

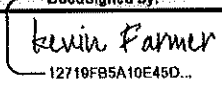
PRODUCT AND SERVICES AGREEMENT

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	Town of Apex	ADDRESS:	53 Hunter Street Apex, NC 27502 United States
CONTACT NAME:		TELEPHONE:	
EMAIL:			

OVERVIEW OF AGREEMENT
This Agreement consists of this cover page, the Schedule, the General Terms, and the following Product Attachments:
Recreation and Membership Management Product Attachment
Third Party Hardware Product Attachment

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

In consideration of the mutual promises and covenants contained in this Agreement, Client and Active hereby agree to be bound by this Agreement. By signing below, Client acknowledges and confirms that it has read this Agreement.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	DocuSigned by:  12719FB5A10E45D...
Name: _____	Kevin Farmer
Title: _____	VP of Sales
Date: _____	7/3/2024 9:54 AM PDT

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

This instrument has been preaudited in the manner required by the Local Government Fiscal Control Act.

Antwan Morrison, Town Finance Director



Schedule

This is a Schedule pursuant to that certain Product and Services Agreement Contract #00133084, dated as of _____, entered into by and between Active Network, LLC, and the Town of Apex on behalf of its Parks, Recreation, and Cultural Resources.

Company Address 3400 N Central Expressway, Suite 300
Richardson, TX 75082
US

Created Date 4/22/2024
Quote Number 00133084
Currency USD

Prepared By Deborah Angel
Opportunity Owner Deanna Foy
Owner Email deanna.foy@activenetwork.com

Contact Name Madeline Cavanagh
Phone 9198155027
Email madeline.cavanagh@apexnc.org

Bill To Name Town of Apex Parks, Recreation & Cultural Resources
Bill To Contact Madeline Cavanagh
Bill To Address Parks, Recreation & Cultural Resources P.O. Box 250
Apex, NC 27502 United States

Ship To Contact Madeline Cavanagh
Ship To Address 53 Hunter Street
Apex, NC 27502 United States

Product	Product Type	Description	Quantity	Total Price*	Sales Price	Fee %	Total Price
ACTIVENet - Annual Subscription Fee	SaaS		1	USD 81,000.00	USD 81,000.00		81,000.00
ACTIVENet - SaaS				USD 49,915.00	USD 49,915.00		
ACTIVENet - Staff Interface - Payment Processing Fee - Electronic Cheque/Check Processing	SaaS		1	USD 0.00	USD 0.00	0.50	
ACTIVENet - Staff Interface - Refunds - Credit Card (Flat Fee)	SaaS		1	USD 0.10	USD 0.10		0.10
ACTIVENet - Public Interface - Online Transaction Fee	SaaS	Migration Loyalty Rates for first term of contract for U.S. organizations exceeding \$30,000,000 in annual revenue through ACTIVE Net.	1	USD 0.00	USD 0.00	3.00	
ACTIVENet - Staff Interface - Payment Processing Fee - Credit Card	SaaS	Rates for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.	1	USD 0.00	USD 0.00	3.00	
Total Price							USD 81,000.00
Annual Projected Contract Value							USD 81,000.00

Active reserves the right and may take additional measures to verify Client's account which may consist of reviewing publicly available data and/ confirmation of Client provided information. Such verification measures will be completed in advance of remittance.

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



Schedule

The payment options we offer may include MasterCard, Visa, American Express and Discover.

If your order includes hardware, please note that all hardware orders have a 30-day return policy, and it is recommended that you inspect your purchases upon delivery.

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

Capitalized terms used in this Schedule and not defined have the meaning set forth in the General Terms or Product Terms, as applicable.

Quote Acceptance Information
Town of Apex Parks, Recreation & Cultural Resources

Signature: _____
Printed Name: _____
Title: _____
Date: _____

DocuSigned by:
Active Network, LLC
Kevin Farmer
12719FB5A10E45D...
Signature: _____
Name: Kevin Farmer
Title: VP of Sales
Date: 7/3/2024 | 9:54 AM PDT

Signature: _____
Printed Name: _____
Title: _____
Date: _____
PO# (if applicable): _____

