

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**SOFTWARE AS A SERVICE AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND**

Active Network, LLC

This agreement (the "Agreement") is made this **17th day of December, 2015** (the "Effective Date"), in the City and County of San Francisco, State of California, by and between: **Active Network, LLC, 717 North Harwood Drive, Suite 2500, Dallas, TX 75201**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City" or "Recreation and Park Department," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing" (collectively the "Parties").

Recitals

WHEREAS, City wishes to license certain software as a service from Contractor to enable internal and external users access to scheduling and reservation services;

WHEREAS, Contractor represents and warrants that it is qualified to provide such software as a service as required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Acceptance	The City's confirmation in writing of the go-live date for the SaaS Application.
Acceptance Period	The period of timing before the go-live date and after the SaaS application has been made available for City's preparation and training, including the training period.
Agreement	This document and any attached appendices and exhibits, including any future written and executed amendments.
City Data	All data, including all text, sound, or image files that are provided to Contractor by, or on behalf of, the City through use

of the SaaS Application. As between the parties, the City retains all right, title and interest in and to their customer data, subject to the terms and conditions set forth in this Agreement.

Documentation

Technical publications relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals or on-line help files in the form generally available to customers of Contractor, as updated by Contractor from time to time.

Internet

The term "internet" shall mean that certain global network of computers and devices commonly referred to as the "internet," including (without limitation) the World Wide Web.

Precedence

Notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any conflicting or inconsistent terms set forth in any other Contractor or City pre-printed document or purchase order.

Services

The provision by Contractor of the hosted services where Contractor's servers host the configured SaaS Application to perform the functionality listed in the Documentation and services described in Exhibit 1, "SaaS Application and Hosting Services Description" and Appendix A, "Services to be Provided by the Contractor."

Website

The Website that provides End User access to the SaaS Application Services.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, City 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, City shall notify Contractor within ten (10) days of any action by City's governing body not to appropriate funds for payment of City's obligations hereunder, and shall provide with such notice a copy of the resolution, minutes or recording of such action.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Reserved.

4. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **January 1, 2016 to January 1, 2018** (the "Initial Term"). One year prior to the conclusion of the Initial Term the parties may mutually agree in writing to extend the term of this Agreement for additional two year terms under the same terms and conditions set forth herein (each a "Renewal Term"). This Agreement shall become effective on the Effective Date.

5. License

a. Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants City and End Users a non-exclusive, non-transferable limited term license to use, display, and execute the SaaS Application during the term of this Agreement and any Renewal Terms, if any.

b. Click-Wrap Disclaimer. No "click to accept" agreement that may be required for the End Users that are City employees accessing on behalf of the City the SaaS Application and Services and no "terms of use" or "privacy policy" referenced therein or conditioned for use of the SaaS Application and shall apply. Only the provisions of this Agreement shall apply to End Users that are City employees acting on behalf of the City for access thereto and use thereof. The Parties acknowledge that each End User that are City employees acting on behalf of the City may be required to click "Accept" as a condition of access to the SaaS Application and Services through the Website, but the provisions of such "click to accept" agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for each such End User that is a City employee acting on behalf of the City.

c. Reserved.

d. SaaS Application Title; Proprietary Markings. City acknowledges that title to each SaaS Application shall at all times remain with Contractor, and that City has no rights in the SaaS Application except those expressly granted by this Agreement, if any. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within any SaaS Application or Services or any related materials or Documentation by Contractor.

6. Services Contractor Agrees to Perform. During the Term of this Agreement, Contractor will perform all of the services specified below:

a. Provide all hardware, software and other equipment at Contractor's hosting site as necessary to host and deliver the configured SaaS Application and Services described in Exhibit 1 and Appendix A.

b. Provide End User access to the SaaS Application and Services pursuant to the license grant in Section 5.

c. Comply with the service level obligations in the Support and Maintenance Handbook attached hereto as Exhibit 2. It is mutually agreed and understood, that the service level obligations will be applied beginning on the first full calendar month following the Acceptance of the SaaS Application and Services.

d. Provide the SaaS Application and Services in accordance with the Documentation.

e. Maintain the correct operation of the SaaS Application and Services and the Website and provide maintenance and support services as specified in this Agreement.

f. Provide telephone support for End Users in the operation of the SaaS Application and Services as set forth in Contractor's Support and Maintenance Handbook attached hereto.

g. Provide disaster recovery services as described in Section 24(d) and Exhibit 3.

7. Acceptance Testing; Document Delivery; Training.

a. After City has obtained access to the SaaS Application and Services from Contractor, during the Acceptance Period, the City may verify that the SaaS Application and Services substantially performs to the specifications contained in the Documentation. In the event that the City determines that the SaaS Application and Services do not meet such specifications, the City shall notify the Contractor in writing, and the Parties shall agree upon an adjusted "go-live" date, before which the Contractor shall modify or correct the SaaS Application and Services so that it satisfies the Acceptance criteria. The date of Acceptance will be the "go-live" date.

b. **Document Delivery.** Contractor will deliver completed Documentation in electronic format for the SaaS Application and Services by making the Documentation available for access during the Acceptance Period. The City may withhold its Acceptance by adjusting the "go-live" date until City receives access to the completed Documentation in accordance with Section 6(b).

8. Reserved.

9. Trainings. Contractor shall provide training in the use and operation of the SaaS Application as listed in Exhibit 1. Upon request by the City, Contractor will provide additional training at mutually agreed upon rates.

10. Termination for Default. Either Party may terminate this Agreement including any or all Product Attachments and Schedules executed hereunder immediately upon written notice: (i) in the event that the other Party commits a non-remediable material breach of this Agreement, 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 and following the conclusion of a dispute resolution procedure in Section 42 in the case of a termination by either Party.

11. Warranties of Contractor.

a. Compliance With Description of Services. Contractor represents and warrants that the SaaS Application and Services specified in this Agreement and all updates and improvements to the SaaS Application and Services will comply in all material respects with the specifications and representations specified in the Documentation and any applicable updates thereto.

b. Title. Contractor represents and warrants to City that it is the lawful owner or licensee of all programs, materials and property supplied by it in the performance of the SaaS Services contemplated hereunder and has the right to permit City access to or use of the SaaS Application and Services and each component thereof, provided that City's use is in compliance the terms and conditions of this Agreement and all applicable Documentation.

c. Virus Protection. Contractor will use industry-standard methods intended to prevent the transmission of a computer virus or Disabling Code to any computing system of City or any End User.

d. EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT AND SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, CONTRACTOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, ORAL OR WRITTEN, WITH RESPECT TO THE SaaS APPLICATION OR SERVICE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE ABOVE, CONTRACTOR DOES NOT WARRANT THAT THE SaaS APPLICATION OR THE SERVICES PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF CITY OR THAT THE OPERATION OF THE SaaS APPLICATION OR THE SERVICES PROVIDED HEREUNDER WILL BE FREE FROM INTERRUPTION OR ERRORS.

12. Compensation. The implementation and training fees shall be a one-time fee of fifty-four thousand six-hundred dollars and no cents (\$54,600.00). The fee shall be paid following Acceptance. City will be billed by Contractor on a monthly basis per the Active Net fee breakdown below based on the Active Net system report.

