



City of Oakland
And
Active Network, Ltd.

Point-of-Sale
Contract

05 OCT -5 10:24

OAKLAND CITY COUNCIL
RESOLUTION No. 80229 C.M.S.

REVISED

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO WAIVE THE CITY'S COMPETITIVE BIDDING AND AWARD PROCESS, AUTHORIZE A SOLITATION OF PROPOSALS PROCESS AND NEGOTIATION OF ~~AND EXECUTE~~ A CONTRACT WITH ACTIVE NETWORK, FORIN AN AMOUNT NOT TO EXCEED \$250,000.00 TO PURCHASE AN ENTERPRISE POINT-OF-SALE (POS) SYSTEM WHICH WILL AUTOMATE THE CASH HANDLING PROCESS WITHIN THE CITY OF OAKLAND

WHEREAS, the City of Oakland's Finance and Management Agency, Treasury Division is working to update and standardize its cashiering processes; and

WHEREAS, the implementation of a new Enterprise Point-of-Sale (POS) System can reduce the repetitive process of cash receipting and mitigate key punch errors; and

WHEREAS, Oakland Municipal Code Chapter 1, Article 2.04.050.A requires that product purchases be advertised, competitively bid and awarded on a lowest-responsible-bidder basis; and

WHEREAS, the purchase of the automated cash handling system is better suited to a request for proposal process because multiple vendors offer unique systems and approaches or methodologies and Oakland Municipal Code Chapter 1, Article 2.04.050.I.5 authorizes the City Council to waive the competitive bidding and award process set forth in Article 2.04.050.A when it is in the best interests of the City; and

WHEREAS, staff from the Treasury and Information Technology Divisions prepared and distributed a Request for Proposal to numerous proposed vendors; and

WHEREAS, the Treasury and Information Technology Divisions reviewed proposals and facilitated product presentations by the six responding vendors for an Enterprise Point-of-Sale (POS) System; and

WHEREAS, the selection committee recommended Active Network based on their knowledge and experience installing enterprise cashiering solutions and their ability to provide an Enterprise Point-of-Sale (POS) System to meet the unique needs of the City; and

WHEREAS, initial funds for a not-to-exceed in the amount of \$250,000.00 have been allocated from the Treasury Division FY 2006-2007 Budget to cover the cost of the associated hardware, software, licensing, and first year maintenance, and approximately \$20,000 (beginning in FY

2008); for maintenance to be distributed annually among various agencies (Departments) that will use the Enterprise Point-of-Sale System; and

WHEREAS, the City finds that the services provided pursuant to the agreement authorized hereunder are of a professional and technical nature; and

WHEREAS, the City finds that this contract shall not result in the loss of employment or salary by any person having permanent status; now, therefore, be it

RESOLVED: That, based on the above, the City Council hereby finds and determines that it is in the best interest of the City to waive the competitive bidding and award process set forth in Article 2.04.050.A and so waives, and authorizes the City Administrator to award a contract for an automated case handling system through the solicitation process described in the City Administrator's report accompanying this resolution ~~enter into an agreement with Active Network to provide the City with an Enterprise Point-of Sale (POS) System; and, be it~~

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to negotiate ~~and execute a contract; for an amount not to exceed \$250,000.00 for the Enterprise Point-of-Sale (POS) System with Active Network and~~ The City Council hereby authorizes the City Administrator to begin negotiating with the second highest ranked vendor if negotiations with Active Network fail due to contractual obligations; and, be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to approve any subsequent amendments to or extensions of the purchase order with the exception of those related to an increase in the purchase price or the allocation of additional funds provided that such amendments or extensions shall be filed with the City Clerk's office; and, be it

FURTHER RESOLVED: That the purchase order and/or other contract form shall be reviewed and approved by the City Attorney's Office for form and legality prior to execution, and a copy shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 31 2006, 2006

PASSED BY THE FOLLOWING VOTE:


AYES- ~~BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND~~
PRESIDENT DE LA FUENTE - 6

NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- Brooks, Chang - 2

ATTEST: 
LATONDA SIMMONS

City Clerk and Clerk of the Council of
the City of Oakland, California

**SOFTWARE LICENSE AND MAINTENANCE
PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND THE ACTIVE NETWORK, INC.**

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Exhibit 1---Statement of Work
Exhibit 2---Software License Agreement (Schedule A)
Exhibit 3-- General Software Services Agreement (Schedule B)
Exhibit 4---Fees and Payment Terms
Exhibit 5---Delivery Schedule
Exhibit 6---Equipment Specifications / Active 3rd Party Products Agreement (Schedule D)
Exhibit 7---Acceptance Test
Exhibit 8---Training
Exhibit 9---Software Support and Maintenance Agreement (Schedule C)
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Exhibit 11---Contractor's and City's Contract/Project Managers

SCHEDULES

Schedule C-1-Declaration of ADA Compliance
Schedule D---Professional Services Questionnaire
Schedule F---Employment Questionnaire
Schedule O---Campaign Contribution Limits Form
Schedule Q---Insurance Requirements

**SOFTWARE LICENSE AND MAINTENANCE
PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND THE ACTIVE NETWORK, INC.**

This Agreement is entered into as of December 6th, 2006_ between The Active Network, Inc., a Delaware corporation ("Contractor") and the City of Oakland ("City"), a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, who agree as follows:

RECITALS

This Agreement is made with reference to the following facts and objectives:

- A. **WHEREAS**, the City Council has authorized the City Manager to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.
- B. **WHEREAS**, Contractor is the developer or distributor of software products.
- C. **WHEREAS**, City is part of and provides information technology services to the various City departments, offices, and programs.
- D. **WHEREAS**, City is interested in Contractor's software and services, and specifically interested in Payment Manager (commonly referred to as "Payment Manager") for the purposes of implementing a Citywide automated cash handling / management process and expedite the capture and reporting revenue.
- E. **WHEREAS**, City desires to obtain a license from Contractor to use the software and obtain software maintenance from Contractor.
- F. **WHEREAS**, the following Exhibits and Schedules are attached to and incorporated by reference into this Agreement:

EXHIBIT 1---Statement of Work

EXHIBIT 2---Software License Agreement (Schedule A)

EXHIBIT 3---General Software Services Agreement (Schedule B)

EXHIBIT 4---Fees and Payment Terms

EXHIBIT 5---Delivery Schedule

EXHIBIT 6---Equipment Specifications / Active 3rd Party Products Agreement
(Schedule D)

EXHIBIT 7---Acceptance Test

EXHIBIT 8---Training

EXHIBIT 9---Maintenance and Support Agreement (Schedule C)

EXHIBIT 10---Escrow Agreement

EXHIBIT 11---Contractor's and City's Contract/Project Managers

Schedules:

Schedule C-1-Declaration of ADA Compliance

Schedule D---Professional Services Questionnaire

Schedule F---Employment Questionnaire

Schedule O---Campaign Contribution Limits Form

Schedule Q---Insurance Requirements

NOW THEREFORE, THE PARTIES TO THIS AGREEMENT COVENANT AND AGREE AS FOLLOWS:

1. Definitions

- (a) "Acceptance" means City's determination that the Software has met the requirements of the Acceptance Test specified in Section 9 or in **EXHIBIT 7**.
- (b) "Equipment" means the hardware and other equipment specified in **EXHIBIT 6**.
- (c) "Software" is defined in Section 7 and 8 of this Agreement.
- (d) "Source Code" is defined in Section 10 of this Agreement.

2. Scope of Services

Contractor agrees to perform the services ("**Services**") specified in **EXHIBIT 1** attached to this Agreement and incorporated herein by reference. Contractor shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. **EXHIBIT 4** includes the manner of payment.

3. Time of Performance

Contractor's software and services shall begin on December 11, 2006, and shall be delivered and completed in accord with **EXHIBIT 5**

4. Compensation and Method of Payment

City shall pay Contractor in accord with and as set forth in Section 7 and in **EXHIBIT 4** of this Agreement.

5. Software Specifications and Documentation

The Software is described in the specifications (the "Software "Specifications") attached to this Agreement as **EXHIBIT 2**, Software Description and Documentation. The documentation ("Documentation") is also included in **EXHIBIT 2**.

As referenced in the "Software Specifications" in Exhibit 2 Active will be providing the City with the Interfaces required to integrate Active Point of Sale to four (4) of the City's business application as outlined in Exhibit 2.

6. Equipment Specifications

Contractor's equipment specifications are attached to this Agreement as **EXHIBIT 6**, Equipment Specifications. Contractor warrants that the Software will be compatible with and function with the Equipment specified in **EXHIBIT 6**.

7. Grant and Scope of Licenses

(a) Licensed Software

- (1) [Payment Manager, a Citywide integrated cashiering and payment management solution] ("Payment Manager"). Subject to the terms and conditions contained in this Section 7, Contractor hereby grants to City a non-transferable, non-assignable, non-exclusive, perpetual license to internally use the Licensed Software at City's designated site, please reference Exhibit 2.
- (2) Scope of Use. Any use of the Licensed Software by a third party who is not an employee of City shall require the written approval of Contractor. Contractor, at its sole discretion, may require such third party to execute appropriate licensing agreements as Contractor deems necessary.

If there is a disaster or other emergency that requires the temporary use of the Software on computers or equipment owned by third parties outside the scope of this license, the City or such third parties may use the Software on such other computers or equipment at a City site or at a site owned by a third party, including "hot-sites" operated by City's disaster recovery vendors.

(b) Software Warranty.

- (1) Contractor warrants that the Licensed Software and Customized Software accepted by the City will substantially conform to the applicable System Design Specification or the substantially equivalent requirements specifications as they may then be referred to. Each and every deliverable shall be provided in a manner consistent with good commercial practice, free from defects in material and workmanship, and shall conform to the specifications and functional, performance, and reliability requirements as set forth in the Workplan and as otherwise mutually agreed to in writing by the City and Contractor.
- (2) After the City has accepted the Licensed Software and Customized Software, the City makes the production payments in Section 7 or **EXHIBIT 4**, Contractor shall replace, repair or recode any portion of License Software, or Customized Software, as required to cause any defective source code or object code to conform to the System Design Specification set forth in this Agreement, or Exhibit attached thereto, or specifications as may be provided pursuant to a Change Order.

(c) Documentation Warranties. Contractor warrants that any deliverable consisting of Documentation of a software or hardware deliverable will accurately reflect the operation of said software or hardware deliverable and will enable the City to use, modify, and maintain the Licensed Software and Custom Software.

(d) Protection Against Computer Viruses. Contractor understands the importance to the City of protecting all of its machine-readable data and information from all forms of surreptitious or malicious code, including computer viruses. Contractor shall adopt all current versions of all industry standard testing procedures designed to test for and exclude such surreptitious or malicious code from releases of the Licensed Software and Custom Software and all other software delivered by Contractor to the City in the expectation that such software shall be used in connection with any of the City's computer systems. Contractor warrants that the Licensed Software and Custom Software and any other software shall be free from any back door, time bomb, drop dead-device, or other software routing designed to disable a computer program automatically with the passage of time or under the positive control of persons other than the City's personnel.

(e) Warranty of Rights. Contractor warrants that it owns and possesses all rights and interests in the Licensed Software necessary to enter into this Agreement, and/or has the license rights, legal permission and authority with respect to any software used by Contractor to deliver any of the services or work called for under this Agreement, and that Contractor has the authority to convey and grant the licenses granted to City by Contractor under this Agreement, free and clear of any liens and encumbrances, and that the use of any Contractor Licensed Software, other

software and any and all of the other products, work, and Deliverables produced by Contractor for City as described in Sections 2, 5, 7, 8 and **EXHIBIT 2** and **EXHIBIT 9**, and otherwise under this Agreement, will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark, or other proprietary or intellectual property rights of any third party ("Intellectual Property Rights"). Contractor shall indemnify, defend (using counsel acceptable to City) and hold City, its City Council, its agents and employees harmless from any loss, damage, or liability for infringement or violation of any Intellectual Property Rights.

- (f) Fees. The total and complete one-time license fee for the Licensed Software is \$95,000, payable as per **Exhibit 4**. No payments are to be made after the final payment in 2007. The license fee for the Licensed Software is an enterprise-wide license with no restriction on the number of POS users. The annual maintenance fees for the Licensed Software are as follows: \$23,750 for the year 2007; \$23,750 for the year 2008; and \$23,750 for each subsequent year as renewed by the parties.
- (g) Most Favored Customer. If Contractor's published or otherwise established price for any Software for its most favored, similarly situated customers, is less than the price for such Software as set forth in this Agreement at any time between the effective date of this Agreement and the date the Software is accepted by City, then Contractor shall immediately notify City and the price for such Software shall automatically be deemed to be reduced to the lowest such published or otherwise regularly established price during such period. If any such reduction occurs after payment for the Software by City, Contractor shall rebate the difference in price to City within thirty (30) days after the change in price occurs.

8. Software

All references to "Customized Software" in this section (8) shall pertain only to database stored procedures written by Active staff to facilitate connectivity between other City systems and the Licensed Software. "Customized Software" shall not apply to the list of Licensed Software in the Software License Table in Exhibit 2 (Software License Agreement (Schedule A))

- (a) Should the City identify key features and functionality that are not present in the Software, the City will document and submit the same as enhancement requests to Contractor for subsequent inclusion in future releases of the Software at Contractor's discretion.
- (b) With regard to Customized Software, Contractor shall utilize methods of structure design and coding and standards of coding consistent with those used in Licensed Software.

- (d) Licensed Software. City and Contractor have reviewed the specifications of the Licensed Software listed in **EXHIBIT 2** attached hereto. Contractor shall utilize the current versions of Licensed Software and integrate Licensed Software into the relevant programs of the City as described in **Exhibit 2**. City and Contractor warrant that the terms and conditions of each license agreement for Licensed Software are not in conflict with the terms of this Agreement and agree that any material nonconformity shall be cause for the City to exercise all its rights and remedies available at law and under this Agreement including, without limitation, breach of this Agreement subject to termination pursuant to Section 39 below.
- (e) Upgrades. Contractor's support and maintenance agreement shall include all upgrades, new versions or subsequent releases of Stored Procedures (together with all supporting Documentation). Contractor shall assure that such upgrades, new versions, or subsequent releases are compatible with any Customized Software and hardware developed or Licensed Software utilized by Contractor for City.