Products and Services General Terms

Client's relationship with Active and Client's use of Active's products and services (including Client's licensing of Active's SaaS, Client's use of Services, and/or Client's purchase or leasing of Hardware) are subject to the terms and conditions set forth herein and are between Client and Active. Capitalized terms are defined in Section Z below, unless otherwise defined within the body of this Agreement, the applicable Product Attachment, or Schedule. In order to use the Products, Client must first agree to this Agreement. Client represents and warrants that Client has the necessary and full right, power, authority, and capability to accept this Agreement, to bind Client's organization, and to perform Client's obligations hereunder. Client can accept this Agreement by signing this Agreement. Client may not use the Products and may not accept this Agreement if (i) Client is not of legal age to form a binding contract with Active, or (ii) Client is a person barred from receiving the Products under the laws of the United States or other countries, including the country in which Client is a resident or from which Client uses the Products. Client may not use the Products if Client does not accept this Agreement. By accepting this Agreement, Client agrees as follows:

1. AGREEMENT STRUCTURE AND SCOPE.

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

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

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

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

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

2. FINANCIAL TERMS.

2.1. Fees; Payment Terms; Currency. Fees, currency, and payment terms are specified in the applicable Schedule. Unless otherwise specified in the Schedule, all amounts owed by Client that are not directly collected by Active are due from Client within thirty (30) days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. Past due fees will accrue interest at the lesser of the annual rate of ten percent (10%) per annum or the maximum amount permitted by applicable law. In the event of any non-payment or delay in paying a fee, to the extent permitted by law, Client agrees to reimburse Active for any fees and expenses incurred in its collection efforts. Payment of fees is under no circumstances subject to, or conditioned upon, the delivery of future Products or functionality. Active shall have the right, once per calendar year, to increase the subscription fees by two percent (2%) and/or the transaction fees by four percent (4%) (the "Annual Fee Increase"), as applicable. In special circumstances, Active, in its sole discretion and upon thirty (30) days' written notice to Client (which may be sent by email), shall have the right to further increase the subscription fees and/or transaction fees on an annual basis by an additional amount (the "Additional Increase") provided that the Annual Fee Increase and the Additional Increase cumulatively do not exceed five percent (5%) for subscription fees and/or twelve and a half percent (12.5%) for transaction fees.

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

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

2.4. Taxes. The prices stated in this Agreement do not include Taxes. Client is responsible for, and agrees to pay, any and all required Taxes which may be assessed on Client's invoices. If Client is tax-exempt, Client will send Active a copy of its valid tax-exempt certificate (or, as applicable, its reseller's certificate) prior to execution of any Schedule. Client is solely responsible for determining which, if any, Taxes apply to End Users or licensees in connection with Client's use of the Products and for collecting, remitting, and reporting the correct amounts of all such Taxes to the applicable governmental authorities, even if Active provides Client with tools that assist Client in doing so. In the event that a governmental authority requires Active to pay any Taxes attributable to Client's use of the Products, to the extent not prohibited by law, Client agrees to defend, indemnify, and hold Active harmless from all such Taxes and all costs and expenses related thereto. Active reserves the right to modify this section and apply all required Taxes to this Agreement upon providing a thirty (30) day written notice to Client in order to comply with applicable laws. When Active is acting as the payment facilitator and Client elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the Term of the Agreement, Active may, upon at least five (5) business days' prior written notice, (a) require Client to send to Active Client's books and records related to its sales tax payments, and/or (b) visit Client's premises during Client's normal business hours to review Client's sales tax payments.

3. LIMITED RIGHTS AND OWNERSHIP; INDEMNIFICATION; CONFIDENTIALITY.

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

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

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

3.4. Active Indemnification. Active agrees to defend, settle, and pay damages (including reasonable attorneys' fees) ("Client Losses") relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("Claim(s) Against Client") against Client to the extent that such claim is based upon Active's proprietary Products (excluding Professional Services and Third Party Products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement; provided Client shall (i) promptly give Active written notice of the Claim Against Client; provided, however, that Client's failure to give or delay in giving such notice to Active shall not relieve Active of any liability it may have to Client except to the extent that Active demonstrates that the defense of such Claim Against Client is prejudiced thereby, (ii) gives Active sole control of the defense and settlement of the Claim Against Client; provided that Active may not settle any Claim Against Client without Client's prior written consent unless such settlement includes a complete and final release of liability and Client Losses against Client and does not impose any obligations on Client, and (iii) gives Active all reasonable assistance, at Active's expense.