Compensation shall be made monthly payments on or before the 31st day of each month for work, as set forth in Section 4 of this Agreement for Services performed as of the 31st day of the immediately preceding month. During the Initial Term, in no event shall the amount of this Agreement exceed nine hundred thousand (\$900,000). In the event the fees are approaching the aforementioned maximum amount, City initiate the amendment process to ensure that there is no disruption of the services provided in this Agreement. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No payments will become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor in accordance with this Agreement. In no event shall City be liable for interest or late charges for any late payments.

Unless otherwise agreed to by the parties in writing, compensation shall be made monthly in arrears on or before the 31st day of each month. Payment of fees is under no circumstances

subject or conditioned by the delivery of future products or functionality. Except as otherwise provided in writing and subject to Section 42 of this Agreement, Contractor may modify the fees once per Renewal Term provided that any increase will not exceed twelve and a half percent (12.5%) over the then-current fees.

13. Indemnification.

a. General Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees acting on behalf of City from, and, if requested, shall defend them against any and all third party loss, cost, damage, injury, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, to the extent arising from Contractor's gross negligence or willful misconduct in performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the gross negligence or willful misconduct of City, its officers, agents and employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an obligation to defend City from any claim which falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is timely tendered to Contractor by City and continues so long the claim continues to satisfy the requirements for indemnification under this Section 13(a).

b. Infringement Indemnification. If notified promptly in writing of any judicial action brought against City by a third party to the extent based on an allegation that City's use of the SaaS Application and Services infringes a United States, Canadian or European Union patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property ("Infringement"), Contractor will hold City harmless and defend such action at its own expense provided that the SaaS Application and Services are used in compliance with this Agreement and all applicable Documentation. Contractor will pay the costs and damages finally awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. City shall notified Contractor promptly in writing of any informal claim (other than a judicial action) brought or threatened against City based on an allegation that City's use of the SaaS Application and/or Services constitutes Infringement. Contractor will pay the costs associated with its defense of an Infringement claim subject to indemnification under this Section 13(b), and will pay the applicable settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement, including the decision to settle and for such amounts, and further provided that Contractor has the reasonable cooperation of City. Notwithstanding the foregoing, Contractor will not settle any claim in a manner which would require a monetary payment without City's consent. In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder, (b) replace the

SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either party hereto and Contractor shall refund to City a pro-rata portion of the fees paid by City based on its lost use and terminate this Agreement. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used.

14. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification, which may be increased by additional amounts certified by the Controller. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form attached hereto in Exhibit 4, and must include a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City as further set forth in Section 34. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

16. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false

claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) knowingly conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

a. **Taxes.** City will pay all applicable sales, use, withholding and excise taxes, and any other assessments against City in the nature of taxes, duties or charges however designated on the Services and SaaS Application or their license or use, on or resulting from this Agreement, exclusive of taxes based on the net income of Contractor, unless exempted by law and unless a valid tax exemption certificate has been provided to Contractor prior to invoicing. Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. Additionally, the parties do not intend to create a possessory interest for Contractor. If such a possessory interest is created, then the following shall apply:

1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

17. Acceptance of Work. When the Services are made available for public use (“go-live”), the City will be deemed to have accepted the Services. Prior to the “go-live” software,

components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

18. Reserved.

19. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

20. Reserved.

21. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses. Should City, at the written request of a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the City shall provide Contractor with prompt notice of such request. After any appeals made by Contractor, and upon the rendering of a final determination by the relevant taxing authority, the amounts payable under this Agreement, if required, shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, and after, in Contractor's discretion, exhausting all appeals, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement,

Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, reasonable out-of-pocket costs, damages, and reasonable out-of-pocket expenses, including attorney's fees, arising from this section.

22. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the

provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

23. Insurance.

a. Without limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 4) Technology Errors and Omissions Liability with limits of not less than \$1,000,000 each claim with respect to failure against programming errors, software performance, failure to perform work as agreed, and errors and omissions subject to the terms, conditions, and exclusions of the policy in connection with the Services.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

- 1) Include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. Contractor shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of one (1) year beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies, subject to the terms, conditions, and exclusions of the policy.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance substantially in compliance with this Section 23, if not resolved to the satisfaction of the Parties, shall constitute a material breach of this Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

24. IN NO EVENT SHALL CONTRACTOR BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, WHETHER OR NOT CONTRACTOR HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY CITY AS CONSIDERATION FOR THE SaaS APPLICATION AND SERVICES GIVING RISE TO SUCH CLAIMS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE. CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS, CONTRACTOR'S OBLIGATION TO INDEMNIFY, AND WRONGFUL DEATH DIRECTLY CAUSED BY CONTRACTOR. FOR THE PURPOSES OF THIS SECTION 23 AND ANY INDEMNIFICATION PROTECTING CONTRACTOR UNDER THIS AGREEMENT, REFERENCE TO CONTRACTOR WILL ALSO INCLUDE ITS SUPPLIERS AND LICENSORS.

25. **Liability Of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 10 (COMPENSATION) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

26. Force Majeure.

a. Liability. No Party shall be liable for any default or delay in the performance of its obligations under this Agreement: (i) if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"), (ii) provided the non-performing Party is without fault in causing reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (including, with respect to Contractor, by meeting its obligation for performing disaster recovery services as described in Section 25(d)).

b. Duration. In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall notify the Party to whom performance is due as soon as reasonably practicable by telephone (to be confirmed in writing) and describe at a reasonable level of detail the circumstances causing such delay.

c. Effect. If any event under Section 24(a), above substantially prevents, hinders, or delays performance of a Party for more than fifteen (15) consecutive days, then the Party to whom performance is due, may, at its option: (i) terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) terminate this Agreement without liability to the other Party as of a date specified by in a written notice of termination. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three (3) days. Under no circumstances will this provision be interpreted as to excuse any payment obligations of City.

d. Disaster Recovery. In the event of a disaster, as defined below, Contractor will be responsible for providing disaster recovery services in accordance with the provisions of the disaster recovery plan attached as set forth in Exhibit 3 hereto, or as otherwise set forth in this Agreement or any Statement of Work.

27. Nondisclosure. Subject to the San Francisco Administrative Code §67.24(e) and to any state open records or freedom of information statutes, and any other applicable laws, City agrees that it shall treat the SaaS Application with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Contractor first provides the SaaS Application and Services to the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the SaaS Application or Services, or any portion thereof, which:

- a.** is now or hereafter becomes publicly known;
- b.** is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- c.** is known to the City prior to its receipt of the SaaS Application and Services;

d. is subsequently developed by the City independently of any disclosures made hereunder by Contractor;

e. is disclosed with Contractor's prior written consent;

f. is disclosed by Contractor to a third party without similar restrictions.

In the event of a request under San Francisco Administrative Code §67.24(e) and to any state open records or freedom of information statutes, and any other applicable laws for the disclosure of any confidential and/or proprietary information of the Contractor, the City shall immediately notify the Contractor to allow the Contractor a reasonable opportunity to seek protective legal treatment for such confidential and/or proprietary information.