9. Acceptance Testing.

- (a) Acceptance Tests. The following acceptance test procedure shall apply to each Release or Phase of the software Implementation.
 - (1) Contractor shall give City written notice when each Release or Phase of the implementation is completed and ready for City's acceptance test. This notice shall include a copy of the acceptance test procedure used by Contractor and the test results.
 - (2) City shall have seven (7) days after receipt of Contractor's notice to determine if the deliverables for that Release function according to specifications and if the Release successfully meets City's acceptance test (the "Acceptance Test"). The Acceptance Test shall consist of the tests specified in **EXHIBIT 7** in addition to any other tests agreed upon in writing by the parties, including, without limitation, availability and response time testing. If the Release successfully meets City's Acceptance Test, in City's sole judgment, City shall notify Contractor in writing within five (5) days after completion of the Acceptance Test that Software and/or the Deliverability shall be deemed to be accepted by City.
 - (3) If City disapproves of the Acceptance Test results, Contractor shall have fourteen (14) days after receipt of City's notice of disapproval to make any applicable corrections and provide City with a written certificate that the Release is ready for a second Acceptance Test. City shall have fifteen (15) days after receipt of the second notice to conduct the second Acceptance Test and either: (1) approve the Acceptance Test results and notify Contractor that the Release is accepted ("Final Acceptance"); or (2)

disapprove the Acceptance Test results and specify in written detail the manner in which the Acceptance Test results are unsatisfactory. If Contractor does not make the applicable corrections within five (5) days, City may terminate this Agreement under the provisions of Section 39, unless a greater period of time is agreed upon in writing by the parties in which case, the City reserves the right to terminate this Agreement if Contractor does not make the applicable corrections within the extended time period in accord with Section 9(a)(4) below.

- (4) This process shall continue until the Acceptance Test is approved and the Services or Deliverable is accepted by City, except that if City disapproves of the results of the second or any further Acceptance Test, or upon re-delivery of revised or corrected version of any Deliverable such Deliverable fails to substantially conform with the service and/or software specifications required under this Agreement, or fails to materially conform with the applicable delivery schedule then, notwithstanding any other provision of this Agreement, City shall have the option, at its sole discretion and without limitation of City's other remedies, to either: (A) terminate this Agreement, in which case City shall retain all of its rights and remedies and Contractor shall deliver all of its work-in-progress to City; or (B) notify Contractor to continue its corrections and Final Acceptance re-testing, subject to the provisions of this Section. If City terminates the Agreement under option (A) above, then: (i) Contractor shall, within thirty (30) days after termination, refund to City all fees paid by City to Contractor under the Agreement through the date of termination; or (ii) City shall have the right to supply, correct or complete the Services, Deliverable or Milestone and deduct from any payment due to contract hereunder an amount equal to the expenses and cost incurred to the City to supply, correct or complete such Services, Deliverable or Milestone including, without limitation, any compensation provided to any third parties employed or retained by the City for such purposes, or (iii) City shall return Contractor Proprietary Information to Contractor upon receipt of the refund referred to above and neither party shall have any further obligation under this Agreement, except as otherwise provided in this Agreement.
- (b) The parties further agree that any failure by City to discover and notify Contractor of defects within the Final Acceptance testing period or thereafter shall not negate any of Contractor's representations or warranties, nor waive any of City's rights or remedies. Notwithstanding Final Acceptance and payment, Contractor shall remain liable for latent defects, fraud, or such gross negligence as amounts to fraud. Nothing contained in this Agreement shall relieve Contractor in any way from the obligations of testing, inspection, and quality control.

- (c) During the term of this Agreement and for ninety (90) days after Final Acceptance, Contractor shall correct all errors, bugs and failures of the Software and other programs which operate the system to conform to the Specifications at no charge to the City.

OR SET OUT ACCEPTANCE TEST IN EXHIBIT 7.

10. Source Code

Source Code Escrow for the Licensed Software are documented in the attached (Exhibit 10) Three-Party Escrow Services Agreement between the City, the Contractor and Iron Mountain.

11. Bankruptcy.

All rights and licenses granted to City pursuant to this Agreement are, and shall be deemed to be, for purposes of Section 265(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the U.S. Bankruptcy Code. In a bankruptcy or insolvency proceeding involving Contractor, the parties agree that City, as licensee of such rights, shall retain and fully exercise all of its rights and elections under the U.S. Bankruptcy Code, and the provisions thereof shall apply notwithstanding conflict of law principles. The parties further agree that, in the event of the commencement of a bankruptcy or insolvency proceeding by or against Contractor under the U.S. Bankruptcy Code, City shall be entitled to a complete duplicate of any such intellectual property and all embodiments of such intellectual property to which City would otherwise be entitled under this Agreement, and the same, if not already in City's possession, shall be promptly delivered to City (a) upon any such commencement of a bankruptcy proceeding upon written request therefore by City, unless Contractor elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under (a) above, upon rejection of this Agreement by or on behalf of Contractor upon written request therefore by City. If, in a bankruptcy or insolvency proceeding involving Contractor, the provisions of the U.S. Bankruptcy Code referenced above are determined not to apply, City shall nevertheless be entitled to no less than the protection offered by the provisions of the U.S. Bankruptcy Code with respect to its entitlement to and rights to the use and possession of all intellectual property to which City has been granted rights under this Agreement notwithstanding the bankruptcy or insolvency of Contractor.

12. No Disruption of Software

Contractor acknowledges that City is a provider of public and municipal services to the public and residents of the City of Oakland and that City's use of the Software will be vital to: (a) the business operations of the City; (b) the orderly and efficient provision of public and municipal services by the City; and (c) the health and safety of City's residents; and therefore, that any unauthorized interruption of City's business and operations could result in substantial liability to City. In recognition of City's status as a provider of such public and municipal services, Contractor warrants and represents that Contractor shall not at any time during the term of this Agreement and thereafter

render the Software unusable or inoperable, take possession of the Software, and products, software, hardware, equipment or copies of Software provided to City by Contractor or Contractor's subcontractors or in any way deliberately take actions to this Agreement limiting Contractor's liability. If Contractor takes any such actions, Contractor shall be liable for and indemnify City for all liabilities, claims, losses, damages and expenses, including without limitation, reasonable attorney's fees, arising from Contractor's actions.

13. Training

Contractor will provide the training as specified in **EXHIBIT 8**. Training will take place at the time and locations specified in **EXHIBIT 8**. Unless otherwise provided in this Agreement, all such training will be provided at Contractor's sole expense.

14. Maintenance and Support

The Interfaces Active creates, as referenced in Exhibit 2, will be Active's responsibility to support and maintain on an ongoing basis as per Exhibit 9. Active will be the first line of support for any issues with regards to the interfaces created by Active. In addition if the City is upgrading Active's system or any of the business systems Active has integrated to, as per Exhibit 2, it will be Active's responsibility to modify the Interfaces created by Active to these systems at no additional cost to the City in accordance to the support and maintenance agreement in Exhibit 9.

Any interfaces not created by Active will not be supported or maintained by Active and would be the sole responsibility of the City.

Contractor will provide the maintenance and support services as described in **EXHIBIT 9**. Contractor shall also comply with the level of problem and response times set forth in **EXHIBIT 9**.

15. Change Notices

- (a) Upon fifteen (15) days' written notice to Contractor, City shall have the right to request changes in the provision of any future Deliverables or Services under this Agreement by delivering to Contractor a change notice ("Change Notice"), provided that any and all such changes shall be subject to Contractor's written consent. Each Change Notice may specify changes to the Work, including without limitation, designs, specifications, hardware, software, equipment, testing, materials, time and place of delivery and the nature, time and place of the provision of Services. If any Change Notice causes an increase or decrease in the price or the time required for performance under this Agreement, an equitable adjustment jointly agreed upon by City and Contractor shall be made and the Agreement shall be modified in writing accordingly.

- (b) Change Notices issued under this Agreement must be accepted or rejected in writing by Contractor within ten (10) days of Contractor's receipt of its issuance. Notwithstanding Section 45 (a), if for any reason Contractor should fail to timely accept or reject a Change Notice in writing, such Change Notice shall be deemed accepted.

16. Independent Contractor

(a) Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor acknowledges and agrees that all of Contractor's employees and subcontractors are under the sole direction and control of Contractor and City shall have no authority over or responsibility for such employees and subcontractors of Contractor. Contractor has and shall retain the right to exercise sole direction and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in **EXHIBIT3**.

(b) Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of the City. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Contractor shall complete and submit to City, Schedule M-Independent Contractor Questionnaire, prior to the execution of this Agreement.

(c) Payment of Income Taxes

Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor agrees to indemnify the City for

any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

(d) Non-Exclusive Relationship

Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

(e) Tools, Materials and Equipment

Contractor will supply all tools, except those tools, materials, equipment specified herein, if any, required to perform the services under this Agreement.

(f) Cooperation of the City

The City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

(g) Extra Work

Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

17. Project Management Coordination/Key Employees

(a) Contractor shall be solely responsible for managing, scheduling, coordinating and controlling Contractor's employees and subcontractors.

(b) Contractor and City will each assign an *Account Manager* to operate as the central person with respect to City's account under this Agreement and to handle all issues or proposals that may arise during the term of this Agreement. The *Account Manager*, along with all contact information, are set out on **EXHIBIT 11** hereto.

(c) Subject to City's prior written approval, Contractor shall appoint a *Project Manager* to coordinate and supervise the performance of the obligations of Contractor in connection with this Agreement. The Project Manager shall be available, as reasonably required by City, at the appropriate City sites for the management and coordinator of Work and Services hereunder. The Project Manager, along with all contact information, is set out on **EXHIBIT 11** hereto. Contractor shall not change the designated Project Manager during the term of the Agreement or any Purchase Order, Change Order, or Change Notice, without the prior written consent of City, which shall not unreasonably withheld.

(d) Subject to City's prior written approval, Contractor shall assign a team of employees and/or subcontractors ("*Key Employees*") to City's account and

Contractor commits to make such Key Employees available to work on projects assigned by the City during the term of the Agreement. The Key Employees are identified in **EXHIBIT 11** hereto. Contractor shall not change the designated Key Employees during the term of the Agreement without the prior written consent of City, provided however, that if a Key Employee terminates with Contractor, then Contractor shall replace such Key Employee within five (5) business days of such termination with an employee of equal or greater experience and qualifications. City reserves the right to review and approve the City replacement employee's experience and qualifications.

- (e) Contractor shall, upon City's written request, remove any of Contractor's employees or subcontractors from performing any services under this Agreement. Contractor shall replace such employee with an employee of equal or greater experience and qualifications within three (3) business days after removal of such employee. Contractor shall indemnify and hold City harmless if such employee brings any claim against Contractor or City for such removal.

18. Proprietary or Confidential Information of the City and Contractor

a. Confidentiality

Both parties understand and agree that, in the performance of the work or Services under this Agreement or in contemplation thereof, the other party may have access to private or confidential information ("Confidential Information" as defined below) 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 parties. Both parties agree that all information disclosed shall be held in confidence and used only to use Confidential Information solely for the purposes set forth in this Agreement and in the performance of this Agreement. Both parties shall take suitable precautions and measures to maintain the confidentiality of the Confidential Information and exercise the same standard of care to protect Confidential Information as a reasonably prudent party would use to protect its own proprietary data. The parties agree not to disclose or otherwise furnish Confidential Information to any third party other than employees or independent contractors of City or Contractor who have a need to know the Confidential Information to perform its obligations under this Agreement, provided such employees or independent contractors are obligated to maintain the confidentiality of the Confidential Information.

b. Confidential Information

For the purposes of this Agreement, "Confidential Information" means any information which is confidential or proprietary to the party owning or disclosing party and which is not generally known to the public, whether of a technical,

business or other nature including, without limitation, trade secrets, know-how and information relating to such party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs of either party.

c. Non-Disclosure of Confidential Information/Exceptions

The obligations under this Section will not apply to any: (i) use or disclosure of any information pursuant to the exercise of the disclosing party's rights under this Agreement; (ii) information that is now or hereafter become generally known or available to the public other than through the violation of this Agreement, (iii) information that is obtained by the receiving party (other than in connection with this Agreement) who was not under any obligation of secrecy or confidentiality with respect to such information, (iv) information that is independently developed by the receiving party without reference to any Confidential Information, (v) any disclosure made with the explicit consent of the disclosing party, and (vi) any disclosure required by applicable law or authorized by the other party. Contractor acknowledges that Confidential Information may be considered public records and are subject to public disclosure upon a request under the California Public Records Act (California Government Code Section 6250 et seq., hereinafter the "Act"), or under the City of Oakland's Sunshine Ordinance. If Contractor's legal counsel has determined that certain portions of the Confidential Information contain actual proprietary or trade secret information which are exempt from disclosure under Section 6245.15 of the Act, or under the Sunshine Ordinance, the Contractor will clearly designate those portions of Confidential Information as such and City will attempt to maintain designated portions confidential. However, City may be required to disclose all or part of Confidential Information pursuant to a request from the public under the Act and/or the Sunshine Ordinance. City will disclose such information upon a request by any member of the public unless a California Court of law determines that all or any part of such Confidential Information is proprietary, or a trade secret, or otherwise exempt from disclosure under the Act or the Sunshine Ordinance. City will provide notice of any requests from the public for disclosure of Confidential Information under the Act, and Contractor will solely bear the burden of timely petitioning and proving to a California Court of law that all or part of Confidential Information is proprietary or trade secret information and thus exempt from disclosure under the Act or under the Sunshine Ordinance. Contractor agrees to defend City in any litigation with respect to the disclosure of any Contractor Confidential Information and will hold City harmless against any claims, attorneys' fees, damages, fines, judgments, or administrative penalties, which may arise from any such actions or requests for public disclosure of Contractor's Confidential Information under the Act or under the Sunshine Ordinance.

d. Remedies

Either party shall promptly advise the other in writing if it learns of any unauthorized access, use or disclosure of Confidential Information by the notifying party or any other entity or person. The parties acknowledges that in the event of a breach of the obligations under this Section 18, damages may not be an adequate remedy and the aggrieved party shall be entitled to injunctive relief to restrain such breach, threatened or actual.

e. Return of Confidential Information

Any Confidential Information in the possession of the non-owning party shall be promptly returned to the owning party upon request, or in any event, upon any termination or expiration of the term of this Agreement.

19. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

20. Copyright

Contractor shall execute appropriate documents to assign to the City the copyright to any works for hire created pursuant to this Agreement.