3.5. Infringement. Active shall have no liability or obligation under Section 3.4 above or otherwise to the extent a Claim Against Client is based upon (i) use of the Products in combination with software or hardware not provided by or specified by Active in the Documentation, if infringement would have been avoided in the absence of such combination; (ii) modifications of the Products made by any individual or entity other than Active or at Active's written direction; or (iii) use of the Products by Client or any User in a manner not expressly permitted by the Agreement. If Active has reason to believe that the Products may infringe or misappropriate any third party Intellectual Property right or otherwise give rise to an infringement or misappropriation Claim Against Client, Active may in its sole discretion and at no cost to Client (a) modify the Products so that they no longer infringe or misappropriate or (b) obtain a license for Client's continued use of that Products in accordance with this Agreement. If Active determines (a) and (b) above are not reasonably practicable, Active may (x) terminate Client's subscriptions for the Products, if applicable, or (y) terminate this Agreement, if Client is not using the Products on a subscription basis, upon thirty (30) days' written notice and Active will refund to Client any prepaid fees covering the remainder of the Term (as defined in the applicable Product Attachment) of the subscription(s). Active's defense and indemnification obligations in Section 3.4 above do not apply to the extent a Claim Against Client arises from Client's breach of this Agreement.

3.6. Client Indemnification. To the extent not prohibited by law, Client will defend Active, and hold Active and its Affiliates and their respective employees, directors, successors and permitted assigns harmless, against any claim, action, regulatory action, demands, lawsuit or proceedings (whether threatened, asserted, or filed) made or brought against Active by a third party to the extent that such claim is based upon (a) any actual, alleged or anticipated breach by Client of this Agreement; (b) injury or death to a person or damage to property resulting from the participation in an Event (as defined in the applicable Product Attachment) operated by Client in connection with the Products; (c) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the Intellectual Property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (d) use or unauthorized disclosure of Participant Information by Client or other third parties to whom access is given to Participant Information as provided hereunder; (e) Client's use of the Products in violation of Section 3.2 (Restrictions) of these General Terms; and/or (f) any claims for refunds or chargeback requests from End Users ("Claim(s) Against Active"). To the extent not prohibited by law, Client will indemnify Active from any damages, liabilities, losses, expenses, fines, penalties and/or judgments, attorney fees and costs finally awarded against Active as a result of, or for any amounts charged to Active, recoverable from Active and/or paid by Active under a Client and court-approved settlement of, a Claim Against Active ("Active Losses"); provided Active (i) promptly gives Client written notice of the Claim Against Active; provided, however, that Client shall not be excused from its indemnification obligations unless a delay in providing such notice impairs Client's ability to defend the Claim Against Active; (ii) gives Client sole control of the defense and settlement of the Claim Against Active (except that Client may not settle any Claim Against Active unless it

unconditionally releases Active of all liability), and (iii) gives Client all reasonable assistance, at Client's expense. The above defense and indemnification obligations do not apply to the extent a Claim Against Active arises from Active's breach of this Agreement

3.7. Sole Remedy. This "Mutual Indemnification" Section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for a third party claim that constitutes either a Claim Against Client or a Claim Against Active as described in this Section.

3.8. Definition of Confidential Information. During the Term (as defined in the applicable Product Attachment) of this Agreement and for a period of three (3) years after the expiration of or the termination of this Agreement each party acknowledges and agrees that "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Client includes Client data; Confidential Information of Active includes the Products; and Confidential Information of each party, solely by way of illustration, and not in limitation, shall include the following information: the terms and conditions of this Agreement (including pricing), financial data, plans, forecasts, Intellectual Property, methodologies, as well as business and marketing plans, technology and technical information, product plans and designs, Client information, strategic analyses and business processes, in each instance disclosed by such Disclosing Party or any of its Representatives regarding it and its Affiliates. However, Confidential Information does not include any information that the Receiving Party can demonstrate (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as evidence by prior documentation or tangible embodiments of such information

3.9. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its respective Affiliates' employees, officers, directors, agents, representatives and contractors, including, legal counsel, tax advisors and/or accountants who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with or are otherwise subject to enforceable obligations to the Receiving Party that contain protections no less stringent than those herein (collectively, "**Representatives**"). Neither party will disclose the terms of this Agreement to any third party other than its Representatives without the other party's prior written consent, provided that a party that makes any such disclosure to its Representatives will remain responsible for such Representatives compliance with this "Confidentiality" Section.

