive property. Any registration fees collected by us will be sent to you twice a month and Service Charges shall be retained by us. Active shall not be responsible for processing or making any refunds. All credit card refunds processed will be assessed a \$.10 fee charged by Active to you. Active may reimburse itself for any credit card charge backs and associated fees out of registration fees collected by it. In the event such funds are not available, you agree to reimburse Active for any charge backs or refunds.

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.

Onsite Services

Quoted prices for onsite services do not include airfare. If onsite services are required, economy airfare will be assessed and invoiced separately. Onsite services are billed in minimum, 8 hour daily increments.

Method of Payment:

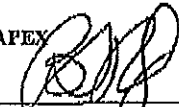
Invoice Me Purchase Order Number: 2013-243

Credit Card Visa MasterCard American Express

Credit Card Number: _____ Expiration Date: _____

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

Customer Name: TOWN OF APEX

Signature: 

Name: BRUCE A. RADFORD

Title: TOWN MANAGER

Effective Date: 7-30-12

End of Quote

AUG/02/2012/THU 12:08 PM

FAX No.

P. 004

Ship To
Town of Apex
Community Center
53 Hunter Street
APEX, NC 27502

Bill To
Town of Apex
Accounts Payable
Po Box 250
APEX, NC 27502

Purchase Order
No. 2013-00000243

DATE 08/02/2012

VENDOR NO. 1848

Vendor
THE ACTIVE NETWORK, INC.
LOCKBOX 9634
LOS ANGELES, CA 90084-9634



PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, SHIPPERS, BILL OF LADING AND CORRESPONDENCE

DELIVER BY
FREIGHT TERMS
PAGE 1 of 1
ORIGINATOR: Pam Kitto

REFERENCE #

QTY	UNIT	DESCRIPTION	VENDOR PART #	UNIT COST	TOTAL COST
18,000.000	Each	Travel & Training - Active Net Training per Quote 19824-1 Schedule 1 10-4220--- 41400--- Travel and Training 9,000.00 10-6200--- 41400--- Travel and Training 9,000.00		1.0000	\$18,000.00
				SUBTOTAL	\$18,000.00
				SALES TAX	\$0.00
				TOTAL DUE	\$18,000.00

Special Instructions

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT. Purchasing Agent: Pam Kitto