21. Inspection of Books and Records/Right to Audit

- (a) During the term of this Agreement, and for a period of four (4) years after the termination of this Agreement, or two (2) years after the closure of any disputed matter, whichever occurs later, (the "Audit Period"), Contractor shall maintain financial and operational records related to this Agreement or to any other agreement with City. Contractor shall make all books and records open to inspection by the governing agency, City Auditor or their individually assigned designee during normal business hours at a location within a twenty-five (25) mile radius of the City of Oakland for the period of this contract and for a period of four years after the close of each contract year.
- (b) During the Audit Period, Contractor hereby grants to City or its designee(s), upon one (1) days prior notice to Contractor, access to and the right to make copies of

any of Contractor's books, statements, documents, papers or records ("Financial Information") which arise from or relate to the terms and conditions of this Agreement and the performance of any services pursuant to this Agreement, or any other agreement between the parties, in order to permit City to conduct audits, examinations, excerpts and transition audits (collectively hereafter referred to as "Audit or Audits"). Contractor authorizes the City Auditor or his designee to obtain such information directly from these sources. City's right to Audit and to make copies shall apply whether such Financial Information is located at Contractor's offices or at Contractor's banks, financial institutions or lenders, or at the offices of Contractor's financial consultants, accountants or bookkeepers. For the purposes of such Audit, Contractor waives its right to the confidentiality of all Financial Information and Contractor authorizes the City or its designee(s) to access, obtain and make copies of Financial Information directly from Contractor's banks, financial institutions or lenders, or from Contractor's financial consultants, accountants or bookkeepers.

- (c) Such Audits may be performed by City through its employees or by its designees including, without limitation, a third party auditor retained by City. City's right to Audit under this Section 21 is independent, separate and distinct from any right to audit such books and records reserved by law or contract, or as a condition of funding, by the county, state or federal government.
- (d) If any Audit of Contractor's invoices or other records reveals any variance from any invoice to City, or of any amount of funds provided to Contractor by City which is in excess of the amount actually due to Contractor by City, then: Contractor shall immediately refund any excess payment or funds received from City. In addition, if any Audit reveals any variance from any invoice or funds received from City in excess of one-half percent (.5%) of the amount shown on such invoice or the amount of funds actually due to or granted to Contractor by City, Contractor shall immediately reimburse City for all costs and expenses incurred in conducting such Audit. Failure to pay such variance and the cost of the Audit as required herein shall constitute and be deemed a material breach of the Agreement by Contractor and will subject Contractor to termination of the Agreement by City and to a breach of contract claim for damages by City.

22. Right to Offset

All claims for money or to become due from City shall be subject to deduction or offset by City from any monies due Contractor by reason of any claim or counterclaim arising out of this Agreement or any Purchase Order, Change Order, or Change Notice or any other transaction with Contractor. To the extent that there are amounts due to the City and to a state or federal funding agency, and the amount of the offset is insufficient to pay such amount in full, the amount of the offset shall be prorated between the City and such state or federal funding agency in proportion to the amounts due them.

23. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

24. Assignment

Except in connection with any sale of all or substantially all of its assets, or any other transaction in which more than fifty percent of its voting securities are transferred, Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

25. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

26. Title of Property

Title to all property, real and personal, excepting Software licensed in accordance with Exhibit 2 (Software License Agreement) acquired by the Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. The Contractor shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

27. Conflict of Interest

(a) Contractor

The following protections against conflict of interest will be upheld:

- (1) Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- (2) Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- (3) Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- (4) Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 *et seq.*, pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- (5) Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including

nonprofit entities) if the income totaled more than \$500 in the previous 12 months, or value of the gift totaled more than \$350 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- (6) Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- (7) Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

(b) No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

(c) Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

28. Non-Discrimination/Equal Employment Practices

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

- (a) Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- (c) If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

29. Americans With Disabilities

The Americans with Disabilities Act (ADA) requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its contractors comply with their ADA obligations and verify such compliance by signing the Declaration of Compliance incorporated herein as **Schedule C-1**.

30. Local and Small Local Business Enterprise Program (L/SLBE)

- a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant (s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by

the City of Oakland in order to earn credit toward meeting the twenty percent requirement.

- b. *Good Faith Effort*-In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. *Incentives* – Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
- d. *Banking* – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by the City prior to the submittal or bid date.
- e. *The Exist Report and Affidavit (ERA)* – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Manager's Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.
- f. *Joint Venture and Mentor Protégé Agreements*. If a prime contractor or prime consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- g. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its subcontractors and suppliers, by completing **Schedule D** ("Professional Services Questionnaire"), **Schedule E** ("Project Consultant Team"), and **Schedule F** ("Employment Questionnaire"), attached and incorporated herein and made a part of this Agreement.
- h. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are

required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.

- i. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Manager will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

31. Other Applicable Ordinances:

(a) Living Wage Ordinance

This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000.00 or more, or if it is amended to increase the contract amount by \$25,000.00 in any twelve-month period thereafter. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that Contractor provide the following to its employees who perform services under or related to this Agreement:

- (1) Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$9.45 with health benefits or \$10.87 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. (Effective July 1, 2001 the hourly wages will be \$9.13 per hour with health benefits and \$10.50 per hour without.)
- (2) Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Contractor shall provide proof that health benefits are in effect for

those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

- (3) Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- (4) Federal Earned Income Credit (EIC) – Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- (5) Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- (6) Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- (7) Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

- (8) Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

(b) Equal Benefits Ordinance

- (1) This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations.
- (2) Entities which enter into a "contract" with the city for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the city or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the city in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.
- (3) The Ordinance shall only apply to those portions of a contractor's operations that occur (A) within the city; (B) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (C) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor
- (4) The equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1 – Equal Benefits-Declaration of Nondiscrimination.**

(c) Nuclear Free Zone

Contractor represents, pursuant to Schedule P ("Nuclear Free Zone Disclosure Form"), that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete Schedule P, attached hereto.

32. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**.

33. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in **Schedule Q**. **Schedule Q** is attached hereto and incorporated herein by reference.

34. Indemnification

- (a) General Indemnification. Contractor shall indemnify, hold harmless, and (at City's request with Counsel acceptable to City), defend City, its Councilmembers, directors, officers, employees, agents, servants, and independent contractors (each of which persons and entities are collectively referred to herein as "Indemnitees") from any and all actions, causes of actions, claims, injuries (including, without limitation, injury to or death of an employee of Contractor or any of its structures), liabilities (of every kind, nature and description), losses, demands, debts, liens, obligations, judgments, administrative fines, damages, (incidental or consequential) costs, expenses, and attorneys' fees (collectively referred to herein as "Actions") caused by or arising out of:
- (1) a breach of Contractor's obligations, representations or warranties under this Agreement,
 - (2) any act or failure to act in the course of performance by Contractor under this Agreement,
 - (3) any negligent (passive or active) or willful acts or omissions in the course of performance by Contractor under this Agreement,
 - (4) any claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;

- (b) Proprietary Rights Indemnity. Contractor shall indemnify, defend, save and hold harmless Indemnitees from any and all Actions arising out of claims that the software, products, work or deliverables infringe upon or violates the Intellectual Property Rights of others. If the software, products, work or deliverables will become the subject of an Action or claim of infringement or violation of the Intellectual Property Rights of a third party, City, at its option shall require Contractor, at Contractor's sole expense to: (1) procure for City the right to continue using the software, products, work or deliverables; or (2) replace or modify the software, products, work or deliverables so that no infringement or other violation of Intellectual Property Rights occurs, if City determines that: (A) such replaced or modified software, products, work or deliverables will operate in all material respects in conformity with the then-current specifications for the software, products, work or deliverables; and (B) City's use of the software, products, work or deliverables is not impaired thereby. Contractor's obligations under this Agreement will continue with respect to the replaced or modified software, products, work or deliverables as if it were the original software, products, work or deliverables uninterrupted and the performance of the software, products, work or deliverables is it were the original software, products, work or Deliverables.
- (c) For the purposes of this Section 34, the term "Contractor" includes, without limitation, Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants, and subcontractors.
- (d) Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any Action which potentially falls within this indemnification provision, which obligation shall arise at the time an Action is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any Action arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- (e) City shall give Contractor prompt written notice of any Action and shall fully cooperate with Contractor in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests. Notwithstanding the foregoing, City shall have the right, if Contractor fails or refuses to defend City with Counsel acceptable to City, to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold payments due Contractor in the amount of reasonable defense costs actually incurred. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.

- (f) All of Contractor's obligations under this Section 34 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- (g) The indemnity set forth in this Section 34 shall not be limited by the City's insurance requirements contained in Schedule B hereof.

DESPITE ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY AND ALL EXHIBITS, SCHEDULES, AND AMENDMENTS:

Except as set forth below in no event whatsoever will Contractor be liable to the City or to any other party for indirect damages or losses (in contract or tort), including, but not limited to, damages for lost profits, lost savings, or incidental, consequential or special damages.

The aggregate liability of Contractor for all damages and liability incurred by the City in connection with the products and services provided hereunder will be limited to an amount equal to the greater of: (i) the amount paid to Contractor hereunder for such products and services, or (ii) five hundred thousand dollars (\$500,000). The foregoing limitations on Contractor's aggregate liability for damages shall not apply with respect to (i) Contractor's infringement of a third party's intellectual proprietary rights as provided by Section 7 (e) and Section 34 (b) hereof, (ii) willful disclosure of Confidential Information as set forth in Section 18 hereof, (iii) gross negligence or willful misconduct, or (iv) liability with respect to damages to, claims by, or injuries to third parties.

35. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

36. Religious Prohibition

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

37. Business Tax Certificate

Contractor shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

38. Termination

- (a) Termination for Breach. If Contractor breaches or violates any obligation, term, condition or provision under this Agreement including, without limitation, failure to keep, observe or perform any of the material covenants, terms or conditions of this Agreement or Purchase Order, Change Order, or Change Notice, or of any Exhibit or Schedule hereto, then City may, at its option: (i) withhold payment under this Agreement, any Purchase Order, Change Order, or Change Notice until a date when the breach is cured, and/or (ii) terminate all or any part of this Agreement, Purchase Order, Change Order, or Change Notice, or Amendment it issues in whole or in part, upon notice to Contractor. In the event that City chooses option (i), City shall notify Contractor and stipulate a period within which Contractor must cure the breach.
- (b) Bankruptcy. Either party may immediately terminate this Agreement if (i) the other party files a petition for bankruptcy or has filed against it an involuntary petition for bankruptcy which remains un-dismissed for 60 days, (ii) a court has appointed a receiver, trustee, liquidator or custodian of it or of all or a substantial part of the other party's property, (iii) the other party becomes unable, or admits in writing its inability, to pay its debts generally as they mature, or (iv) the other party makes a general assignment for the benefit of its or any of its creditors.
- (c) Termination for Convenience by City. City may terminate this Agreement for any reason at any time upon not less than ninety (90) days' prior written notice to Contractor. After the date of such termination notice, Contractor shall not perform any further services or incur any further costs claimed to be reimbursable under this Agreement, any Purchase Order, Change Order, or Change Notice without the express prior written approval of City. As of the date of termination, City shall pay to Contractor all undisputed amounts then due and payable under this Agreement.
- (d) Transition Services after termination. In connection with the expiration or other termination of this Agreement or the expiration of this Agreement, Contractor may provide transition services as requested by City. Such transition services shall be subject to the pricing provided in this Agreement or any amendment thereto.

39. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all of the project related reasons at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. Upon City's approval, Contractor may expend a reasonable amount

of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Contractor shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other undisputed charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

40. Validity of Contracts

The Oakland City Council must approve all agreements greater than \$15,000. This Agreement shall not be binding or of any force or effect until signed by the City Manager or his or her designee and approved as to form and legality by the City Attorney or his or her designee.

41. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its conflicts of laws principles. Any action or proceeding to enforce the terms of this Agreement shall be brought in the courts of Alameda County, Oakland, California and each party agrees to waive any objections to personal jurisdiction and venue in the courts of Alameda County, Oakland, California.

42. Notices

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

(City of Oakland)

Katano Kasaine
Treasury Manager
150 Frank Ogawa Plaza, 5th
Oakland, CA 94612

cc:

Celso Ortiz
Deputy City Attorney
1 Frank Ogawa Plaza, 6th Fl.
Oakland, CA 94612

(Contractor)

Alex Barnetson Sr. Vice President
Suite 160, 6400 Roberts St.
Burnaby, BC
Canada, V5G 4C9

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

43. Headings

Headings and captions used to introduce Sections and paragraphs of this Agreement are for convenience, only, and have no legal significance.

44. Construction

- (a) Except as provided in Section 15 (b) above, acceptance or acquiescence in a prior course of dealing or a course of performance rendered under this Agreement or under any Change Order, or Change Notice, shall not be relevant in determining the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
- (b) The language in all parts of this Agreement and any Purchase Order, Change Order, or Change Notice, shall in all cases be construed in whole, according to its fair meaning, and not strictly for or against, either Contractor, City regardless of the drafter of such part.

45. Waiver

No covenant, term, or condition of this Agreement may be waived except by written consent of the party against whom the waiver is claimed and the waiver of any term, covenant or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition of this Agreement.

46. Priority of Documents

The event of conflicting provisions between the following documents, the provisions shall govern in the following order: this Agreement, the latest Amendment, Change Order, or Change Notice, Exhibits, and any Purchase Order to this Agreement.

47. Attorneys' Fees

If either party commences an action or proceeding to determine or enforce its rights hereunder, the prevailing party shall be entitled to recover from the losing party all expenses reasonably incurred, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

48. Counterparts

This Agreement may be executed in any number of identical counterparts, any set of which signed by both parties shall be deemed to constitute a complete, executed original for all purposes.

49. Survival

Sections 7, 10, 11, 12, 16, 18, 21, 23, 34, 35, 42, 46, 47, 49, 50 and 52 of this Agreement, along with any other provisions which by their terms survive, shall survive the expiration or termination of this Agreement.

50. Remedies Cumulative

The rights and remedies of City provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law, including the California Uniform Commercial Code.

51. Successors and Assigns

This Agreement and all of its provisions shall inure to the benefit of and become binding upon the parties and the successors and permitted assigns of the respective parties.

52. Time of the Essence

Time is of the essence for any act or obligation of Contractor under this Agreement when time is a factor.

53. Authority

Each individual executing this Agreement or any Purchase Order, Change Order or Change Notice, hereby represents and warrants that he or she has the full power and authority to execute this Agreement or such Purchase Order, Change Order or Change Notice, on behalf of the named party such individual purports to bind.

54. Access

Access to City's premises by Contractor shall be subject to the reasonable security and operational requirements of City. To the extent that Contractor's obligations under this Agreement or any Purchase Order, Change Order, or Change Notice, require the performance of Services or Work by Contractor on City's property or property under City's control, Contractor agrees:

- (i) to accept full responsibility for performing all Services or work in a safe manner so as not to jeopardize the safety of City's personnel, property, or members of the general public; and
- (ii) to comply with and enforce all of City's regulations, policies, and procedures including, without limitation, those with respect to security, access, safety and

fire protection, City's policy against sexual harassment, and all applicable state and municipal safety regulations, building codes or ordinances.

55. Force Majeure:

(a) The term "Force Majeure" means acts of God, strikes, lockouts, failure or refusal of any person or entity to comply with then existing agreements to obtain or ship materials or equipment or other industrial disturbances; acts of a public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, or other natural disasters; arrests and restraints of governments and people, civil disturbances, explosions, restraint by court order or public authority; and action or non-action by or failure to obtain authorizations or approvals, duly sought, from any governmental agency or authority of competent jurisdiction; and which, by the exercise of due diligence, such party is unable to prevent or overcome.