3.10. Required Disclosure. The confidentiality obligations imposed herein are modified to provide that disclosure of certain material by the Client may be required due to its status as a state governmental entity under the North Carolina Public Records Law. Receiving Party agrees to apply any and all available exceptions under the North Carolina Public Records Law to disclosure of its records containing any of Active's Confidential Information protected by this Non-Disclosure Agreement and to promptly notify Active of any pending disclosure request under North Carolina Public Records Law pertaining thereto to enable Active to monitor, and, if it so wishes, to the extent permitted by law, intervene to oppose such disclosure.

4. DISCLAIMERS AND LIMITATION OF LIABILITY.

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

4.2 DELETED.

4.3 DELETED.

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

5. TERM AND TERMINATION.

5.1. Term. The Term (as defined in the applicable Product Attachment) for each Product offered under this Agreement will be as set forth in the applicable Product Attachment. =

5.2. Termination. Either party may terminate this Agreement, including any or all Product Attachments and Schedules executed hereunder, immediately upon written notice: (a) in the event that the other party commits a non-remediable material breach of this Agreement and/or the applicable Product Attachment or Schedule, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within thirty (30) days of being notified in writing of such breach, except for breach of Section 2 of these General Terms which will have a ten (10) day cure period; or (b) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Where a party has the right to terminate this Agreement, such party may at its discretion either terminate the entire Agreement or the applicable Product Attachment or Schedule; provided however, that termination of a Product Attachment will automatically terminate all Schedules entered into pursuant to such Product Attachment. Product Attachments and Schedules that are not terminated will continue in full force and effect under the terms of this Agreement. Following termination of this Agreement or a Product Attachment (for whatever reason), if requested by Active, Client will certify that it has returned or destroyed all copies of the applicable Protected Materials and acknowledges that its rights to use the same are relinquished. Except for the refund of prepaid fees set forth in Section 3.5 (Infringement), as applicable, termination for any reason will not excuse Client's obligation to pay in full any and all amounts due, nor will termination by Active result in a refund of fees paid.

5.3. Suspension. Active will be entitled to suspend any or all Products or deactivate Client's account, including suspending its performance and obligation to remit payments hereunder, upon ten (10) days' written notice to Client in the event Active reasonably believes that Client is in breach of this Agreement, Client's use of the Products is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. Further, Active, in its sole discretion, may terminate Client's password, accounts (or any part thereof), and/or Client's right to use the Products, and remove and discard any and all of Client's content within the Products, at any time for any reason or no reason, including, without limitation, for lack of use, failure to timely pay any fees or other monies due Active, or if Active believes Client has violated or acted inconsistently with the letter or spirit of this Agreement. Client agrees that any termination of its use of the Products may be effected without prior notice, and acknowledges and agrees that Active may immediately deactivate or delete Client's account and all related content and files related to Client's account and/or bar any further access to such files or Products. Further, Client agrees that Active shall not be liable to Client or any third party for any termination of use of or access to the Products. All provisions of this Agreement that by their nature should survive termination of Client's right to use the Products shall survive (including, without limitation, all limitations of liability, releases, indemnification obligations, disclaimers of warranties and Intellectual Property protections and licenses).

6. GENERAL PROVISIONS.

6.1. Force Majeure. Neither party will incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without any negligence on the part of the party seeking protection under this subsection, including internet service provider or third party payment delays or failures, natural hazards outside of human control for which no person or persons can be held responsible, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a time equal to the time lost due to the delay so caused.

6.2. Assignment. Active may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Client may not resell, assign, or transfer any of its rights or obligations under this Agreement except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without the prior written consent of Active will be null and void.

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

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

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

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

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

6.8. Survival. The following provisions will survive any termination, cancellation, or expiration of this Agreement: Sections 1, 2, 3.2, 3.5, 3.6, 3.7, 3.8, 3.9, 4, 5.2, 6, and 7 of these General Terms, and such other provisions that should reasonably survive termination, cancellation, or expiration hereof.

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

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

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

6.12. Governing Law and Venue. Except as set forth below, this Agreement will be governed by the laws of the State of North Carolina, without giving effect to the conflict of law provisions thereof and as applicable under United States federal law. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement.