28. Proprietary or Confidential Information.

a. **Proprietary or Confidential Information.** The Parties understand and agree that, in the performance of the work or services under this Agreement or in contemplation thereof, each Party may have access to private or confidential information which may be owned or controlled by the other Party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the other Party. Contractor agrees that all information disclosed between the Parties shall be held in confidence and used only in accordance with the terms of the Agreement. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent party would use to protect its own proprietary information.

b. **Nondisclosure.** The receiving Party of proprietary or confidential information agrees and acknowledges that it shall have no proprietary interest in the confidential information and will not disclose, communicate nor publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the disclosing Party, any of the confidential information it produces, receives, acquires or obtains from the disclosing Party. The receiving Party shall take all necessary steps to ensure that the confidential information is securely maintained. The receiving Party's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event the receiving Party becomes legally compelled to disclose any of the confidential information, it shall provide the disclosing Party with prompt notice thereof and shall not divulge any information until the disclosing Party has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the confidential information which it is legally required to disclose.

c. **Data Security.** Contractor shall at all times during the term provide and maintain up-to-date security with respect to (a) the Services, (b) the Website, (c) Contractor's physical facilities, and (d) Contractor's networks, to prevent unauthorized access or "hacking" of City's confidential information and City's hosted Data. Contractor shall provide security for its networks and all internet connections consistent with industry standards observed by well-managed SaaS working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's confidential information in Contractor's possession and control to those employees, agents or service providers of

Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion detection or similar barriers) and password protected access to the City's confidential information and hosted Data. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City's confidential information. Contractor also will establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the City's confidential information and hosted Data from unwarranted disclosure.

d. Data Transmission. The Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via secure means (using HTTPS or SFTP or equivalent). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement.

e. Loss or Unauthorized Access to City's Data; Security Breach Notification. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. Contractor shall notify City of any actual exposure or misappropriation of City's Data in its possession and control (any "Leak") within forty eight (48) hours of the discovery of such. Contractor will reasonably cooperate with City and with law enforcement authorities in investigating any such Leak, at Contractor's expense. Contractor will likewise reasonably cooperate with City and with law enforcement agencies in any effort to notify injured or potentially injured parties, at Contractor's expense.

f. City's Data Backup. Contractor agrees to store all of City's Data on Contractor's primary server and back-up servers. Contractor will: (i) execute incremental database backups to a backup server on a regular basis throughout the day, (ii) conduct weekly full backups, (iii) will replicate City's database and default path to an off-site location (i.e., other than the primary data center); and (iv) will archive the Data as set forth in Exhibit 3.

g. City Data Retrieval. Subject to any applicable Payment Card Industry Standards, City shall at all times, during the term, have access and control of its Data and shall be able to retrieve it in a readable format in electronic form, at any time, at no additional cost.

h. Information Collection and Authorized Users. Notwithstanding anything to the contrary herein, Contractor may collect certain information from individuals as part of a registration process. City may login to Contractors data management system to access this information. 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) Contractor's privacy policy as published on its website. City is solely responsible for the security of its login information, authorization credentials, and similar access information (collectively "Login Information") and for the use or misuse of such Login Information. City agrees to only allow access to and use of the SaaS Application and Services to its authorized users. City acknowledges and agrees that Contractor may provide access to or use of SaaS

Application and Services to anyone utilizing City's Login Information or who is otherwise authorized by City to use or access the SaaS Application and Services on City's behalf. City is responsible for such users' compliance with the terms and conditions of this Agreement. Contractor may suspend or terminate any such user's access to the SaaS Application and Services upon notice to City if Contractor reasonably determines that any such user has violated the terms and conditions of this Agreement or is otherwise using the SaaS Application and Services for suspect purposes. City will immediately either notify Contractor in writing or disable such user's access if any previously authorized City user is no longer authorized to use the Login Information or otherwise use or access the SaaS Application and Services. Contractor may rely, without independent verification, on such notice.

29. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

30. SSAE 16 and SOC 1/SOC 2 Audit Reports. During the Term of the Agreement, Contractor will provide upon written request, but no more than on a semi-annual basis, the SSAE 16 and SOC 1/SOC 2 Audit reports ("Audit Reports") it receives from its hosting service provider as follows: (a) the Audit Reports will include a 180 day (six month) testing period; and (b) the Audit Reports will be available to City no later than 30 days after they are received by Contractor. Upon City's written request, Contractor will provide a so-called "negative assurance opinion" to City as soon as said opinion is received from Contractor's hosting service provider. Contractor shall on a semi-annual basis, and otherwise as reasonably requested by City: (i) provide the foregoing Audit Reports to City and (ii) request such "negative assurance opinions" on City's behalf.

31. Termination

a. Either Party shall have the right, without further obligation or liability to the other Party to immediately terminate this Agreement if such Party commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by the non-breaching Party of such breach. Such termination shall not excuse the City from its payment obligations set forth herein.

b. Disposition Content. Upon expiration or termination of this Agreement, Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Up until expiration or termination of this Agreement, Contractor shall continue to provide access to City's Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) days purge all City Data from its hosted servers and provide City with written certification that such purge occurred, subject to Contractor's retention of data for legal, regulatory and archival

purposes. If City elects to use other hosting options, including on premise hosting and hosting by other third-parties, Contractor will provide reasonable assistance the City in the transition to ensure uninterrupted access to City's Data. The Contractor shall provide reasonable cooperation in the transition of City's Data as to ensure uninterrupted access, provided that City pays Contractor's reasonably, mutually agreed upon rates associated with such assistance.

c. Survival. This section and the following sections of this Agreement shall survive termination of expiration of this Agreement:

- | | |
|---|--|
| 11. Infringement Indemnification. | 25. Nondisclosure. |
| 14. Submitting False Claims; Monetary Penalties. | 26. Proprietary or Confidential Information of City |
| 15. Taxes | 27. Protection of Private Information. |
| 16. Payment Does Not Imply Acceptance of Work. | 39. Non-Waiver of Rights. |
| 18. Responsibility for Equipment | 40. Modification of Agreement |
| 19. Independent Contractor; Payment of Taxes and Other Expenses | 41. Administrative Remedy for Agreement Interpretation |
| 21. Insurance | 42. Agreement Made in California; Venue. |
| 22. Incidental and Consequential Damages | 43. Construction |
| 23. Liability of City | 44. Entire Agreement |

32. Notice to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the Parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: Recreation and Park Department
AnneMarie Donnelly
McLaren Lodge, 501 Stanyan Street
San Francisco, CA 94117
annemarie.donnelly@sfgov.org

To Contractor: Active Network, LLC
Steve Arsenault
717 North Hardwood Drive, Suite 2500
Dallas, TX 75201
Steve.Arsenault@activenetwork.com

Either Party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

33. Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to

insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

34. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. The terms "subcontractor(s)" or "subcontract" as used in this Agreement does not include the general provision of services or utilities which are also provided to Contractors' other customers as well as the City.

35. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City once per calendar year, upon reasonable prior written notice, during regular business hours at Contractor's location, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records and other data for the sole purpose of verifying the accuracy of invoicing under this Agreement and/or Contractor's compliance with its obligations hereunder, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than seven years from the creation of such record. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section. Other than information owned by City or otherwise made available to City on a non-confidential basis, all such information examined or obtained in connection with any such audit shall constitute confidential information of Contractor and may be used only for the purpose described above. In no event shall Contractor have access to any legally privileged or highly sensitive information. Under no circumstances shall this provision be construed as to permit access to Contractor's servers, technology or computer systems.