(b) If either party is rendered unable wholly or in part by "Force Majeure" to carry out its obligations under this Agreement or to provide commercially reasonable substitute performance, it is agreed that such party upon providing a written detailed description of the event(s) causing the Force Majeure, within a reasonable time following such events(s), shall be excused from fulfilling its obligations under this Agreement, until such reasonable time that the event(s) causing the Force Majeure is corrected or other remedial action is taken, but for no longer a reasonable period of time thereafter.

(c) It is understood and agreed that the settlement of strikes or lockouts shall be entirely at the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be corrected within a reasonable time shall not require the settlement of strikes or lockouts.

56. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

57. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

58. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

59. Commencement, Completion and Close-out

It shall be the responsibility of the Contractor to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Contractor to enable Contractor to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Contractor not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement. Within thirty (30) days of completion of the performance under this Agreement, the Contractor shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. Failure of the Contractor to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Contractor.

60. Approval

If the terms of this Agreement are acceptable to Contractor and the City, sign and date below.

61. Inconsistency

If there is any inconsistency or conflict between the main agreement and the attachments/schedules/exhibits, the text of the main agreement shall prevail.

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City of Oakland,
A municipal corporation

Contractor

Henry A. Laguerre
(City Administrator's Office) (Date)

Mike Wahl Dec 7/06
(Signature) (Date)

Kateno Kesime 12-11-06
(Department Head Signature) (Date)

2249111
Business Tax Certificate No.

Approved as to form and legality:

[Signature] 12-11-06
(City Attorney's Office Signature) (Date)

80229
Resolution Number

EXHIBIT 1---Statement of Work

See Attachment

EXHIBIT 2---Active Software License Agreement (Schedule A)

See Attached

Software License Agreement (Schedule A)

This document (the "**Agreement**"), consisting of:

- a. this cover page ("**Cover Page**");
- b. the attached table of licensed Software ("**Software Table**"); and
- c. the attached Terms and Conditions of the Software License Agreement ("**Terms and Conditions**") constitutes the entire agreement between the undersigned customer ("**Customer**") and The Active Network, Ltd. ("**TAN**") whereby, and TAN and the Customer hereby agree that, TAN grants to the Customer the rights and licenses herein described regarding the installation and use of certain computer software for the prices described in the Software Table, as modified from time to time according to this Agreement. Any apparent contradiction among this Cover Page, the Software Table and/or the Terms and Conditions is to be resolved by giving priority to the Terms and Conditions, followed by the Cover Page, and finally the Software Table.

Payment Terms for Software Licenses

- A. All prices are in the currency of the country of installation.
- B. Sales and any other applicable tax(es), duties or any other charges in the nature of taxes and duties are not included unless specifically identified as line items.
- C. Prices shown include freight F.O.B. the shipping point.
- D. No services (i.e. site preparation such as cabling and provision of electricity) are included in costs described herein.
- E. The following installment payment schedule is applicable; figures are percentages of total fees and other charges re: all Software licensed under this Agreement:

Phase End Date	100% of the fees applicable to the phase

- F. A Project Schedule will be established (see attached Active Project Schedule) through discussions between the Customer and TAN once this agreement has been signed. The Project Schedule will consist of separate phases. The Customer can, at any time, choose not to proceed with a subsequent phase. The Project Schedule will indicate the acceptance criteria for each phase. Unless indicated otherwise by the Customer, each phase is deemed to be complete unless TAN is notified by the customer within 15 calendar days after the Phase End Date, as specified in the Project Schedule. When deemed complete, the customer acknowledges that all project expectations have been met for the completed phase and there is no further recourse or liability for TAN.
- G. The Customer agrees, subject to any conditions, limitations, or deductions as defined in the Project Schedule, to pay to TAN for the performance of the work required under the Project Schedule to the satisfaction of the Customer in accordance with the fee structure as defined in the Software License Agreement and work estimates set forth in the Project Schedule.
- H. TAN will invoice the Customer for the amounts contemplated in paragraph E. All invoices are payable within 60 days of receipt thereof, and such receipt is deemed to occur as though such invoices were notices sent pursuant to section 9.3 of the Terms and Conditions. Overdue invoices will bear interest at the lesser of 1% per month, 12.68% per annum or the maximum rate permitted by law.

{The remainder of this page is intentionally BLANK}

The parties hereto each acknowledge that they have read, understand and agree to be bound by this Agreement.

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Software Table: Licensed Active Software Modules

Module (included modules in parentheses)		No. of Copies	Total Cost
WORKSTATION-BASED, CORE MODULES			
1.	Enterprise POS Plus	Unlimited	
2.	Report Inquiry	Unlimited	
SERVER-BASED, ADD ON MODULES			
3.	Enterprise Payment Server (Credit , Debit and Electronic Funds Transfer)	Unlimited	
4.	Finance-link - (Financial Systems Integration) (Oracle GL Interface)	1 Included	
5.	Bank-link	Included	
6.	Department Connector* (<i>Tax, Parking Tickets, Oracle AR, Permit and Code Enforcement</i>)	4 Included	
SYSTEM MODULES-COSTS (included in costs of other licensed Modules)			
7.	System Utilities as defined in sect. 1.1.q) of Terms and Conditions	◆	◆
CUMULATIVE WORKSTATION-BASED MODULES			
8.	Customized Reports	Included	
		Total Cost	\$95,000

*additional Department Connectors required would be charged at \$10,000 / connector and may require services from Active.

Terms and Conditions of Software License Agreement

1. Interpretation

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

- a) **"Agreement"** means this Software License Agreement.
- b) **"Client Workstation or Workstation"** means a computer attached to a local or wide-area network (including an Intranet), which accesses the Software or Enterprise Database.
- c) **"Concurrent Use"** means use at the same moment in time to access a given server computer (of any kind) owned or controlled by the Customer.
- d) **"Customer"** means the legal entity other than TAN entering this Agreement.
- e) **"TAN"** means The Active Network Ltd.
- f) **"Database Server"** means the single server computer upon which the Enterprise Database is resident.
- g) **"Enterprise Database"** means the MSDE, MS SQL Server or Oracle database files containing customer data (which is owned by Customer) and which is accessed by the Software.
- h) **"Initial Installation"** means initial installation of any Module on any server computer owned or controlled by the Customer.
- i) **"Internet Client"** means a remote device capable of using the Internet and either Internet Explorer 4.0 or higher to access selected Software on the Internet Server or the Enterprise Database on the Database Server via the Internet Server.
- j) **"Internet Server"** means a single server computer used by the Customer which enables access to the Software by individuals using an Intranet or the Internet, having a minimum configuration as set out in hardware specifications previously described to the Customer as applicable to the Software to be installed and used upon it.
- k) **"Module"** means a single type of Software referred to in any particular line item, such that each such line item refers to one, and only one, Module, with respect to which one or more licenses may or may not be granted hereby.
- l) **"Core Module"** means any item of Software listed, but not in parentheses, in line items 1 through 12, which represent the most commonly licensed modules.
- m) **"Payment Server"** means a single server computer used by the Customer to process electronic payments from its clients, having a minimum configuration as set out in hardware specifications previously described to the Customers as applicable to the Software to be installed and used upon it.
- n) **"Phase"** means the software, services, third party products, maintenance, deliverables, and acceptance criteria to be implemented between the Phase Start Date and the Phase End Date including the associated costs.
- o) **"Phase Start Date"** means the date for the start of each Phase as indicated on the Project Schedule
- p) **"Phase End Date"** means the date for the end of each Phase as indicated on the Project Schedule
- q) **"Project Schedule"** means the document detailing the ~~standalone~~ and separate implementation phases established through discussions between the Customer and TAN once this agreement has been signed.

- r) **"Software"** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and are identified in the Software Table as licensed (or sublicensed) to the Customer by TAN in connection with this Agreement, and/or which are in the future provided to the Customer by TAN under any circumstances unless provided under a separate licensing agreement.
- s) **"Software Table"** means the table of TAN Software Modules licensed hereunder, shown on the page of this Agreement immediately following the Cover Page.
- t) **"System Utilities"** includes the following: Accounting Processes, Central Login, Log File, Copy Database, Edit Database, Maintain Database, MSDE Tool, Oracle Setup Utility, Query Tool, System Maintenance, Upgrade Database and View Components.
- u) **"User"** means a person who accesses and uses any of the Software to access, use or affect the Enterprise Database in any manner whatsoever.

v. **"Project End Date"** means the date the project officially ends as indicated on the Project Schedule

1.2. **"Line Items"** – Any reference herein to a "line item" or "line items" is a reference to the appropriate line item(s) of the Software Table.

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

1.4. Active's software products are a collection of independent software modules and each module is independently functional on its own. There are no dependencies within the modules of each product family that inhibit independent operation and acceptance.

2. GRANT OF LICENSES AND LIMITATIONS THEREON

2.1. TAN hereby grants to the Customer a non-exclusive and non-transferable right and license, subject to this Agreement, to install and/or use the Software as agreed and as follows:

- a) **Server-based Core and Add On Modules** – Subject to b), the Customer may install one copy of each Server-based Core or Add On Module licensed on each of as many Workstations as the Customer wishes, and may use and permit use of such Modules by its clients, without limit as to the number Users or transactions which simultaneously use any such Module.
- b) **Exceptions Regarding Unlimited System Feature (Server Based Licensing):**
 - i)
 - ii) that at any time, any or all such Modules may be in Concurrent Use by, at most, the number of licenses of the Online Client Access Module licensed multiplied by twenty-five (25).

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

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

- b) one copy of each Module licensed hereunder for backup purposes,

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

2.3. Incidental Installation of System Feature Software – TAN will not require any payment by the Customer for, and hereby releases the Customer with respect to any damages or claims to or by TAN relating to, unlicensed Modules listed in the Software Table under "System Features" the Software for which is automatically installed on any hardware of the Customer in the process of installation of any other Module(s), provided that the Customer shall not use, and shall not permit any other person to use, any such Modules.

3. CHARGES AND PAYMENTS

3.1. Software License Fees - The charges and payments applicable to the installation and use of the Software by the Customer are set out on the Cover Page.

3.2. Taxes and Other Charges – The Customer will pay all applicable sales, use, withholding and excise taxes, ~~and any other assessments~~ against the Customer in the nature of taxes, ~~duties or charges~~ however designated on the Software or its license or use, on or resulting from this Agreement, exclusive of taxes based on the net income of TAN.

4. OWNERSHIP OF SOFTWARE

4.1. Warranty of Title - TAN warrants that it has all rights necessary to make the grant of license herein by having all right, title and interest in and to the Software or as licensee of all such rights from the owner thereof.

4.2. Retention of Rights by TAN and Customer's Obligations - All proprietary and intellectual property rights, title and interest including copyright in and to the original and all copies of the Software and the documentation or any changes or modifications made to the Software or related documentation will be and remain that of TAN, or its licensor as the case may be. Without limiting the foregoing, the Customer will not any time whether before or after the termination of this Agreement:

- a) reverse engineer, disassemble or decompile any Software or prepare derivative works thereof;
- b) copy, transfer, display, or use the Software except as expressly authorized in this Agreement;
- c) disclose, furnish, or make accessible to anyone any confidential information received from TAN or make any use thereof other than as expressly permitted under this Agreement, which confidential information is deemed to include the source and executable code of the Software and all related documentation;
- d) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary and intellectual property rights, title or interest of TAN in and to any Software; or

Terms and Conditions of Software License Agreement

- e) obliterate, alter, or remove any proprietary or intellectual property notices from the Software in its physical or electronic forms.

4.3. Intellectual Property Indemnity by TAN - TAN will defend or settle any claim made or any suit or proceeding brought against the Customer insofar as such claim, suit or proceeding is based on an allegation that any of the Software supplied to the Customer pursuant to this Agreement infringes the proprietary and intellectual property rights of any third party in or to any invention, patent, copyright or any other rights, provided that the Customer will notify TAN in writing promptly after the claim, suit or proceeding is known to the Customer and will give TAN information and such assistance as is reasonable in the circumstances. TAN will have sole authority to defend or settle any such claim at TAN's expense. TAN will indemnify and hold the Customer harmless from and against any and all such claims and will pay all damages and costs finally agreed to be paid in settlement of such claim, suit or proceeding. This indemnity does not extend to any claim, suit or proceeding based upon any infringement or alleged infringement of copyright by the combination of the Software with other elements not under TAN's sole control nor does it extend to any Software altered by the Customer either by enhancement or by combination with product(s) of the Customer's design or formula. The foregoing states the entire liability of TAN for proprietary and intellectual proprietary rights infringement related to the Software. If the Software in any claim, suit or proceeding is held to infringe any proprietary or intellectual property rights of any third party and the use thereof is enjoined or, in the case of settlement as referred to above, prohibited, TAN will have the option, at its own expense, to either (i) obtain for the Customer the right to continue using the infringing item, or (ii) replace the infringing item or modify it so that it becomes non-infringing, provided that no such replacement or modification will diminish the performance of the Software.

5. WARRANTY

5.1. Limited Warranty of Software - TAN warrants that when utilized by the Customer in a manner authorized hereunder, the Software will conform to the functional specifications set out in the user documentation accompanying the Software for ninety (90) days from city acceptance and go live date.. TAN's sole obligation and liability hereunder with respect to any failure to so perform will be to use reasonable efforts to remedy any non-conformity, which is reported to TAN in writing by Customer within that warranty period. In the event TAN is unable to remedy such non-conformity within a reasonable time using reasonable efforts, TAN shall refund to Customer the license fee pertaining to the Software and this Agreement will be automatically terminated. All warranty service will be performed at service locations designated by TAN.

6. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

6.1. SPECIFIC EXCLUSION OF OTHER WARRANTIES - THE WARRANTIES SET OUT IN SECTIONS 4.1 AND 5.1 ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER APPLICABLE, EITHER EXPRESS OR IMPLIED BY LAW (IN CONTRACT OR TORT) OR CUSTOM, INCLUDING, BUT NOT

LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, DURABILITY, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE ABOVE, TAN DOES NOT WARRANT THAT ANY SOFTWARE PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OF SOFTWARE PROVIDED HEREUNDER WILL BE FREE FROM INTERRUPTION OR ERRORS.

6.2. RESTRICTIONS ON WARRANTY - TAN HAS NO OBLIGATION TO REPAIR OR REPLACE SOFTWARE DAMAGED BY ACCIDENT OR OTHER EXTERNAL CAUSE, OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN TAN.