6.13 Order of Precedence. To the extent any terms and conditions of these General Terms conflict with the terms and conditions of any Product Attachment, the provisions of the Product Attachment will control. To the extent any provision of these General Terms or any Product Attachment conflict with the provisions of a Third Party EULA, the Third Party EULA will control. In the event of a conflict between a Schedule and these General Terms or the applicable Product Attachment, the General Terms or the applicable Product Attachment will control, provided, however, that such standard variable terms such as price, quantity, license scope, payment terms, shipping instructions, and the like will be specified on each Schedule. Further, Client agrees and acknowledges that it shall not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party, amend, alter, or contract away (or seek to amend, alter, or contract away) any of its rights, liabilities, or obligations under this Agreement through any means (including, but not limited to, through any waiver, contract, terms, or communication with End Users (individually and collectively, "Client Terms"). Client agrees and acknowledges that any such amendment, alteration, or contracting away of any such liabilities, or obligations under this Agreement shall be void, and of no force or effect. Active shall bear no liability or obligation to any End User under any Client Terms, and any provision of any Client Terms that is inconsistent with this Agreement, or that expressly, implicitly, or effectively imputes any liability or obligation upon Active to any End User or to any other third party shall be void, and of no force or effect.

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

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

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

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

6.18 Deleted.

6.19 Anti-Human Trafficking. Active warrants and agrees that no labor supplied by Active or its subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

6.20 Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Active hereby warrants and agrees that Active will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

7. DEFINITIONS.

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

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

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

"Client" means the Town of Apex.

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

"Effective Date" means July 1, 2024.

"End Users" means users who register for, sign up, or otherwise use the Products in connection with the Events (as defined in the applicable Product Attachment).

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

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

"Intellectual Property" means any and all intellectual property and proprietary rights (in whole or in part) recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed, or recorded, including inventions, technology, patent rights (including patent applications, divisions, and disclosures), copyrights and all works of authorship (whether or not copyrightable), moral rights, trade secrets, trademarks and other indicators of source (and the goodwill associated therewith), service marks, trade dress, logos, methodologies, procedures, processes, know-how, tools, utilities, techniques, protocols, various concepts, ideas, methods, models, templates, software, source code, algorithms, tools, utilities, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, layouts, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which Active has created, acquired, or otherwise has rights in, and may, in connection with the Products or the performance of Services hereunder, create, employ, provide, modify, create, acquire, or otherwise obtain rights in, and in each case includes any derivative works, alterations, and other modifications using, incorporating, based on, or derived from the foregoing.

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

"Participant Information" means certain information that Active collects from End Users, individuals, and/or licensees as part of the registration process for Events (as defined in the applicable Product Attachment).

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

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

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

"Protected Materials" means Products, except for Hardware.

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

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

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

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

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

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

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

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

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

"User" means an individual who is authorized by Client to use the Products and to whom Client (or Active at Client's request) has supplied a user identification and password. Users may include employees, consultants, contractors and agents of Client, and third parties with which Client transacts business, but shall not include Client's End User.

Recreation and Membership Management Product Attachment

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

1. SERVICES. Active will provide the Products related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "**Events**"), including without limitation access to its Products. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Products. Products provided hereunder are deemed delivered when access is made available to Client.

2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

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

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

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

3. PRIVACY AND DATA PROTECTION.

3.1 End User Personal Information. The Products are designed to enable Client to collect information from and about Client's students, athletes, and recruits. Information that identifies, relates to, describes, is reasonably capable of being associated with or could reasonably be linked, directly or indirectly, with a particular student, athlete, or recruit shall be referred to herein as "**End User Personal Information**." The Products process two forms of End User Personal Information:

3.2 End User Accounts. When an End User interacts with the Products for the first time, Active creates an account for that End User ("**End User Account**"). Active authenticates the End User in future interactions with the Products by requiring the End User to log in to their End User Account. Active maintains End User Accounts pursuant to the Terms of Use and Privacy Notice that Active displays to the End User when the End User creates the End User Account.