36. Assignment. Neither party may assign its rights or obligations arising out of this Agreement without the other party's prior written consent, except that Contractor may assign any of its rights or obligations under this Agreement (i) to an affiliate; (ii) the purchaser of all or substantially all of Contractor's assets or equity securities related to the business of Contractor that is the subject matter of this Agreement or (iii) to any successor by way of merger, consolidation, or other corporate reorganization of Contractor related to the business of Contractor that is the subject matter of this Agreement; provided that in each case the assignee is adequately capitalized and can provide adequate assurances that it can perform the obligations under this Agreement. In the event that any such assignment is made by Contractor, Contractor will provide the City with written notice of such assignment. City will work in good faith with Contractor to effectuate the assignment, but City must affirmatively accept the assignment in accordance with Administrative Code 21.22.

37. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled

persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

38. Sunshine Ordinance. In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request provided however, that in the event of such a request, the City shall promptly notify the Contractor to allow the Contractor a reasonable opportunity to seek protective legal treatment for such confidential and/or proprietary information required to be disclosed by City pursuant to the request.

39. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

40. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any

facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

41. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

42. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

43. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

44. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

45. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

46. Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. Contractor further agrees that in the event of conflicting language between this Agreement and Contractor's printed form attached as Appendix D, the provisions of this Agreement shall take precedence.

47. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

48. Reserved.

49. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

50. Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to City's Data under this Agreement, or which in any way might reasonably require access to City's Data. Contractor shall not respond to subpoenas, service of process and other legal requests related to City without first notifying City.

51. PCI Requirements. Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

a. Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

b. Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

c. For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council Pin Transaction Security (PTS) program.

d. For items 10.17.1 to 10.17.3 above, upon written request of City, Contractor shall provide an attestation of compliance.

e. Contractor shall reasonably work with City to demonstrate PCI compliance upon City's written request.

f. Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

52. City Information and Obligations. In order to assist Contractor in the successful provision of SaaS Application and Services, City shall (i) provide to Contractor information relating to City's organization, technology platforms, systems configurations, and business processes and otherwise relating to City that is reasonably requested by Contractor from time to time, (ii) make available such personnel assistance to Contractor as may be reasonably necessary for Contractor to perform hereunder; and (iii) carry out in a timely manner all other City responsibilities set forth herein. Any delay by City hereunder shall result in a day-for-day extension of Active's dependent obligations.

53. Third Party Software and Open Source Components. The SaaS Application may contain open source components or other third party software of which the use, modification, and distribution is governed by license terms (including limitations of liability) set out in the applicable documentation (paper or electronic) or read me files. Contractor hereby represents and warrants that such additional user terms for open source components or other third party software incorporated into the SaaS Application shall be consistent with the City's permitted use of the SaaS Application and the SaaS Application specifications and user documentation, and shall not prejudice the license use benefits being derived from the City's use of the SaaS Application.

54. Restrictions; Acceptable Use Policies. City shall: (i) use the SaaS Application exclusively for authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others, including privacy and anti-spamming laws; (ii) not reverse engineer, disassemble, or decompile any SaaS Application or prepare derivative works thereof; (iii) not copy, modify,

transfer, display, or use any portion of the SaaS Application except as expressly authorized in this Agreement or in the applicable documentation; (iv) not contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or intellectual property rights, title, or interest of Contractor in and to any SaaS Application; (v) not obliterate, alter, or remove any proprietary or intellectual property notices from the SaaS Application in physical or electronic forms; (vi) not use the SaaS Application to transmit, publish, or distribute any material or information: (a) for which City 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; (b) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS Application; or (c) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (vii) not attempt to gain access to any systems or networks that connect thereto except for the express purpose of using the SaaS Application for their intended use; (viii) not rent, lease, sublicense, resell, or provide access to the SaaS Application on a time-share or service bureau basis; and (ix) not input credit card information into the SaaS Application or solicit the input of such information other than in pre-defined fields within the SaaS Application that are intended for that purpose.

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

56. Transmissions and Communications. City acknowledges that Contractor: (a) does not monitor or police communications or data transmitted through the SaaS Application by City or any third party, or any communications or data transmitted by any third party suppliers through the SaaS Application; (b) shall not be responsible for the content of any such communication or transmission; (c) shall have no liability of any kind with respect to any materials or information that City inputs into or transmits, publishes, or distributes through the SaaS Application; and (d) may remove or modify any such communication or transmission deemed offensive for which Contractor has received more than one complaint.

57. License and Branding. Contractor hereby grants to City a limited, non-exclusive, non-transferable license to display, reproduce, distribute, and transmit in digital form Contractor's name and logo in connection with promotion of the SaaS Application only in the manner approved of by Contractor during the term of this Agreement. City hereby grants to Contractor a limited non-transferable license to use, display, reproduce, distribute, adapt and transmit in digital or printed form information provided by City relating to its organization, including its name, trademarks, service marks and logo, in connection with the implementation and promotion of the SaaS Application; provided, however, that such use shall be as necessary to Contractor's performance under this Agreement. City will use reasonable efforts to encourage adoption of the SaaS Application, including displaying Contractor's name and logo, in the form supplied by

Contractor from time to time and in a manner approved by Contractor, in any medium used by City to promote its programs or services to prospective participants.

58. Exclusivity of SaaS Application. During the term of this Agreement, Contractor will be the sole and exclusive provider of registration services provided to City's Recreation and Park Department hereunder for the events or transactions for which City's Recreation and Park Department is using Contractor's SaaS Application and Services.

59. Additional Attachments, Appendices and Exhibits. The following attachment(s), appendices and exhibits are hereby attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the parties. To the extent there is a conflict between this Agreement and any of the Appendices or Exhibits attached hereto, Agreement shall control. After the Agreement, and in supplement thereto, the order of precedence is as follows:

Appendices

A: Services to be Provided by Contractor

B: Calculation of Charges

Exhibits

1: SaaS Application & Hosting Services Description

2: Service Level Obligations

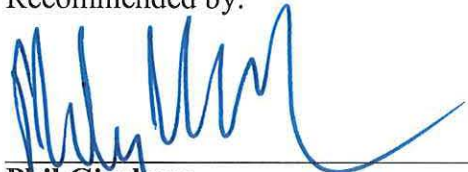
3: Active Network Product Data Sheet

4. Form of Invoice

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

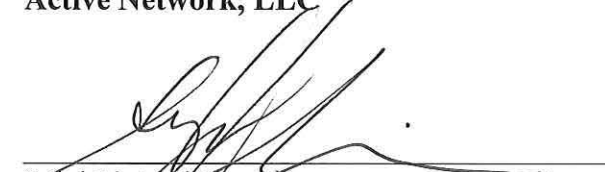
Recommended by:



Phil Ginsburg
General Manager
San Francisco Recreation and Park
Department

CONTRACTOR

Active Network, LLC



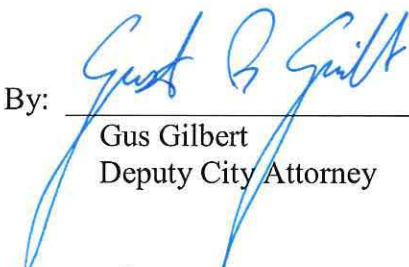
Sejal Pietrzak
Chief Administrative Officer
717 North Hardwood Drive, Suite 2500
Dallas, TX 75201