6.3. NO INDIRECT DAMAGES - WITHOUT LIMITING THE GENERALITY OF SECTIONS 6.1 AND 6.4, IN NO EVENT WILL TAN BE LIABLE TO THE CUSTOMER OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

6.4. LIMITS ON LIABILITY - IF, FOR ANY REASON, TAN BECOMES LIABLE TO THE CUSTOMER OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT), THEN:

- A) THE AGGREGATE LIABILITY OF TAN FOR ALL DAMAGES AND LIABILITY INCURRED BY CUSTOMER AND ALL OTHER PARTIES IN CONNECTION WITH THE SOFTWARE IN QUESTION WILL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID TO TAN FOR THE LICENSE OF THE MODULE OR MODULES WHICH GAVE RISE TO THE CLAIM FOR DAMAGES; AND
- B) IN ANY CASE THE CUSTOMER MAY NOT BRING OR INITIATE ANY ACTION OR PROCEEDING AGAINST TAN ARISING OUT OF THIS AGREEMENT OR RELATING TO ANY SOFTWARE PROVIDED HEREUNDER MORE THAN TWO YEARS AFTER THE RELEVANT CAUSE OF ACTION HAS ARISEN,

6.5. SEPARATE ENFORCEABILITY - SECTIONS 6.1 THROUGH 6.4 ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

7. TERMINATION

7.1. Termination - This Agreement will terminate:

- a) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within 30 days after receiving written notice thereof; and
- b) without limiting a), at the option of TAN if the Customer breaches 3.1 in section 3 of this Agreement

provided that the right of termination will be in addition to all other rights and remedies available to the parties for breach or default by the other.

7.2. Suspension of Obligations - If either party should default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its

Terms and Conditions of Software License Agreement

obligations under this Agreement, without liability, until the other party's default is remedied, but this section will not permit the Customer to suspend its obligation to make payments owing in respect of the Software.

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

8. AUDIT AND MONITORING RIGHTS

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

9. GENERAL

9.1. Complete Agreement; Modification- This Agreement constitutes the complete and exclusive statement of the agreement between TAN and the Customer relating to the licensing of the Software, ~~and supersedes all oral or written proposals, prior agreements and other prior communications between the parties, concerning the subject matter of this Agreement.~~ This Agreement may not be modified or altered except by written instrument duly executed by both parties, except that TAN may fill future purchase or other orders for further goods or services available under this Agreement, and if TAN does so the provisions of this Agreement will contain the only commercial terms applicable to such transaction despite such purchase or other order stating otherwise.

9.2. Force Majeure - Dates or times by which either party is required to perform under this Agreement, excepting the payment of any fees or charges due hereunder for services or hardware already accepted by City, will be postponed automatically to the extent that any party is prevented from meeting them by **Force Majeure as defined in and in accord with Section 55 of the Master City Software and Professional Services Agreement.**

9.3. Notices - All notices and requests in connection with this Agreement will be given to the respective parties in writing and will be deemed given as of the first business day of the notified party following the day the notice is faxed or sent via overnight courier, providing a hard copy acknowledgment of such successful faxed notice transmission or evidence of such couriering, as applicable, is retained. Notice may also be deposited in the Canadian mails (or if the Customer is resident outside Canada and is rendering the notice, in the mails of that

country), postage pre-paid, certified or registered, return receipt requested, and addressed to the parties as indicated on the face of this Agreement and receipt of any such notice will be deemed to be effective as of the third business day following such deposit.

9.4. Governing Law - This Agreement and performance hereunder will be governed by the laws of the jurisdiction where the Database Server is situated excepting in the case of Louisiana when the laws of California will apply, or in the case of Quebec when the laws of Ontario will apply.

9.5. Non-Assignability - This Agreement is not assignable by the Customer. Any assignment, purported assignment or attempt to assign by the Customer will be a material breach of this Agreement and will be void.

Terms and Conditions of Software License Agreement

9.6. Survival - Sections 4, 6, 7.3 and 9 of this Agreement will survive termination and expiration of this Agreement.

9.7. U.S. Government Restricted Rights - The Software and documentation are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) (1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c) (1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. **The Manufacturer is The Active Network Ltd., Suite 300, 6400 Roberts Street, Burnaby, BC, Canada, V5G 4C9.**

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

EXHIBIT 3---Active General Software Services Agreement (Schedule B)

See attached document

EXHIBIT 3---Active General Software Services Agreement (Schedule B)

See attached document

General Software Services Agreement (Schedule B)

This document (the "**Agreement**"), consisting of:

- a. this cover page ("**Cover Page**"),
- b. the attached table of Services ("**Services Table**");
- c. the attached Terms and Conditions of General Software Services Agreement ("**Terms and Conditions**"); and
- d. the attached form of Certificate of Insurance ("**Certificate of Insurance**") constitutes the agreement between the undersigned customer ("**Customer**") and The Active Network, Inc. ("**TAN**") whereby, TAN and the Customer hereby agree that, TAN will provide to the Customer the Services described in this Agreement, for prices and at rates as described in the Services Table as modified pursuant to the Terms and Conditions. Any apparent contradiction among this Cover Page, the Terms and Conditions, the Services Table and/or the Certificate of Insurance is to be resolved by giving priority to the Terms of Conditions, followed by the Cover Page, followed by the Services Table, and finally the Certificate of Insurance.

The parties hereto each hereby acknowledge that they have read, understand and agree to be bound by this Agreement.

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Services Table

Pre-Agreed Services	Rate per Hour	Number of Hours	Total Services Cost
A. Pre- Project Documentation	\$150		
B. Onsite Database & Software Installation	\$150		
C. Remote/Web-based Database & Software Installation	\$100		
D. On-Site less than 3 days (PLUS AIRFARE)			
D.i. Standard Consultants	\$185		
D.ii. Senior Consultant / Project Planner	\$220		
D.iii. Technical Specialist	\$250		
E. On Site 3 days or More (PLUS AIRFARE)			
E.i. Standard Consultants	\$125	40	\$5,000
E.ii. Senior Consultant / Project Management	\$190	368	\$69,920
E.iii. Technical Specialist	\$220		
F. e-Consulting (REQUIRES INTERNET ACCESS ON EACH PC)			
F.i. Standard Consultants	\$100		
F.ii. Senior Consultant / Project Planner	\$156.25	40	\$6,250
F.iii. Technical Specialist	\$195		
G. Weekend Surcharge *			
G.i. Standard Consultants	\$75		
G.ii. Senior Consultant / Project Planner	\$75		
G.iii. Technical Specialist	\$75		
Totals		448	\$81,170

NOTE THAT RATES SHOWN INCLUDE ALL TRAVEL EXPENSES OTHER THAN AIRFARE

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Terms and Conditions of General Software Services Agreement

1. DEFINITIONS

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

- a) **"Initial Installation"** means the date upon which any of the Software has first been installed on any server computer owned or controlled by the Customer.
- b) **"Other Services"** means Services other than Pre-Agreed Services acquired by the Customer under this Agreement.
- c) **"Pre-Agreed Services"** means Services which are expressly listed in the Services Table as being acquired hereunder by the Customer.
- d) **"Release"** means any release, update, patch, set of revisions, or bug/permanent fix or temporary bypass solution released by TAN to its customers generally during the term of this Agreement, which provides enhancements and/or error corrections to the then-current Version or Release, and where a new Version has been released and no new Release has been released since the release of that Version, that Version will also constitute a Release for the purpose of determining whether Support or Maintenance is available with respect to that Version. New Releases will be denoted by an increase to the version number to the right of the decimal point such as from Release 1.1 to Release 1.2.
- e) **"Services"** means any and all types of services which TAN provides, to the Customer and/or to other customers of TAN, in the course of TAN's business, including but not limited to services relating to the installation, implementation, customization, optimization, administration, training and troubleshooting of computers, computer software including the Software, computer networks, databases, internet-related equipment and applications, but expressly excludes Support and Maintenance as described in TAN's standard Software Support and Maintenance Agreement.
- f) **"Software"** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and subsequently licensed by TAN to the Customer.
- g) **"Version"** means a version of the Software providing a particular functionality, while a new Version of the Software will provide new/additional functionality and/or improvements to a previous Version. New Versions will be denoted by a change to the version number to the left of the decimal point such as from Version 1.0 to Version 2.0.

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

2. SERVICES TO BE PROVIDED

2.1. TAN will provide to the Customer:

- a) all Pre-Agreed Services which the Customer hereby agrees, pursuant to the Services Table, to acquire; and
- b) all Other Services which the Customer from time to time agrees to acquire, provided that no Services other than Pre-Agreed Services will be provided by TAN unless TAN has, prior to such Services being rendered, received confirmation from the Customer that the Customer wishes to acquire such Services and will pay for such Services under the terms of this Agreement; and
- c) Standard on-site services days are eight (8) hour days, included as billable time are fifteen (15) minute morning and afternoon breaks as well as one (1) hour lunch break, the minimum billable on-site period is 8 hours. Standard e-Consulting (remote) services are provided in minimum four (4) hour increments.

- d) Weekend surcharges apply to services provided on a Saturday, Sunday, and on Friday for hours past the time at which the consultant would be reasonably able to travel to the next destination on Friday.

3. FEES AND PAYMENT

3.1. Pre-Agreed Services - The Customer will pay TAN the fees described in the Services Table for Pre-Agreed Services.

3.2. Other Services - Upon subsequent agreement from time to time between the Customer and TAN that the Customer will acquire Other Services, the Customer will pay for such Other Services at the service rates in effect at the time of provision of such Other Services, provided that the service rates shown in the Services Table will be effective for the 6-month period following effective date of this Agreement, and thereafter relevant service rates, if different from the rates contained in the Services Table, will be provided to the Customer prior to such Other Services being rendered.

3.3. Consulting and training Services include up to five (10) participants per class.

3.4. Travel Expenses - Costs and rates as described in this Agreement include all TAN personnel travel expenses other than airfare. The Customer will pay all airfare relating to travel of TAN personnel relating to Services provided at the Customer's location, which airfare will unless urgency on the part of the customer requires otherwise, be at "coach" rates.

3.5. Shipping and Handling - The Customer will pay all applicable sales, use, withholding and excise taxes, and any other assessments in the nature of taxes, duties or charges however designated on the Services rendered under this Agreement, exclusive of taxes based on the net income of TAN.

3.6. Applicable Currency - Unless specifically stated otherwise, all prices and amounts are in the currency of the country in which the Software is installed.

3.7. Invoices (Delivery, Payability and Interest) - TAN will provide invoices to the Customer for all amounts owing by Customer hereunder, such invoices to be provided after provision of the Services to which they relate, and subsequently due within 60 days after receipt by the Customer. Overdue invoices shall bear interest at 1 % per month, 12.68% per annum.

4. ACCESS TO SYSTEM AND OTHER CUSTOMER OBLIGATIONS

4.1. Customer will provide, at no cost to TAN:

- a) sufficient space to allow TAN personnel on the Customer's site to perform the on-site Services acquired hereunder;
- b) office supplies and services such as photocopying, facsimile and telephone access;
- c) without limiting a), education and training facilities adequate to the training services acquired hereunder, including classroom space, networked PCs (minimum one (1) PC for every two (2) training participants), networked printing capability, computer display/projection facilities, and flip chart or whiteboard, plus markers and other ancillary supplies;
- d) subject to the security requirements of the Customer, 24 hour access to the Customer's system via either an always-available telephone circuit or an always available internet connection to enable TAN or its designated representative to perform any of the obligations placed upon TAN by this Agreement; and
- e) subject to the security requirements of the Customer, remote dial up/internet access methods approved by TAN to allow TAN to remotely diagnose and correct errors in the Software and provide other Services.

4.2. Without limiting the Customer's obligations, Customer will:

- a) use its best efforts to upgrade to any new Release or Version of the Software that is designated for general distribution, as soon as possible after becoming aware of its availability;

- b) ensure that at all times at least one current staff person of the Customer, who is the Customer contact person named on the Cover Page and per c), has been fully trained on the Software;
- c) designate by written notice a single site and single person as the point of contact for telephone or other contact, which site and/or person the Customer may change upon 14 days prior notice; and
- d) provide particulars of the Customer's system configuration in sufficient detail to allow TAN to effectively provide Services hereunder.

5. REPRESENTATIONS AND WARRANTIES

5.1. Insurance – TAN represents and warrants that it does and will at all times during the term of this Agreement maintain general liability insurance as described in the Certificate of Insurance.

5.2. Limited Warranty of Services - TAN warrants that all services provided hereunder will be performed in full conformity with the Agreement, with the skill and care which would be exercised by those who perform similar services at the time the services are performed, and in accordance with accepted industry practice. In the event of a breach of the express warranties contained herein and/or in the event of non-performance and/or failure of TAN to perform the services in accordance with the Agreement, TAN will, at no cost to Customer, re-perform or perform the services so that the services conform to the warranties.

6. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

6.1. SPECIFIC EXCLUSION OF OTHER WARRANTIES - THE WARRANTIES SET OUT IN SECTION 5.1 AND 5.2 ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OR ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED BY LAW (IN CONTRACT OR TORT) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY, IN EFFECT REGARDING THE SERVICES.

6.2. NO INDIRECT DAMAGES – IN NO EVENT WILL TAN BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT) IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

6.3. LIMITS ON LIABILITY - DESPITE ANY OTHER PROVISION OF THIS AGREEMENT, IF FOR ANY REASON, TAN BECOMES LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT), THEN:

- A) THE AGGREGATE LIABILITY OF TAN FOR ALL DAMAGES, INJURY, AND LIABILITY INCURRED BY CUSTOMER AND ALL OTHER PARTIES IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE CHARGES PAID TO TAN FOR THE SERVICES WHICH GAVE RISE TO THE CLAIM FOR DAMAGES; AND
- B) CUSTOMER MAY NOT BRING OR INITIATE ANY ACT OR PROCEEDING AGAINST TAN ARISING OUT OF THIS AGREEMENT OR RELATING TO SERVICES MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION HAS ARISEN,

6.4. SEPARATE ENFORCEABILITY - SECTIONS 6.1, 6.2 AND 6.3 ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

7. TERM

7.1. Term - The term of this Agreement will commence on the date of its execution and, subject to termination as provided herein, will continue indefinitely.

8. TERMINATION

8.1. Termination - This Agreement will terminate:

- a) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within 30 days after receiving written notice thereof from the non-defaulting party;
- b) at the option of either party if the other party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof;
- c) at TAN' option upon the expiry of ninety (90) days following issuance by TAN of an invoice to the Customer for fees payable under this Agreement and such invoice remaining unpaid, provided that TAN has prior to terminating under this provision provided the Customer with at least ten (10) days' prior written notice of such non-payment, which minimum 10-day period may expire before, simultaneously with, or after the sixty day period (Customer shall indemnify and reimburse TAN for any attorneys fees incurred by TAN in connection with collection of moneys from Customer due to it nonpayment); or
- d) at either party's option if the other party assigns or attempts to assign this Agreement other than as expressly permitted by this Agreement; provided that these rights of termination will be in addition to all other rights and remedies available to the parties for any breach or default hereunder.