3.3 Participant Information. Client will have the ability to use the Products to collect a wide variety of End User Personal Information from authenticated End Users, including through the use of forms and features that enable the collection of images and other attachments ("**Participant Information**"). As between the Parties, Client is exclusively responsible for providing any notices, procuring any consents, and otherwise taking any steps that are necessary to ensure that Active's collection, storage, and processing of Participant Information on behalf of Client, as contemplated by this Agreement, is compliant with Data Protection Laws. For the purposes of this Product Attachment, "**Data Protection Laws**" means all local, state, federal and foreign privacy, security, marketing and consumer protection laws and regulations applicable to the processing of Participant Information. Active will process Participant Information solely for the purpose of providing the Products to Client, and as otherwise permitted by Data Protection Laws. Client agrees that it will process Participant Information at all times in compliance with Data Protection Laws, and that it will not use any Participant Information to communicate with any End User in a manner that violates the CAN-SPAM Act, the Canadian Anti-Spam Legislation, the Telephone Consumer Protection Act, or any other law or regulation applicable to Client's outreach to End Users via email or SMS. Client further agrees that Client will not permit any Affiliate or third party to access or process any Participant Information in a manner inconsistent with this Agreement, or in a manner which would cause Active's processing of such Participant Information, as contemplated by this Product Attachment, to violate Data Protection Laws. If Client is subject to a Data Protection Law that requires the Parties to enter into a Data Protection Addendum that includes terms supplemental to this Product Attachment, it is Client's obligation to notify Active of that requirement.

3.4 Data Retention. The Products are not designed to serve as a permanent system of record. During the Term, Active reserves the right to delete any Participant Information that has not been accessed or modified within a trailing period of five (5) years. At the conclusion of the Term, Active will: (i) convert all Participant Information to a backup format approximately thirty (30) days after the end of the Term; and (ii) permanently delete all Participant Information approximately one (1) year after the end of the Term. If Client is subject to any legal obligation that would require Client to maintain any Participant Information for a longer period than those set forth in this Section 3.2, it is Client's responsibility to retrieve that Participant Information from the products and to store it in another format within the time periods allotted. Notwithstanding anything else set forth in the Agreement or in this Product Attachment, Active shall not be in any way responsible for any negative consequences associated with Client's failure to adhere to the requirements set forth in this Section 3.2.

3.5 Prohibition on Certain Categories of Participant Information. The Products are customizable, meaning Client has the ability to choose what kinds of Participant Information Client will use the Products to collect. Client agrees, however, that Client will not use the Products to collect or otherwise process: (i) any personal health information that is subject to the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and its accompanying regulations, or any relevant amendments thereto; (ii) any Participant Information from or about a minor, without procuring and documenting a prior consent that meets the requirements of any applicable Data

Protection Laws, and maintaining such documentation for the duration of the Term; (ii) any cardholder data subject to the Payment Card Industry Data Security Standard ("PCI-DSS"), or any other payment card or financial account information, except within pre-defined fields designed for that purpose; or (iii) any unredacted social security numbers or other similar government identifiers, except within pre-defined fields designed for that purpose. If Active discovers any violation of this Section 3.3 by Client, Active reserves the right to promptly and securely dispose of any prohibited Participant Information found within the Products.

3.6 User Accounts. Client is exclusively responsible for: (a) creating and defining under Client's account in the Products any logons or IDs for Client's Users of the Products; and (b) defining and maintaining at all times with respect to each such logon or ID the appropriate scope of the applicable User's authority and permission with respect to the use of the Products and the security controls, restrictions, and limitations that apply with respect to each such User and his or her use of the Products. Client is solely and exclusively responsible for all access and use of the Products (and for any resulting activity or communications) by Client or its Users or that occurs through the use of any logon or ID established by or with respect to Client or any of its Users. Active shall not be liable or responsible for any activity, loss, or damage arising from any unauthorized access to or use of any such logons or IDs or resulting from any failure by Client or its system administrator to establish or assign an appropriate scope of authority or permission, or appropriate security controls, restrictions, or limitations, with respect to any given User, logon, or ID. Client shall immediately notify Active of any known or suspected unauthorized access to or use of Client's account, or of any logons or IDs established or assigned with respect to Client or its Users, of which Client becomes aware.

4. FEES.

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

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

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

4.4. Client is not entering into this Product Attachment and using the Products for the benefit of a third-party Event or organization ("Third Party Recipient"),

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

4.6. Client hereby authorizes and appoints Active as its limited agent to initiate payment card and ACH credit or debit entries to and from Client's bank account. Payment by Receiver (in the case of ACH entries) or card networks (in the case of Payment Card transactions) to Active is considered the same as payment made directly to Client. Client, upon receipt of funds by Active, must (1) provide the purchased goods or services to the End User, or (2) credit the End User for the full amount of funds received by Active, which credit is not revocable by Client, and evidence this credit in writing in a form capable of being retained for future reference. For transactions involving goods or services, Client must provide the purchased goods and services as agreed to between Client and End User, regardless of whether Active transmits the funds to Client.