City vendor number: **62084**

Approved as to Form:

Dennis J. Herrera
City Attorney

By:



Gus Gilbert
Deputy City Attorney

Approved:



Jaci Fong
Director of the Office of Contract
Administration, and
Purchaser

Exhibit 1
SAS Application & Hosting Services Description

1.0 The SaaS Application shall provide the following functionality:

- 1.1 Activity Registration
- 1.2 Facility Reservation
- 1.3 Memberships
- 1.4 POS
- 1.5 Camps
- 1.6 Private Lessons

2.0 Product list of Application modules licensed through this SaaS Agreement:

- 2.1 Service Package Premium
- 2.2 Technical Services Customer Import
- 2.3 Technical Services Financial Export
- 2.4 Technical Services, 3rd Party Payment Processing
- 2.5 Staff Interface Technology Fee
- 2.6 Staff Interface Payment Processing Fee – Credit Card
- 2.7 Staff Interface Payment Processing Fee – Electronic Check Processing
- 2.8 Credit Cards Refunds – Flat Fee
- 2.9 Public Interface – Online Transaction Fee
- 2.10 Public Interface Fee Set-Up
- 2.11 Magazine Offer –Opt Out
- 2.12 Primary Transportation

3.0 Hosting Services; Data Center

The location of the data center that will be used to host the SaaS Application is as follows:

Primary data center: Switch SuperNap
7135 S. Decatur Boulevard
Las Vegas, NV 89118

Back-up data center: Equinix
21701 Filigree Ct.
Ashburn, VA 20147

In the event that the location of the data center used to host the SaaS Application is changed, Contractor shall endeavor to provide City with prior written notice of said change and disclose the address of the new facility. Any such new primary facility shall be located within the United States. The Data Centers referenced above are subcontractors that are approved by City.

4.0 Training Modules

Initiation	Project Launch	Remote
Week 1	Business Process Review	Onsite
Week 3	Module 1,2&3 Review & Data Collection Preparation	Remote
Week 5	Module 4,5&6 Review & Data Collection Preparation	Remote
Week 7	Module ALL Data Collection Review	Remote
Week 9	Module 1&2 User Testing	Onsite
Week 11	Module 3&4 User Testing	Onsite
Week 13	Module 5&6 User Testing	Remote
Week 15	Module ALL User Testing	Remote
Week 17	Module 1&2 Training	Onsite
Week 19	Module 3&4 Training	Onsite
Week 21	Module 5&6 Training	Remote
Week 23	System Training	Remote
Week 25	Go Live Prep	Remote

Exhibit 2



SUPPORT AND MAINTENANCE HANDBOOK

SUPPORT AND MAINTENANCE

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

- Unlimited technical support between 5:00am and 6:00pm Pacific Time, Monday through Friday via telephone (800.663.4991), email or web portal (<http://support.theactivenetwork.com>)
- Unlimited phone support for System Down issues on a **24 hours x 7 days a week** basis, provided that:
 - If self-hosted, the site must have remote access and Internet email capability for extended support hours
 - Support calls placed during extended support hours must be placed by an authorized contact person
 - The type of support call is an urgent issue that includes site down, revenue impacting, or customer facing issues that have no reasonable work-around
- Access to Active's secure customer care web portal, discussion forums, knowledgebase and online training materials
- Regular documentation and communication
- **Support also includes, if such assistance can be provided in 15 minutes or less:**
 - Assistance troubleshooting Third Party Products (e.g., Crystal Reports, Citrix client)
 - Assistance to isolate and/or troubleshoot difficulties resulting from sources other than Active Network products and services, such as:
 - General network/internet support (e.g., network access, printing, internet access)
 - PC hardware troubleshooting
 - PC setup, configuration and optimization
 - Network operating system configuration and functionality
 - Basic Microsoft Windows functionality (i.e. Windows Explorer or Internet Explorer)
 - Loss of supervisor or other password

ANNUAL SUPPORT AND MAINTENANCE FOR NON-HOSTED CUSTOMERS

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

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

SUPPORT AND MAINTENANCE FOR HOSTED CUSTOMERS

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

- Installation of new Software releases
- Monitoring of connectivity and critical functionality at all times (24hr x 365 days/year) by skilled personnel using an extensive series of automated probes from multiple locations
- Response to site-down/critical issues within one hour, with reasonable efforts to advise your organization of the current status and expected resolution time
- Service agreements between Active and critical vendors essential to the continuing successful operation of the hosted environment
- Scheduled maintenance to increase performance, fix defects or update applications, with reasonable efforts to notify your organization of scheduled maintenance times and potential impacts to service
- Urgent maintenance (done to correct network, hardware or Software issues that are likely to cause significant service disruption and that require immediate action), which may temporarily degrade service or cause outages. Active may undertake urgent maintenance at any time deemed necessary and shall provide status updates to your organization as soon as possible.

SUPPORT ISSUE PRIORITIES AND TIMELINES

TICKET RESOLUTION TARGETS

- New support incidents are assigned one of the following levels, each with its respective standard ticket resolution target:

Call Priority Level	Description	Standard Completion Target
Priority 1 – System Outage	Fatal issues that result in the customer's inability to fulfill critical business functions (i.e., those pertaining to core functionality such as processing registrations, memberships, rentals) and that have no reasonable work-around	1 business Day
Priority 2 – High Business Impact	Serious issues significantly impacting use of the system but do not prevent core functions from being fulfilled (i.e., Customer cannot perform critical business functions; Customer experiences severe site degradation)	2 business day
Priority 3 – Medium Business Impact	All other issues, except those classified as low; (e.g., how-to questions, reporting/reconciliation issues, general questions, work around options)	3 business days
Priority 4 – Low Business Impact	Issues that are not time-sensitive or may be undertaken as customer service initiatives outside the scope of this Agreement (i.e., feature requests or low priority questions)	None
Guaranteed Uptime	For clients licensing Hosted Software	99%

SERVICES NOT INCLUDED

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

- Services required to remedy problems that stem from changes to or defects in system configuration upon which the Software was originally installed
- Services required to remedy problems which do not stem from any defect in the Software
- Services required to remedy problems caused by lack of training of Client's personnel
- Improper treatment or use of the Software
- Onsite or remote training services
- Full report customization service
- Database-specific services or assistance

RESTRICTIONS

The following actions will void Active's obligations under this Support and Maintenance Handbook:

- The use of any other application that modifies data in the database, whether created by you or otherwise
- The use or creation of third party applications that work in connection with Active's application or application database without prior written notification and consent from Active

HOLIDAY HOURS (US AND CANADA)

Holiday	Open with reduced staff	Closed
New Year's Day (January 1st)		✓
Martin Luther King Day (3rd Monday in January)	✓	
President's Day (3rd Monday in February)	✓	
Good Friday (Friday before Easter)	✓	
Victoria Day (3rd Monday in May)	✓	
Memorial Day (Last Monday in May)	✓	
Canada Day (July 1st)	✓	
Independence Day (July 4th)	✓	
Civic holiday (1st Monday in August)	✓	
Labor Day (1st Monday in September)		✓
Canadian Thanksgiving/Columbus Day (2nd Monday in October)	✓	
Remembrance Day/Veteran's Day (November 11th)	✓	