8.2. Suspension of Obligations - If either party should default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its obligations under this Agreement, without liability, until the other party's default is remedied, but this Section will not permit the Customer to suspend its obligation to make payments owing in respect of Support and other Software Services.

9. GENERAL

9.1. Complete Agreement; Amendments – This Agreement, as modified and affected by TAN's standard Software license fees and the terms of any agreement between TAN and the Customer relating to licensing of Software (as opposed to the mere provision of Software, to which this Agreement relates in respect of Releases and Versions), is the complete and exclusive statement of the Agreement between the parties with respect to the subject matter contained herein and supersedes and merges all prior representations, proposals, understandings and all other agreements, oral or written, express or implied, between the parties relating to the matters contained herein. This Agreement may not be modified or altered except by written instrument duly executed by both parties, except that TAN may fill future purchase or other orders for further goods or services available under this Agreement, and if TAN does so the provisions of this Agreement will contain the only commercial terms applicable to such transaction despite such purchase or other order stating otherwise.

9.2. Force Majeure - Dates or times by which either party is required to perform under this Agreement excepting the payment of any fees or charges due hereunder for services already performed and accepted by the other party, will be postponed automatically to the extent that any party is prevented from meeting them by Force Majeure as defined in and in accord with Section 55 of the Master City Software and Professional Services Agreement.

9.3. Notices - All notices and requests in connection with this Agreement will be given to the respective parties in writing and will be deemed given as of the first business day of the notified party following the day the notice is faxed or sent via overnight courier, providing a hard copy acknowledgment of such successful faxed notice transmission or evidence of such couriering, as applicable, is retained. Notice may also be deposited in the Canadian mails (or if the Customer is resident outside Canada and is rendering the

notice, in the mails of that country), postage pre-paid, certified or registered, return receipt requested, and addressed to the parties as indicated on the face of this Agreement and receipt of any such notice will be deemed to be effective as of the third business day following such deposit.

9.4. Governing Law - This Agreement and performance hereunder will be governed by the laws applicable in the jurisdiction where the Software is installed, excepting in the case of Louisiana when the laws of California will apply, or in the case of Quebec when the laws of Ontario, Canada will apply.

9.5. Non-Assignability - This Agreement is not assignable by the Customer, and any assignment, purported assignment or attempt to assign by the

Customer will be a material breach of this Agreement and will further be void. TAN may assign its obligations under this Agreement to TAN's system integrators or resellers or upon a merger or substantial sale of TAN's assets.

9.6. Survival - Sections 6 and 9 will survive termination and expiration of this Agreement.

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

EXHIBIT 4---Schedule of Fees and Expenses

1. This is a fixed price engagement and the total fee, which the City will pay for the Service, is \$197,989.
2. The schedule of Payments is as follows:
 - a. 10% (\$19,798.90) of the "Fee" at the completion of PHASE A
 - b. 15% (\$29,698.35) of the "Fee" at the completion of PHASE B
 - c. 20% (\$39,597.80) of the "Fee" at the completion of PHASE C
 - d. 25% (49,497.25) of the "Fee" at the completion of PHASE D
 - e. 15% (\$29,698.35) of the "Fee" at the completion of PHASE E
 - f. 5% (\$9,899.45) of the "Fee" at the completion of PHASE F
 - g. 10% (\$19,798.90) of the "Fee" at the completion of PHASE G

PENALTIES & REMEDIES:

Active warrants that if Hardware purchased from, configured and installed by Active as defined in *Exhibit 6* fails to perform according to the provisions of this Exhibit 6, that Active shall to the best of Active's ability make necessary hardware and software adjustments at no cost to the City to meet contracted performance levels.

EXHIBIT 5---Delivery Schedule

Active Network shall follow a phased deployment methodology to complete all defined phases of the project accurately and expeditiously, per the forthcoming project schedule. The City shall review all completed project phases to determine that the City's stated requirements have been fully met at which time the City will execute its Signoff Process to document completed phases.

**EXHIBIT 6---Equipment Specifications / Active 3rd Party Hardware Product
Agreement (Schedule D)**

See attached document

Third Party Product Purchase Agreement (Schedule D)

This document (the "**Agreement**"), consisting of:

- a. the cover pages (referred to collectively as the "**Cover Page**" if and only if executed as the cover page to the complete Agreement, and otherwise subject to the Terms and Conditions),
- b. the attached Terms and Conditions of TAN Third Party Product Purchase Agreement ("**Terms and Conditions**"), and
- c. any additional purchase order documentation delivered to TAN by the Customer constitutes the entire agreement between the undersigned customer ("**Customer**") and The Active Network, Inc. ("**TAN**") whereby, and TAN and the Customer hereby agree that, TAN will provide to the Customer the Third Party Products described in this Agreement, for prices as described in the Third Party Products Table below as modified pursuant to the Terms and Conditions. Any apparent contradiction among this Cover Page, the Terms and Conditions and any additional purchase order documentation delivered to TAN by the Customer is to be resolved by giving priority to the Terms and Conditions, followed by the additional purchase order documentation, and then the Cover Page.

Third Party Products Table: Third Party Products Description, Volumes and Prices

Product	Units	Unit Price	Total Cost
MagTek Credit Card Reader - USB, Tracks 1, 2 & 3	15	\$71	\$1,065
APG Series 4000 Cash Drawer, Black, Printer Interface	15	\$200	\$3,000
Epson 6000ii Thermal Printer	15	\$853	\$12,795
3 1/8 Thermal Paper, 50 rolls/case	4	\$81	\$324
IBM External USB CD ROM	1	\$335	\$335
IBM SurePOS563/15inch/keyboard, printer, display included*	1	\$4,300	\$4,300
Total Cost:			\$21,819

Shipping Details

If this page is being provided by the Customer as part of purchase order documentation as described in section 2.2 of the Terms and Conditions, the desired date of receipt of the shipment of Third Party Products referred to herein is:

_____.

{The remainder of this page is intentionally BLANK}

The parties hereto each acknowledge that they have read, understand and agree to be bound by this Agreement, or if this page is delivered by the Customer as purchase order documentation pursuant to section 2.2 of the Terms and Conditions, by the terms of this page as modified by the Agreement.

{The remainder of this page is intentionally BLANK}

1. INTERPRETATION

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

- a) **"Agreement"** means this The Active Network Inc. Third Party Product Purchase Agreement.
- b) **"TAN"** means The Active Network Inc.
- c) **"Customer"** means the legal entity other than TAN entering this Agreement.
- d) **"Related Documentation"** means any end user specifications, manuals, instructions, and other materials, and any copies of any of the foregoing, in any medium, related to the Third Party Products and supplied by TAN to the Customer with the Third Party Products.
- e) **"Third Party Products"** means those hardware, firmware and/or software products, provided to TAN by third parties, listed on the Cover Page, together with all user manuals and other documents accompanying the delivery of the Third Party Products, provided that the Third Party Products shall not include software developed by TAN.
- f) **"Third Party Products Table"** means the table on the Cover Page.
- g) **"Warranty Period"** means, in relation to any particular Third Party Products, the 90 days immediately following delivery of that Third Party Product to the Customer and set up for those Third Party Products outlined in the table of this agreement.

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

2. PURCHASE AND SALE; SECURITY; DELIVERY

2.1. Purchase Commitment and Price - TAN hereby agrees to sell to Customer, and Customer hereby agrees to purchase from TAN, the Third Party Products listed in the Third Party Products Table in the volumes and at the prices described therein, subject to these Terms and Conditions.

2.2. Delivery - TAN will ship all or any part of the Third Party Products to the Customer as soon as reasonably possible (or, if the below-described purchase order documentation does not seek immediate shipping, at the time TAN considers reasonable in order to meet the desired delivery date described) after receipt by TAN, and acceptance of the terms thereof by TAN, of a purchase order from the Customer specifying the particular Third Party Products sought, the number of such Third Party Products sought, the price payable therefore, and the desired date and location of delivery. Any such purchase order must, at a minimum, include a page, in the form of the Cover Page, modified to indicate the information described above relating to the particular shipment, executed by the Customer. In any case, all shipments are F.O.B. Shipping Point.

2.3. Changes by Customer to Delivery Schedule - Following delivery by the Customer of any purchase order documentation described in section 2.2, no changes by the Customer to the shipment schedule described therein will be permitted unless TAN is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

2.4. Acceptance of Purchase Orders - Purchase orders delivered by the Customer to TAN pursuant to are not binding upon TAN until accepted by TAN in writing. In any case, despite any indication to the contrary contained in any such purchase order documentation, no terms or conditions on purchase order documentation issued by the Customer, other than the information required pursuant to section 2.2, will be binding upon TAN, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that TAN may accept or otherwise approve such purchase orders. TAN reserves the right to refuse any such purchase order for any reason not contrary to this Agreement, including without limitation pricing differences as described in section 3.2.

2.5. Additional Third Party Products - The Customer may purchase Third Party Products in addition to those listed in the Third Party Products Table by issuing additional purchase order documentation as described herein, provided that the supply (or non-supply) of such additional Third Party Products will be subject to this Agreement as though such additional Third Party Products had been included in the Third Party Products Table on the date of execution of the Cover Page subject to:

2.6. the price for such additional Third Party Products being subject to agreement between the parties each in their own absolute discretion, and

- a) TAN having a right to discontinue delivery of such additional Third Party Products upon at least ninety (90) days written notice to the Customer without any liability to the Customer whatsoever for such discontinuance.

2.7. Charge On/Security Interest in Third Party Products - TAN shall have a charge against/ security interest in all Third Party Products, and all proceeds arising therefrom, until Customer has paid TAN in full for all amounts owing from Customer to TAN in connection with the particular shipment of which any Third Party Products form a part. Customer shall execute or cause to be executed all instruments and do or cause to be done all acts that TAN, acting reasonably, requires to effect, perfect, register or record such charges/security interests. In the event of default in payment or other breach by Customer, TAN shall, in addition to all other rights afforded by law, have all of the rights and remedies of a secured creditor under the Personal Property Security Act of the jurisdiction in which the Third Party Products is situate or Article Nine of the Uniform Commercial Code, as applicable.

3. CHARGES AND PAYMENTS

3.1. Prices - The pricing applicable to Third Party Products is as set out on the Cover Page, as modified under this Agreement.

3.2. Pricing Variability - The Customer acknowledges that:

- a) the prices described in the Third Party Products Table are applicable for six (6) months after the date of execution hereof, and
- b) such prices are based upon the Customer taking delivery of the full number of any particular Third Party Product listed in the Third Party Products Table in a single shipment and the Customer hereby agrees that after the expiry of such initial six-month period, or in case of the Customer seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed on the Third Party Products Table, the

actual prices may be higher. Prior to shipment of any Third Party Products which would be subject to pricing which differs from that described on in the Third Party Products Table, TAN will notify the Customer of any such different pricing and the Customer will accept such different pricing, as mutually agreed between the Customer and TAN, in writing.

3.3. Taxes and Other Charges – The Customer will pay all applicable sales, use, withholding and excise taxes, and any other assessments against the Customer in the nature of taxes, duties or charges however designated on the Third Party Products, on or resulting from this Agreement, exclusive of taxes based on the net income of TAN.

3.4. Currency – All prices shown or otherwise referred to in or in connection with this Agreement are in the currency of the country in which the Customer is located as described on the Cover Page.

3.5. Invoices - TAN will invoice the Customer for applicable amounts upon shipment of any Third Party Products. All invoices are payable within 30 days of receipt thereof, and such receipt is deemed to occur as though such invoices were notices sent pursuant to section 9.3 of the Terms and Conditions unless such invoices physically accompany the shipped Third Party Products in which case receipt is deemed to occur upon the date of actual delivery of such shipment to the Customer. Overdue invoices will bear interest at 1% per month, 12.68% per annum.

4. PROPRIETARY RIGHTS

4.1. Third Party Proprietary Rights and Indemnity by Customer - The Customer acknowledges that any Third Party Products supplied by TAN hereunder are supplied by TAN as a reseller thereof, and that the Third Party Products are subject to the intellectual property rights of the various third party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark and patent rights. The Customer will maintain in confidence and not use or disclose any and all confidential business or technical information connected with any Third Party Product except as specifically permitted by a party which has legal control of those rights, and the Customer will defend or settle any claim made or any suit or proceeding brought against TAN insofar as such claim, suit or proceeding is based on an allegation that any Third Party Product provided to the Customer hereunder has been installed, used or otherwise treated by the Customer or any client or customer of the Customer in violation of the proprietary rights of any third party, or on an allegation that the Customer or any client or customer of the Customer has disclosed or used any confidential business or technical information connected with any Third Party Product, provided that TAN will notify the Customer in writing promptly after the claim, suit or proceeding is known to TAN and will give the Customer information and such assistance as is reasonable in the circumstances. The Customer will have sole authority to defend or settle any such claim at the Customer's expense. The Customer will indemnify and hold TAN harmless from and against any and all such claims and will pay all damages and costs finally agreed to be paid in settlement of such claim, suit or proceeding.

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

5. SERVICES

5.1. Despite any other provision of this Agreement, TAN is not required to provide any services whatsoever under this Agreement. The Third Party Products are eligible for services to be provided by TAN under separate agreement with TAN, should the Customer wish to acquire such services.

6. WARRANTY

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

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

6.3. TAN will provide the first line of support for all hardware provided to the customer by TAN.

7. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

7.1. SPECIFIC EXCLUSION OF OTHER WARRANTIES - THE WARRANTY SET OUT IN SECTION 6.1, AND THE MANUFACTURERS' WARRANTIES, DOCUMENTATION FOR WHICH ACCOMPANIES THE THIRD PARTY PRODUCTS AS DESCRIBED IN 6.2 ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER APPLICABLE, EITHER EXPRESS OR IMPLIED BY LAW (IN CONTRACT OR TORT) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, DURABILITY, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE ABOVE, TAN DOES NOT WARRANT THAT ANY THIRD PARTY PRODUCT PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION THEREOF WILL BE FREE FROM INTERRUPTION OR ERRORS.