5. TERM AND TERMINATION.

5.1. Unless otherwise set forth in the applicable Schedule, this Product Attachment will commence on the Effective Date and will continue in effect until the earlier to occur of (i) its termination in accordance with the terms and conditions below and (ii) the first anniversary of the Effective Date (the "Initial Term"). This Product Attachment shall renew automatically following the initial Term for subsequent renewal terms thereafter of one (1) year (the "Renewal Term(s)", and, together with the Initial Term, the "Term") unless either Party delivers written notice to the other Party at least six (6) months prior to the expiration of the then-current Term of its intent to terminate this Product Attachment upon the completion of the Initial Term or any Renewal Term. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Products that are related to or interoperable with the Products set forth in a previously entered into Schedule, the Term of such subsequent Schedule will be concurrent and coterminous with the Term of the previously entered into Schedule.

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

6. NON-APPROPRIATION.

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

body not to appropriate funds for payment of Client's obligations hereunder, and will provide with such notice a copy of the resolution, minutes or recording of such action.

7. MISCELLANEOUS.

7.1. Section 5 of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

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

THIRD PARTY HARDWARE PRODUCT ATTACHMENT

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

1. PURCHASE AND SALE; DELIVERY.

1.1 Active hereby agrees to sell to Client, and Client hereby agrees to purchase from Active, the Third Party Products listed in the applicable Schedule in the volumes and at the prices described therein. For purposes of this Product Attachment, "Third Party Products" means those hardware, firmware and/or software products, provided to Active by third parties, listed in the Schedule, together with all user manuals and other documents accompanying the delivery of the Third Party Products, provided that the Third Party Products shall not include Products developed by Active.

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

1.3 Following delivery by Client of any purchase order documentation described in Section 1.2, no changes by Client to the shipment schedule described therein will be permitted unless Active is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

1.4 Purchase orders delivered by Client to Active in respect of Third Party Products are not binding upon Active until accepted by Active in writing. In any case, despite any indication to the contrary contained in any such purchase order documentation, no terms or conditions on purchase order documentation issued by Client, other than the information required by Active as set forth expressly in this Agreement, will be binding upon Active, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that Active may accept or otherwise approve such purchase orders. Active reserves the right to refuse any such purchase order for any reason not contrary to this Agreement, including without limitation pricing differences as described in Section 2.2.

1.5 Client may purchase Third Party Products in addition to those listed in the Schedule by issuing additional purchase order documentation as described herein, provided that the supply (or non-supply) of such additional Third Party Products will be subject to this Agreement as though such additional Third Party Products had been included in the Schedule on the date of execution of Schedule subject to the following: (a) the price for such additional Third Party Products is subject to agreement between the parties each in their own absolute discretion, and (b) Active shall have the right to discontinue delivery of such additional Third Party Products upon at least ninety (90) days written notice to Client without any liability to Client whatsoever for such discontinuance.

2. CHARGES AND PAYMENTS.

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

2.2 Client acknowledges that: (a) the prices described in the Schedule are applicable for thirty (30) days after the date of execution hereof, and such prices are based upon Client taking delivery of the full number of any particular Third Party Product listed in the Schedule in a single shipment; and (b) Client hereby agrees that after the expiry of such initial thirty (30) day period or, in case of Client seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed in the Schedule, the actual prices may be higher. Prior to shipment of any Third Party Products that would be subject to pricing that differs from that described in the Schedule, Active will notify Client of any such different pricing and Client will accept such different pricing, as mutually agreed between Client and Active, in writing.

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

4. PROPRIETARY RIGHTS.

4.1 Client acknowledges that any Third Party Products supplied by Active hereunder are supplied by Active as a reseller thereof and that the Third Party Products are subject to the Intellectual Property rights of the various third party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights. Client will maintain in confidence and not use or disclose any and all confidential business or technical information connected with any Third Party Product except as specifically permitted by a party having legal control of such rights.

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

5. WARRANTY.

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

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