US Thanksgiving (4th Thursday in November)	✓	
Day after US Thanksgiving (4th Friday in November)	✓	
Christmas Day (Dec. 25th)		✓
Boxing Day (December 26th)	✓	
New Year's Eve (December 31st)	✓	

Exhibit 3
Active Network Product Data Sheet

See attached "Active Network Product Data Sheet," pages 1-4



Schedule

Company Address 717 North Harwood Drive, Suite 2500
Dallas, TX 75201
US

Created Date 12/15/2015
Quote Number 00050496
Currency USD

Prepared By Taylor Thiel
Phone 469-291-0632
Email taylor.thiel@activenetwork.com

Contact Name Katie Petrucione
Phone (415) 831-2700
Email katharine.petrucione@sfgov.org

Bill To Name SAN FRANCISCO RECREATION & PARKS
Bill To Contact Katie Petrucione
Bill To Address 501 Stanyan Street
San Francisco, CA 94117 United States

Ship To Contact Katie Petrucione
Ship To Address 501 Stanyan Street
San Francisco, CA 94117 United States

First Year 268,686
Registrations
Average USD 80.44
Registration Cost
Total Processing USD 21,613,101.84
Volume

Product	Product Type	Description	Quantity	Sales Price	Fee %	Total Price
ACTIVE Net - Functionality: Activity Registration	SaaS		1			
ACTIVE Net - Functionality: Facility Reservation	SaaS		1			
ACTIVE Net - Functionality: Memberships	SaaS		1			
ACTIVE Net - Functionality: POS	SaaS		1			
ACTIVE Net - Functionality: Camps	SaaS		1			
ACTIVE Net - Functionality: Private Lessons	SaaS		1			



ACTIVE Net - Service Package Premium 6	Service	ACTIVE Net Service Package Premium 6 consists of the following Services: • onsite business process review • remote functionality review & data collection preparation • remote data collection review • remote data entry (inventory and policy controls) • onsite & remote user testing • onsite & remote train the trainer training • remote Go Live preparation • remote Bi-weekly project management meetings The scope of Services is contained to the 6 functionalities listed below. 50% of total Service costs will be billed at Service initiation, payable within 30 days of the date of invoice. 50% of total Service costs will be billed at Service completion, payable within 30 days of the date of invoice.	1	80,400.00	80,400.00
ACTIVE Net - Technical Services: Customer Import	Service	ACTIVE Net Technical Services: Customer Import consists of the following Services: • remote configuration, testing & training	1	1,400.00	1,400.00
ACTIVE Net - Technical Services: Financial Export	Service	ACTIVE Net Technical Services: Financial Export consists of the following Services: • remote configuration, testing & training	1	1,400.00	1,400.00
ACTIVE Net - Technical Services: 3rd Party Payment Processing	Service	ACTIVE Net Technical Services: 3rd Party Processing consists of the following Services: • remote configuration, testing & training	1	1,400.00	1,400.00
ACTIVE Net - Staff Interface - Technology Fee	SaaS	Migration Loyalty Rates for first term of contract for organizations between \$15,000,000 to \$30,000,000 in annual revenue through ACTIVE Net.	1		1.00
ACTIVE Net - Staff Interface - Payment Processing Fee - Credit Card	SaaS	Migration Loyalty Rates for first term of contract for U.S. organizations between \$15,000,000 to \$30,000,000 in annual revenue through ACTIVE Net.	1		2.00
ACTIVE Net - Staff Interface - Payment Processing Fee - Electronic Cheque/Check Processing	SaaS		1		1.50
ACTIVE Net - Public Interface - Online Transaction Fee	SaaS	Migration Loyalty Rates for first term of contract for U.S. organizations between \$15,000,000 to \$30,000,000 in annual revenue through ACTIVE Net.	1		2.00



ACTIVE Net - (credit card refunds - flat fee)	SaaS		1	0.10		
ACTIVE Net - Public Interface Fee Set up - absorbed by client	SaaS		1			
ACTIVE Net - Class Customer Loyalty - Professional Services Conversion to ACTIVE Net Credit	Service	The Class Customer Loyalty – Professional Services Conversion to ACTIVE Net Credit (the "Credit") is conditioned upon Client fulfilling all of its obligations under the Agreement during the initial term of the Agreement or three years, whichever is longer. If Client fails to fulfill such obligations, Client must pay to Active the full amount of the Credit. The Credit is only to be used for professional services, but cannot be used for hardware or reimbursement of airfare/transportation cost. Client must be current on Class Maintenance until ACTIVE Go Live to be eligible for the Credit. Service Charges will increase to standard list rate after initial term of the Agreement.	1	-30,000.00		-30,000.00
ACTIVE Net - Primary Transportation (to be reimbursed based on actual cost incurred)	Service	Quoted prices for onsite services do not include the costs of transporting Active Network resources onsite. If onsite services are required, economy primary transportation costs (eg. Airfare, train fare, or mileage) will be assessed and invoiced separately. Onsite services are billed in minimum, 8 hour daily increments.	1	4,000.00		
ACTIVE Net - SaaS						
Total Price				USD 54,600.00		
Service Total		54,600.00				

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

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

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

Quote Acceptance Information

Signature: _____

Printed Name: _____

Title: _____

Date: _____



PO# (if applicable): _____

Exhibit 4
Form of Invoice

Invoices submitted by vendors to the Recreation and Park Department must contain certain required data elements. In order to be considered acceptable, vendor invoices must include, but are not limited to, the following elements:

- Vendor name
- Unique invoice number
- Invoice date
- Description of the item(s) billed
- Service period for services
- Vendor remittance address
- Sales tax
- Total amount due
- Purchase order number generated by the City's financial system

Active Net Additional Information

Appendix A

Services to be Provided by the Contractor

1. Scope of Work

Contractor's ActiveNet solution is a hosted cloud-based recreation management system that enables both internal and external users ("End Users") scheduling and reservation access to the Recreation and Park Department's programs and facilities, point of sale systems, and memberships. Contractor shall configure the ActiveNet solution to meet City's scheduling, reservation and on-line payment collection needs.

2. External Users

- a. Create accounts with the following data maintained:
 - Names, Ages of registrants
 - Address
 - Phone Numbers
 - Financial and transaction history
 - Encrypted Credit Card information
- b. Register for recreation programming, camps and private lessons.
- c. Purchase admission for attractions and facilities.
- d. Rent facilities and other permitted properties
- e. Purchase and use memberships

3. Internal Users

- a. Data storage and processing. (All RPD programs and facilities, point of sale systems, and memberships.)
- b. PCI Compliance.
- c. Financial processing and tracking.
- d. Reporting and analysis
- e. Marketing and customer communication.