7.2. NO INDIRECT DAMAGES – WITHOUT LIMITING THE GENERALITY OF SECTIONS 7.1, 7.3 OR 7.4, IN NO EVENT WILL TAN BE LIABLE TO THE CUSTOMER OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT) (EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES) INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

7.3. LIMITS ON LIABILITY – DESPITE ANY OTHER PROVISION OF THIS AGREEMENT, IF, FOR ANY REASON, TAN BECOMES LIABLE TO THE CUSTOMER OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT), THEN TAN'S ENTIRE LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY WILL BE, AT TAN'S OPTION, TO REPAIR, PROVIDE AN EQUIVALENT REPLACEMENT

FOR OR REFUND THE PURCHASE PRICE OF ANY THIRD PARTY PRODUCT WHICH HAS CAUSED THE DAMAGES RESULTING IN SUCH LIABILITY OF TAN WHICH THIRD PARTY PRODUCT IS RETURNED, SHIPPING COSTS PREPAID, PROPERLY PACKAGED WITH THE DULY AUTHORIZED TAN RETURN PERMIT, TO TAN'S DESIGNATED OFFICE DURING THE THIRD PARTY WARRANTY PERIOD.

7.4. THIRD PARTY PRODUCTS MODIFICATION - ANY THIRD PARTY WARRANTY OBLIGATIONS OR ANY TAN WARRANTY OBLIGATIONS HEREUNDER WILL BE VOID IN THE EVENT CUSTOMER MODIFIES THE THIRD PARTY PRODUCT IN QUESTION OR USES ANY ATTACHMENT, FEATURE, OR DEVICE WHICH IS NOT SPECIFIED AS AN APPROVED ATTACHMENT IN THE RELATED DOCUMENTATION FOR THE THIRD PARTY PRODUCT WITHOUT FIRST OBTAINING TAN'S WRITTEN APPROVAL.

7.5. SEPARATE ENFORCEABILITY - SECTIONS 7.1 THROUGH 7.4 ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

8. TERMINATION

8.1. Termination - This Agreement will terminate:

- a) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within 30 days after receiving written notice thereof; and
- b) without limiting a), at the option of TAN if the Customer breaches section 3 of this Agreement, including without limitation by failure to pay any invoice within 30 days of receipt thereof provided that the right of termination will be in addition to all other rights and remedies available to the parties for breach or default by the other.

8.2. Suspension of Obligations - If either party should default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its obligations under this Agreement, without liability, until the other party's default is remedied, but this section will not permit the Customer to suspend its obligation to make payments owing in respect of Third Party Products already brought into stock by TAN on account of the Customer having provided TAN with purchase order documentation in relation thereto. In the event this Agreement is terminated by TAN due to a default by Customer, then any license granted to Customer with respect to any Third Party Product shall terminate if full payment for such license is not delivered to TAN within 30 days from the date of termination.

9. GENERAL

9.1. Complete Agreement - This Agreement including all additional purchase order documentation provided by the Customer to TAN and accepted by TAN according to this Agreement constitutes the complete and exclusive statement of the agreement between TAN and the Customer relating to the subject matter hereof, and supersedes all oral or written proposals, prior agreements and other prior communications between the parties, concerning that subject matter.

9.2. Force Majeure - Dates or times by which either party is required to perform under this Agreement, excepting the payment of any fees

or charges due hereunder for services or hardware already accepted by City, will be postponed automatically to the extent that any party is prevented from meeting them by Force Majeure as defined in and accord with Section 55 of the Master City Software and Professional Services Agreement.

9.3. Notices - All notices and requests in connection with this Agreement will be given to the respective parties in writing and will be deemed given as of the first business day of the notified party following the day the notice is faxed or sent via overnight courier, providing a hard copy acknowledgment of such successful faxed notice transmission or evidence of such courioring, as applicable, is retained. Notice may also be deposited in the US or Canadian mails (or if the Customer is resident outside US or Canada and is rendering the notice, in the mails of that country), postage pre-paid, certified or registered, return receipt requested, and addressed to the parties as indicated on the face of this Agreement and receipt of any such notice will be deemed to be effective as of the third business day following such deposit.

9.4. Governing Law - This Agreement and performance hereunder will be governed by the laws of the jurisdiction provided in the address of the Customer on the Cover Page excepting in the case of Louisiana when the laws of California will apply, or in the case of Quebec when the laws of Ontario will apply.

9.5. Non-Assignability - This Agreement is not assignable by the Customer. Any assignment, purported assignment or attempt to assign by the Customer will be a material breach of this Agreement and will be void.

9.6. Survival - Sections 4, 7 and 9 of this Agreement will survive termination and expiration of this Agreement.

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

EXHIBIT 7---Acceptance Test

See Statement of Work

EXHIBIT 8---Training

See attached document



TRAINING PLAN

Training and go live

- Conducted on site
- Involves consultants from Active, City finance, IT, system administrators and end users for affected departments in the City
- Administrators receive Payment Manager training fairly early in the implementation
- Users are divided in groups of 8-10
- Detailed training syllabuses will be sent 2 to 4 weeks in advance of the training
- Training is done by department to allow us to show real life examples for each group
- Training packages and effort are directly proportional to the number of users being trained
- Training duration can be shortened by adding multiple consultants to train simultaneously in the City's two facilities
- Training on average takes 2-3 hours per group. Each department needs to be split into 2 groups to accommodate keeping the location open. Supervisor training can be done in a single group since the processes should be the same for all supervisors. Note, it is recommended that an IT and Finance representative attend 1 of the end user training sessions
- Training will be staggered according to the Payment Manager rollout schedule determined during the project planning phase
- Deliverable: training and go live support
- Number of days: 10 days
- Timeframe: 10 days. Can be delivered at one time or staggered depending upon the implementation approach determined in the project planning phase

EXHIBIT 9---Maintenance and Support Agreement (Schedule C)

Maintenance and Support

Contractor will provide the following maintenance and support of the software installed under this Agreement.

Basic

Basic Annual Support and Maintenance includes the following:

Unlimited toll free telephone support between 6:00 am and 5:30 pm Pacific Time ("PT") Mon – Fri ("**Regular Support Hours**") and Unlimited dial-in access support (see Notes a, b and c below for qualification) for "system down" issues on 24 hour x 7 day per week basis ("**Extended Support Hours**") Limited report customization & query support (i.e. calls of 15 minutes duration or less) Access to TAN's secure Web site. Regular documentation and communications provided to the Customer New Releases and Versions as described in the Terms and Conditions

Level of Problem/Response Times

Definitions.

"Level 1 Problem" is A – System Down (CRITICAL)

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.

"Response Time for Level 1" - Within 12 hours

"Level 2 Problem" is B – Urgent (MAJOR)

Serious issues significantly impacting use of system but do not prevent core functions (such as processing registrations, memberships, rentals) from being fulfilled

"Response Time for Level 2" - Within 24 hours

Software Support and Maintenance Agreement (Schedule C)

This document (the "**Agreement**"), consisting of:

- a. the cover pages (collectively, "**Cover Page**");
- b. the attached table of supported Software ("**Software Table**");
- c. the attached description of levels of annual support and maintenance ("**Levels Description**");
- d. the attached Terms and Conditions of Active Support and Maintenance ("**Terms and Conditions**"); and
- e. the attached certificate of insurance ("**Certificate of Insurance**") constitutes the agreement between the undersigned customer ("**Customer**") and The Active Network, Ltd. ("**TAN**") whereby, and TAN and the Customer hereby agree that, the Customer will acquire, and TAN will provide, the software support and maintenance products and services described in this Agreement for the prices shown in the table below. Any apparent contradiction among this Cover Page, the Software Table, the Levels Description, and/or the Terms and Conditions is to be resolved by giving priority to the Terms and Conditions, followed by the Cover Page, Software Table and Levels Description in that order.

Product or Service Description	Cost
1. Support and Maintenance – Basic	\$23,750
2. Support and Maintenance – Premium	
RE: 1 Preferred Renewal Date (Optional) - _____ (mm, dd, yyyy)	
Total Cost	\$23,750

Payment Terms for Support and Maintenance

1. A Project Schedule will be established (see attached Active Project Schedule) through discussions between the Customer and TAN once this agreement has been signed. The Project Schedule will consist of standalone and separate phases. The Customer can, at any time, choose not to proceed with a subsequent phase. The Project Schedule will indicate the acceptance criteria for each phase. Unless indicated otherwise by the Customer, each phase is deemed to be complete unless TAN is notified by the customer within 15 calendar days after the Phase End Date, as specified in the Project Schedule. When deemed complete, the customer acknowledges that all project expectations have been met for the completed phase and there is no further recourse or liability for TAN.
2. The cost for the Support and Maintenance services is payable annually in advance and is due in its entirety for the completed Phase on the Support Start Date, unless the Customer has specified a Preferred Renewal Date in the appropriate space in the table above in which case only the cost of Support and Maintenance prorated from the Support Start Date to the Preferred Renewal Date is payable on the Support Start Date. Thereafter, the Support and Maintenance fee is payable in advance on every annual anniversary of the Support Start Date or, if there is a Preferred Renewal Date, every anniversary of the Preferred Renewal Date (the applicable anniversary being the "Support Renewal Date"). TAN will provide invoices to the Customer for all such amounts, such invoices due on the later of (a) the Support Start Date or applicable Support Renewal Date, as applicable, and (b) 30 days after receipt of the invoice. Overdue invoices shall bear interest at 1 % per month, 12.68% per annum.
3. The annual cost of Support and Maintenance hereunder is 25% of the license fee which would be applicable if the Software with respect to which Support and Maintenance are provided hereunder were licensed anew by the Customer at TAN's standard license rates as they exist on the effective date hereof or the Support Renewal Date, as applicable, provided that, excluding increases due to Support and Maintenance of additional Software from one contractual year to the next, any increase in costs hereunder from one contractual year to the next may not exceed five (5) percent of the Support and Maintenance fees payable for the year just ending upon that Support Renewal Date.
4. The Customer will pay all applicable sales, use, withholding and excise taxes, and any other assessments in the nature of taxes, duties or charges however designated on the services rendered under this Agreement, exclusive of taxes based on the net income of TAN.
5. All prices are in the currency of the country in which the Software is installed.

[The remainder of this page is intentionally BLANK]

The parties hereto each hereby acknowledge that they have read, understand and agree to be bound by this Agreement.

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Software Table: Licensed Active Software Modules

Module (included modules in parentheses)		Initial Software Licensing Cost	No. of Copies of Module Supported/ Maintained	Total Module Support / Maintenance Cost
WORKSTATION-BASED, CORE MODULES				
i.	POS Plus		Unlimited	
ii.	Report Inquiry		Unlimited	
SERVER-BASED, ADD ON MODULES				
iii.	Payment Server (Credit , Debit and Electronic Funds Transfer)		Unlimited	
iv.	Finance-link - (Financial Systems Integration) (Oracle GL Interface)		1 Included	
v.	Bank-link		Included	
vi.	Department Connector (<i>Tax, Parking Tickets, Oracle AR, Permit and Code Enforcement</i>)		4 Included	
SYSTEM MODULES-COSTS (included in costs of other licensed Modules)				
vii..	System Utilities as defined in sect. 1.1.g) of Terms and Conditions	◆	◆	◆
CUMULATIVE WORKSTATION-BASED MODULES				
viii..	Customized Reports		Included	
		Total Cost		\$23,750

As per the Cover Page, the amounts shown in the "Initial Software Licensing Cost" and "Total Module Support/ Maintenance Cost" columns of the Software Table are applicable only upon the date of entry into this Agreement, and are subject to change thereafter in accordance with this Agreement's terms.

Description of Levels of Annual Support and Maintenance

1. Basic

Basic Annual Support and Maintenance includes the following:

- Unlimited toll free telephone support between 6:00 am and 5:30 pm Pacific Time ("PT") Mon – Fri ("**Regular Support Hours**") and
- Unlimited dial-in access support (see Notes a, b and c below for qualification) for "system down" issues on 24 hour x 7 day per week basis ("**Extended Support Hours**")
- Limited report customization & query support (i.e. calls of 15 minutes duration or less)
- Access to TAN's secure Web site
- Regular documentation and communications provided to the Customer
- New Releases and Versions as described in the Terms and Conditions

Notes:

- a) Qualifying sites must have direct dial-in and Internet e-mail capability consistent with Customer's security policies for Extended Support Hours.
- b) Support calls placed during Extended Support Hours must be placed through an authorized contact person.
- c) Under Basic Annual Support and Maintenance, Support during Extended Support Hours is available only for "system down" problems 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.
- d) All other calls – including all calls related to upgrades – placed by the Customer within Extended Support Hours will be billed to the Customer under a separate agreement.

2. Premium

Premium Support provides for the same services as Basic Annual Support and Maintenance, and additionally provides that, subject to Notes a) and b) above, all Support available during Basic Support Hours is also available during Extended Support Hours.

3. Holiday Hours

United States Office Holiday Hours

The U.S. TAN Support Desk will be closed: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day, Day after Christmas, Friday before New Year's Day.

TAN Support Desk will be open with reduced staff on the following dates: Good Friday; 3rd Monday in May; July 1st; 1st Monday in August; 2nd Monday in Oct; November 11; and December 26.

1. DEFINITIONS

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

- a) **"Initial Installation"** means the date upon which any of the Software has first been installed on any server computer owned or controlled by the Customer.
- b) **"Maintenance"** means the provision of error investigation and repair services and of new Versions and Releases, as described in Section 3.1.
- c) **"Module"** means a single type of Software referred to in any particular line item of the Software Table, such that each such line item refers to one, and only one, Module, regardless of the number of copies referred to in such line item, except in line item xxxv to which h) applies.
- d) **"Phase"** means the software, services, third party products, maintenance, deliverables, and acceptance criteria to be implemented between the Phase Start Date and the Phase End Date including the associated costs.
- e) **"Phase Start Date"** means the date for the start of each Phase as indicated on the Project Schedule
- f) **"Phase End Date"** means the date for the end of each Phase as indicated on the Project Schedule
- g) **"Project Schedule"** means the document detailing the standalone and separate implementation phases established through discussions between the Customer and TAN once this agreement has been signed.
- h) **"Release"** means any release, update, patch, set of revisions, or bug/permanent fix or temporary bypass solution released by TAN to its customers generally during the term of this Agreement, which provides enhancements and/or error corrections to the then-current Version or Release, and where a new Version has been released and no new Release has been released since the release of that Version, that Version will also constitute a Release for the purpose of determining whether Support or Maintenance is available with respect to that Version. New Releases will be denoted by an increase to the version number to the right of the decimal point such as from Release 1.1 to Release 1.2.
- i) **"Software"** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and are identified in the Software Table as being subject to Support and Maintenance in connection with this Agreement, and any Versions or Releases thereof provided by TAN, in executable form.
- j) **"Support"** means the ongoing telephone and dial-in support and problem resolution to assist the Customer in the use of the Software. It may include but is not limited to response to inquiries regarding the operation, installation, administration and general technical assistance requested by the Customer. Support also includes, provided that such assistance can be provided in fifteen (15) minutes or less:
 - i) Limited assistance with report customization and the development of custom queries, and
 - ii) Assistance to isolate the source of problems and/or to troubleshoot difficulties resulting from sources other than TAN products or services, such as:
 - General network support - for example network access, printing, backup & restoration;
 - PC hardware trouble shooting;
 - PC setup, configuration and optimization;
 - Network operating system configuration and functionality;

- Basic Microsoft Corporation "Windows" functionality (e.g. using File Manager or Explorer);
- Modem configuration & setup;
- Data corruption due to lack of disk space; and
- Loss of supervisor or other password

but expressly excludes any services or assistance relating to database issues, unless acquired under an addendum to this Agreement.

k) **"Support Start Date"** means City acceptance and the day thirty (30) days after the Project End Date

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

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

n) **"Project End Date"** means the date the project officially ends as indicated on the Project Schedule

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

2. SUPPORT SERVICES

2.1. TAN will provide to the Customer Support for:

- a) the Release of the Software that is ~~from time to time~~ the most recently-released, generally available Release, and
- b) the twenty-four (24) months immediately following general availability of the Release described in a), for the Release which immediately precedes that Release. Support services will not be provided for any non-current Version or Release after twenty-four (24) months from the date of availability of the newer Version or Release.