4. Detailed Financial Flow

- a. Front Desk Process Flow
 1. Client walks up for a service (Registration, Permit, Admission etc.).
 2. Client pays with either cash, check or credit card.
 3. Cash / check deposited by RPD revenue division

Active Net Additional Information

4. Credit card processed through Active Gateway
5. Bank of America Merchant Services processes transactions.
6. Funds are deposited into RPD bank account.
 - 1% (technology) of all Cash/Check transactions (Calculated by Active and verified by RPD)
 - 2% (technology + credit card) of all Credit Card transactions. (Calculated by Active and verified by RPD)
 - All refunds incur \$.10 transaction fee.

b. Online Process Flow

1. Client selects a service online (Registration, Permit, Admission etc.).
2. Client pays for service via credit card
3. Credit card processed through Active Gateway
4. Bank of America Merchant Services process transaction.
5. Funds deposited directly to RPD account.
 - 2% of all online transactions calculated by Active on a monthly basis; (1% technology; 1% credit card; minimum of \$0.50 / transaction).
 - All refunds incur \$.10 transaction fee.

APPENDIX B

CALCULATION OF CHARGES

In accordance with Section 10 (Compensation) of this Agreement, the Contractor's total compensation under this Agreement is detailed below, inclusive of all costs associated with the one time hosted software customization and implementation as specified in Appendix A. Except as specified in a mutually agreed upon amendment pursuant to Section 42 (Modification of Agreement) of the Agreement, in no event shall the total costs under this Agreement exceed the amount provided in Section 12 of this Agreement.

1. Software Customization and Implementation. The SaaS Application implementation and training fees (as detailed in Section 7(c) of the Agreement) shall be a one time fee of fifty-four thousand six-hundred dollars and no cents (\$54,600.00).

2. Transaction Fees

Contractor shall provide City with continued support, a lifetime of no charge product enhancements, PCI compliance, hosting in a state-of-the-art data center, maintenance, and the many benefits of hosted technology, in exchange for the following pay-as-you-go transaction fee system which will be applied to each receipt generated by Contractor. City will be billed by Contractor in a monthly basis per the Active Net fee breakdown below based on the Active Net System report.

ACTIVE Net Transaction Fees	
Technology Fee Regardless of payment method, a standard service fee will be assessed for each receipt produced by ACTIVE Net "over-the-counter" by one of City's staff members or online by a registrant.	1.00%
Payment Processing Electronic Check Processing (ECP or EFT) For payments made through Checking or Savings accounts, an additional processing fee of 0.5% will be applied (in addition to the 1.00% technology fee). ACTIVE Net will handle all of the processing. Credit Card Processing For transactions paid for by credit card an additional processing fee of 1.00% will be applied (in addition to the 1.00% technology fee).	+ 0.5% +1.00%
Online Payments For transactions paid for by credit card or electronic check, an additional processing fee of 1.00% will be applied (in addition to the 1.00% technology fee).	+ 1.00%



CERTIFICATE OF LIABILITY INSURANCE

6/1/2016

DATE (MM/DD/YYYY)

12/14/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC
CA License #OF15767
Two Embarcadero Center, Suite 1700
San Francisco CA 94111
(415) 568-4000

CONTACT

NAME:

PHONE

(A/C, No, Ext):

FAX

E-MAIL

ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: National Fire Insurance Co of Hartford

20478

INSURER B: The Continental Insurance Company

35289

INSURER C: National Union Fire Ins Co Pitts, PA

19445

INSURER D:

INSURER E:

INSURER F:

INSURED
1406348 ACTIVE Network, Inc.
717 North Harwood St., Suite 2500
Dallas TX 75201

COVERAGES 1084882

CERTIFICATE NUMBER: 13803748

REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Host Liquor Liab. ☐ Included GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	N	6016940273	6/1/2015	6/1/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☒ Comp \$500 ☒ Coll \$500 ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	Y	N	6016940239	6/1/2015	6/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	☐ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	6016940256	6/1/2015	6/1/2016	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Cyber	N	N	04-186-73-28	6/1/2015	6/1/2016	1,000,000 Limit

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City and County of San Francisco and Recreation and Park Department are included as Additional Insured to the extent provided by the policy language or endorsement issued or approved by the insurance carrier. Waiver of Subrogation applies per attached endorsement(s) or policy language. Insurance provided to Additional Insured(s) is primary and non-contributory as per the attached endorsements or policy language.

CERTIFICATE HOLDER

13803748

City and County of San Francisco
Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117

CANCELLATION See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPR

©

I rights reserved.

Policy No. 6016940256

WC 00 03 13

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Name of Person or Organization:

ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE YOUR RIGHT OF RECOVERY IN A WRITTEN CONTRACT, PROVIDED SUCH CONTRACT WAS EXECUTED PRIOR TO THE DATE OF LOSS.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TECHNOLOGY GENERAL LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Coverage afforded under this extension of coverage endorsement does not apply to any person or organization covered as an additional insured on any other endorsement now or hereafter attached to this Coverage Part.

1. ADDITIONAL INSURED - BLANKET VENDORS
WHO IS AN INSURED (Section II) is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed, because of a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendors business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendors premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1) The exceptions contained in Subparagraphs d. or f.; or
- (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. This provision 1. does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Coverage Part.

4. This provision 1. does not apply if "bodily injury" or "property damage" included within the "products-completed operations hazard" is excluded either by the provisions of the Coverage Part or by endorsement.

2. MISCELLANEOUS ADDITIONAL INSUREDS
WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (called additional insured) described in paragraphs 2.a. through 2.h. below whom you are required to add as an additional insured on this policy under a written contract or agreement but the written contract or agreement must be:

- 1. Currently in effect or becoming effective during the term of this policy; and
- 2. Executed prior to the "bodily injury," "property damage" or "personal injury and advertising injury," but only the following

additional insureds is limited as provided herein:

a. Additional Insured - "Your Work"

That person or organization for whom you do work is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.

The insurance provided to the additional insured is limited as follows:

(1) The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.

(2) The coverage provided to the additional insured by this paragraph. 2.a., does not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless:

(a) It is required by the written contract or written agreement; and

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard" is not excluded either by the provisions of the Coverage Part or by endorsement.

(3) The insurance provided to the additional insured does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of the rendering or failure to render any professional services.

b. State or Political Subdivisions

A state or political subdivision subject to the following provisions:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which the insurance applies:

(a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(b) The construction, erection, or removal of elevators; or

(2) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" arising out of

operations performed for the state or municipality.

c. Controlling Interest

Any persons or organizations with a controlling interest in you but only with respect to their ability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured.

d. Managers or Lessors of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease or be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

e. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver but only with respect to their liability as

mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

f. Owners/Other Interests - Land is Leased

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

g. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

h. Lessor of Equipment

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization. A person's or organization's status as an insured under this endorsement ends when their written contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply:

- (1) To any "occurrence" which takes place after the equipment lease expires; or
- (2) To "bodily injury," "property damage," or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs b. through h. above does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard."

As respects the coverage provided under this endorsement, Paragraph 4.b. SECTION IV -

COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted and replaced with the following:

4. Other Insurance

b. Excess Insurance

This insurance is excess over:

Any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or agreement specifically requires that this insurance be either primary or primary and noncontributing. Where required by written contract or agreement, we will consider any other insurance maintained by the additional insured for injury or damage covered by this endorsement to be excess and noncontributing with this insurance.

3. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Paragraph 3.a. of Section II - Who Is An Insured is deleted and replaced by the following:

Coverage under this provision is afforded only until the end of the policy period or the next anniversary of this policy's effective date after you acquire or form the organization, whichever is earlier.

4. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANY COVERAGE

A. The following is added to Section II - Who Is An Insured:

4. You are an insured when you had an interest in a joint venture, partnership or limited liability company which terminated or ended prior to or during this policy period but only to the extent of your interest in such joint venture, partnership or limited liability company. This coverage does not apply:
 - a. Prior to the termination date of any joint venture, partnership or limited liability company; or
 - b. If there is other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

B. The last paragraph of Section II - Who Is An Insured is deleted and replaced by the following:

Except as provided in 4. above, no person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

5. PARTNERSHIP OR JOINT VENTURES

Paragraph 1.b. of Section II - Who Is An Insured is deleted and replaced by the following:

b. A partnership (including a limited liability partnership) or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

6. EMPLOYEES AS INSURED - HEALTH CARE SERVICES

For other than a physician, paragraph 2.a.(1)(d) of Section II - Who Is An Insured does not apply with respect to professional health care services provided in the course of employment by you.

7. PROPERTY DAMAGE - PATTERNS, MOLDS AND DIES

Paragraphs (3) and (4) of Exclusion j. Damage to Property of SECTION I - EXCLUSIONS do not apply to patterns, molds or dies in the care, custody or control of the insured if the patterns, molds or dies are not being used to perform operations at the time of loss. A limit of insurance of \$25,000 per policy period applies to PROPERTY DAMAGE - PATTERNS, MOLDS AND DIES and is included within the General Aggregate Limit as described in SECTION III - LIMITS OF INSURANCE.

The insurance afforded by this provision 7. is excess over any valid and collectible property insurance (including any deductible) available to the insured, and the Other Insurance Condition is changed accordingly.

8. BODILY INJURY

Section V - Definitions, the definition of "bodily injury" is changed to read:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

9. EXPANDED PERSONAL AND ADVERTISING INJURY

A. The following is added to Section V - Definitions, the definition of "personal and advertising injury":

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

(1) Not done intentionally by or at the direction of:

(a) The insured; or

(b) Any "executive officer," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured; and

(2) Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or persons by any insured.

B. Exclusions of Section I - Coverage B - Personal and Advertising Injury Liability is amended to include the following:

p. Discrimination Relating To Room, Dwelling or Premises

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.

q. Fines Or Penalties

Fines or penalties levied or imposed by a governmental entity because of discrimination.

C. This provision 9. (EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE) does not apply to discrimination or humiliation committed in the states of New York or Ohio. Also, EXPANDED

PERSONAL AND ADVERTISING INJURY COVERAGE does not apply to policies issued in the states of New York or Ohio.

D. This provision 9. (EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE) does not apply if Section I - Coverage B - Personal And Advertising Injury Liability is excluded either by the provisions of the Coverage Part or by endorsement.

10. MEDICAL PAYMENTS

A. Paragraph 7. Medical Expense Limit, of Section III - Limits of Insurance is deleted and replaced by the following:

7. Subject to 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most we will pay under Section - I - Coverage C

for all medical expenses because of "bodily injury" sustained by any one person. The Medical Expense Limit is the greater of:

(1) \$15,000; or

(2) The amount shown in the Declarations for Medical Expense Limit.

B. This provision 10. (Medical Payments) does not apply if Section I - Coverage C Medical Payments is excluded either by the provisions of the Coverage Part or by endorsement.

C. Paragraph 1.a.(3)(2) of Section I - Coverage C - Medical Payments, is replaced by the following:

The expenses are incurred and reported to us within three years of the date of the accident; and

11. SUPPLEMENTARY PAYMENTS

A. Under Section I - Supplementary Payments - Coverages A and B, Paragraph 1.b., the limit of \$250 shown for the cost of bail bonds is replaced by \$2,500:

B. In Paragraph 1.d., the limit of \$250 shown for daily loss of earnings is replaced by \$1,000.

12. PROPERTY DAMAGE - ELEVATORS

With respect to Exclusions of Section I - Coverage A, paragraphs (3), (4) and (6) of Exclusion j. and Exclusion k. do not apply to the use of elevators.

The insurance afforded by this provision 12. is excess over any valid and collectible property insurance (including any deductible) available to the insured, and the Other Insurance Condition is changed accordingly.

13. LEGAL LIABILITY - DAMAGE TO PREMISES

A. Under Section I - Coverage A - Bodily Injury and Property Damage 2. Exclusions, Exclusion j. is replaced by the following.

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems) to premises including the contents of such premises, rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement. Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

B. Under Section I - Coverage A - Bodily Injury and Property Damage the last paragraph of 2. Exclusions is deleted and replaced by the following.

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner.

A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

C. Paragraph 6. Damage To Premises Rented To You Limit of Section III - Limits Of Insurance is replaced by the following:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems, while rented to you or temporarily occupied by you with the permission of the owner. The Damage To Premises Rented To You Limit is the greater of:

a. \$500,000; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

D. Paragraph 4.b.(1)(b) of Section IV - Commercial General Liability Conditions is deleted and replaced by the following:

(b) That is property insurance for premises rented to you or temporarily occupied by you with the permission of the owner; or

E. This provision 13. (LEGAL LIABILITY - DAMAGE TO PREMISES) does not apply if Damage To Premises Rented To You Liability under Section I - Coverage A is excluded either by the provisions of the Coverage Part or by endorsement.

14. NON-OWNED WATERCRAFT

Under Section I - Coverage A - Bodily Injury and Property Damage, Exclusion 2.g., subparagraph (2) is deleted and replaced by the following.

(2) A watercraft you do not own that is:

(a) Less than 55 feet long; and

(b) Not being used to carry persons or property for a charge.

15. NON-OWNED AIRCRAFT

Exclusion 2.g. of Section I - Coverage A - Bodily Injury and Property Damage, does not apply to an aircraft you do not own, provided that:

1. The pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. It is rented with a trained, paid crew; and
3. It does not transport persons or cargo for a charge.

16. BROAD KNOWLEDGE OF OCCURRENCE

You must give us or our authorized representative notice of an "occurrence," offense, claim, or "suit" only when the "occurrence," offense, claim or "suit" is known to :

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) An executive officer or the employee designated by you to give such notice, if you are a corporation; or

(4) A manager, if you are a limited liability company.

17. NOTICE OF OCCURRENCE

The following is added to paragraph 2. of Section IV -

Commercial General Liability Conditions - Duties in The Event of Occurrence, Offense Claim or Suit:

Your rights under this Coverage Part will not be prejudiced if you fail to give us notice of an "occurrence," offense, claim or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this Coverage Part. However, you shall give written notice of this "occurrence," offense, claim or "suit" to us as soon as you are aware that this insurance may apply to such "occurrence," offense claim or "suit."

18. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Based on our reliance on your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure.

19. EXPECTED OR INTENDED INJURY

Exclusion a. of Section I - Coverage A - Bodily Injury and Property Damage Liability is replaced by the following:

a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

20. LIBERALIZATION CLAUSE

If we adopt a change in our forms or rules which would broaden coverage provided under this endorsement without an additional premium charge, your policy will automatically provide the additional coverages as of the date the revision is effective in your state.