3. MAINTENANCE SERVICES

3.1. With respect to any Release of the Software supported at the time, upon receipt of notification from the Customer's authorized contact personnel of an apparent error in the Software, TAN will use commercially reasonable efforts to promptly investigate the issue and determine whether or not there is in fact an error and to advise the Customer that either an error does not exist, or confirm that one does exist and what, if any, work-around exists. Errors will be deemed to be any design or programming error in the Software attributable to TAN which prevents the Software from substantially complying with the functionality as set out in the user documentation (on-line or hard-copy) delivered with the Software and which materially affects the use, function or performance of the Software. When errors are confirmed, TAN will use commercially reasonable efforts to correct such errors and provide Customer with a correction or service pack for the Software as soon as it is practical in TAN's sole discretion.

3.2. TAN will provide to the Customer, either physical form by mail or courier or in electronic form via the Internet, new Releases and Versions (and appropriate documentation) as such Releases or Versions (and documentation) become available, without additional charge.

4. ASSIGNMENT OF PRIORITIES FOR SUPPORT ISSUES

4.1. New support incidents are assigned one of the following four priority levels, each with its respective standard completion target:

Call Level	Priority	Description	Standard Completion	/
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		Resolution Target
A – System Down	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.	Within 12 hours.
B – Urgent	Serious issues significantly impacting use of system but do not prevent core functions (such as processing registrations, memberships, rentals) from being fulfilled.	Within 24 hours.
C – Normal	All other issues, except those classified as D (Low).	Within 36 hours.
D – Low	Issues that are not time-sensitive or may be undertaken as customer service initiatives outside the scope of this Agreement.	None

Customer will request a ranking of the call priority when initially reporting the incident. Should there be any disagreement over the priority assigned to a particular incident, or any other aspect of its handling, by TAN support staff, Customers are encouraged to first speak directly to the support representative dealing with the issue in order to arrive at an acceptable solution. In cases where escalation is desired or necessary, please contact the Supervisor, Support Services with any concerns you may have (phone 1-800-663-4991).

5. EXCLUDED SUPPLIES AND SERVICES

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

- Services which are required to remedy problems that stem from changes to or defects in system configuration upon which the Software was initially installed;
- Services which are required to remedy problems which do not stem from any defect in Software;
- Services which are required to remedy problems caused by lack of training of Customer's personnel improper treatment or use of the Software;
- Full report customization service;
- Any and all hardware support, maintenance or troubleshooting issues, except as described in section 1.1.j)ii), regardless of the source of such hardware.

6. FEES AND PAYMENT

6.1. In consideration of the Support and Maintenance provided hereunder, Customer agrees to pay TAN the fees described on the Cover Page, as modified explicitly pursuant to this Agreement. In the event the Customer requires Support and Maintenance for additional Software, the Customer agrees to pay TAN the additional Support and Maintenance fees applicable based upon the fees then in effect, prorated from the date of agreement to acquire such services to the Support Renewal Date. Payment, other than amounts, which may be adjusted under these Terms and Conditions, will be in accordance with the payment terms set out on the Cover Page.

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

6.3. If at any time after the Customer has initially licensed any of the Software from TAN, the Customer's right to receive Support and

Maintenance, or comparable services, from TAN under this Agreement or a comparable agreement has lapsed for any reason whatsoever, voluntarily or otherwise, and the Customer wishes to receive Support and Maintenance from TAN, the Customer will pay to TAN, prior to re-instatement of Support and Maintenance services:

- all fees that would have been payable hereunder had this Agreement been in force during the time during which Support and Maintenance rights had so lapsed, and
- an additional fee of forty (40) per cent of the license fees which would be payable if the Software to be subject to such Support and Maintenance were licensed anew at TAN's then-standard license fees on the date of re-instatement of Support and Maintenance rights.

7. ACCESS TO SYSTEM AND OTHER CUSTOMER OBLIGATIONS

7.1. Customer will provide, at no cost to TAN:

- sufficient space to allow TAN personnel on the Customer's site to perform the on-site Services acquired hereunder;
 - office supplies and services such as photocopying, facsimile and telephone access;
 - without limiting a), education and training facilities adequate to the training services acquired hereunder, including classroom space, networked PCs (minimum 1 PC for every two training participants), networked printing capability, computer display/projection facilities, and flip chart or whiteboard, plus markers and other ancillary supplies;
 - subject to the security requirements of the Customer, 24 hour access to the Customer's system via either an always-available telephone circuit or an always available internet connection to enable TAN or its designated representative to perform any of the obligations placed upon TAN by this Agreement.; and
 - subject to the security requirements of the Customer, remote dial up/internet access methods approved by TAN to allow TAN to remotely diagnose and correct errors in the Software and provide other Services.
- 7.2. Without limiting the Customer's obligations, Customer will:
- use its best efforts to upgrade to any new Release or Version of the Software as soon as possible after becoming aware of its availability;
 - ensure that at all times at least one current staff person of the Customer, who is the Customer contact person named on the Cover Page and per c), has been fully trained on the Software;
 - designate by written notice a single site and single person as the point of contact for telephone or other contact, which site and/or person the Customer may change upon 14 days prior notice; and
 - provide particulars of the Customer's system configuration in sufficient detail to allow TAN to effectively provide Services hereunder.

8. REPRESENTATIONS AND WARRANTIES

8.1. Insurance – TAN represents and warrants that it does and will at all times during the term of this Agreement maintain general liability insurance as described in the Certificate of Insurance.

8.2. Limited Warranty of Services - TAN warrants that all services provided hereunder will be performed in full conformity with the Agreement, with the skill and care which would be exercised by those who perform similar services at the time the services are performed, and in accordance with accepted industry practice. In the event of a breach of the express warranties contained herein and/or in the event of non-performance and/or failure of TAN to perform the services in accordance with the Agreement, TAN will, at no cost to Customer, re-perform or perform the services so that the services conform to the warranties.

9. EXCLUSION OF OTHER WARRANTIES AND LIMITATION OF LIABILITY

9.1. SPECIFIC EXCLUSION OF OTHER WARRANTIES - THE WARRANTIES SET OUT IN SECTION 8.1 AND 8.2 ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OR ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED BY LAW (in contract or tort) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY.

9.2. NO INDIRECT DAMAGES - IN NO EVENT WILL TAN BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (in contract or tort) IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

9.3. LIMITS ON LIABILITY - IF FOR ANY REASON, TAN BECOMES LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (in contract or tort), THEN:

- a) THE AGGREGATE LIABILITY OF TAN FOR ALL DAMAGES, INJURY, AND LIABILITY INCURRED BY CUSTOMER AND ALL OTHER PARTIES IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE CHARGES PAID TO TAN FOR THE SERVICES WHICH GAVE RISE TO THE CLAIM FOR DAMAGES; AND
- b) CUSTOMER MAY NOT BRING OR INITIATE ANY ACT OR PROCEEDING AGAINST TAN ARISING OUT OF THIS AGREEMENT OR RELATING TO RELEASES OR SERVICES MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION HAS ARISEN.

9.4. SEPARATE ENFORCEABILITY - SECTIONS 9.1, 9.2 AND 9.3 ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

10. TERM

10.1. Term - The term of this Agreement will commence on the Support Start Date and, subject to termination as provided herein, will continue until the following Support Renewal Date, after which it will be automatically renewed for subsequent one year terms on the same terms and conditions as set out herein (with the exception of the fees payable which may be revised by TAN in accordance with this Agreement) upon TAN rendering an invoice therefor unless terminated by the Customer at least ninety (90) days prior to the Support Renewal Date upcoming from time to time.

11. TERMINATION

11.1. Termination - This Agreement will terminate:

- a) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within 30 days after receiving written notice thereof from the non-defaulting party;
- b) at the option of either party if the other party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof;
- c) at TAN's option upon the expiry of sixty days following issuance by TAN of an invoice to the Customer for fees payable under this Agreement and such invoice remaining unpaid, provided that TAN has prior to terminating under this provision provided the Customer with at least ten days' written notice of such non-payment, which minimum 10-day period may expire before, simultaneously with, or after the 60 day period; or
- d) at either party's option if the other party assigns or attempts to assign this Agreement other than as expressly permitted by this Agreement; provided

that these rights of termination will be in addition to all other rights and remedies available to the parties for any breach or default hereunder.

11.2. Suspension of Obligations - If either party should default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its obligations under this Agreement, without liability, until the other party's default is remedied, but this Section will not permit the Customer to suspend its obligation to make payments owing in respect of Support and other Software Services.

12. GENERAL

12.1. Complete Agreement; Modification - This Agreement, as modified and affected by TAN's standard Software license fees and the terms of any agreement between TAN and the Customer relating to licensing of Software (as opposed to the mere provision of Software, to which this Agreement relates in respect of Releases and Versions), is the complete and exclusive statement of the Agreement between the parties with respect to the subject matter contained herein and supersedes and merges all prior representations, proposals, understandings and all other agreements, oral or written, express or implied, between the parties relating to the matters contained herein. This Agreement may not be modified or altered except by written instrument duly executed by both parties except that TAN may fill future purchase or other orders for further goods or services available under this Agreement, and if TAN does so the provisions of this Agreement will contain the only commercial terms applicable to such transaction despite such order stating otherwise.

12.2. Force Majeure - Dates or times by which either party is required to perform under this Agreement, excepting the payment of any fees or charges due hereunder for services already performed and accepted by the other party, will be postponed automatically to the extent that any party is prevented from meeting them by Force Majeure as defined in and in accord with Section 55 of the Master City Software and Professional Services Agreement.

12.3. Notices - All notices and requests in connection with this Agreement will be given to the respective parties in writing and will be deemed given as of the first business day of the notified party following the day the notice is faxed or sent via overnight courier, providing a hard copy acknowledgment of such successful faxed notice transmission or evidence of such courtering, as applicable, is retained. Notice may also be deposited in the Canadian mails (or if the Customer is resident outside Canada and is rendering the notice, in the mails of that country), postage pre-paid, certified or registered, return receipt requested, and addressed to the parties as indicated on the face of this Agreement and receipt of any such notice will be deemed to be effective as of the third business day following such deposit.

12.4. Governing Law - This Agreement and performance hereunder will be governed by the laws applicable in the jurisdiction where the Software is situated, excepting in the case of Louisiana when the laws of California will apply, or in the case of Quebec when the laws of Ontario, Canada will apply.

12.5. Non-Assignability - This Agreement is not assignable by the Customer, and any assignment, purported assignment or attempt to assign by the Customer will be a material breach of this Agreement and will further be void. TAN may assign its Support or Maintenance obligations under this Agreement to TAN's system integrators or resellers or pursuant to a merger or sale of substantially all of TAN's assets.

12.6. Survival - Sections 6.3, 9 and 12 will survive termination and expiration of this Agreement.

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

EXHIBIT 10---Iron Mountain Escrow Agreement

See attached document

EXHIBIT 11**Contractor's and City's Contract/Project Managers****Account Managers:**

CITY of Oakland	CONTRACTOR
Name: Ken Gordon	Name: Adam Tesan
Title: Program Manager	Title: Business Development Manager
Address: 150 Frank Ogawa Plaza Oakland, California 94612	Address: Suite 160, 6400 Roberts St. Burnaby, BC, V5G 4C9
Tel: 510 238-2023	Tel: 1.800.661.1196
Fax: 510 238-2281	Fax: 604.432.9708
e-mail: kgordon@oaklandnet.com	e-mail: adam.tesan@active.com

Project Managers

CITY of Oakland	CONTRACTOR: Active Network
Name: Andrew Hopkins	Name: : Gord Boisvert
Title: Project Manager	Title: Project Manager
Address: 150 Frank Ogawa Plaza Oakland, California 94612	Address: : Suite 160, 6400 Roberts St, Burnaby, BC, Canada V5G 4C9
Tel 510 238-6763	Tel: 1.800.661.1196
Fax: 510 238-2281	Fax: 604.432.9708
e-mail: ahopkins@oaklandnet.com	e-mail: gord.boisvert@active.com

Project Manager:

CONTRACTOR: Active Network
Name Gord Boisvert
Title: Project Manager
Address Suite 160, 6400 Roberts St, Burnaby, BC, Canada V5G 4C9
Tel: 1.800.661.1196
Fax: 604.432.9708
e-mail: gord.boisvert@active.com
Beeper:

Key Employees :

Name	Title
Payam Kavousian	Integration Analyst
Tony Whelan or Jas Gulati	Lead Consultant

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The Active Network Inc

December 11, 2006

Mr. Andrew Hopkins
City of Oakland
150 Frank Ogawa Plaza
Suite 7216
Oakland, CA
94612

Dear Mr. Hopkins,

This letter is to confirm that The Active Network Inc. (Active) will be entering into a Three-Party Escrow Service Agreement with the City of Oakland (City) as part of the "Software License and Professional Service Agreement" for the Enterprise Point of Sale System.

Active uses a third party, Iron Mountain, to manage the three-party (City, Active and Iron Mountain) Escrow Service Agreement.

The process involves an Iron Mountain representative contacting the City directly to gather the City specific information required for the Escrow and completing the agreement on behalf of Active and the City. Iron Mountain, Active and the City will then sign off on the agreement. The Escrow deposit account number is assigned by Iron Mountain.

David Strouse, or one of his representatives, from Iron Mountain will be contacting the City directly this week (w/o December 11th, 2006) to facilitate the completion of the Iron Mountain Escrow Agreement between Active, the City and Iron Mountain. All parties will sign off on the agreement at this time.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Nienhuis".

Michael Nienhuis
VP, Operations
The Active Network Inc.



THREE-PARTY ESCROW SERVICE AGREEMENT

Deposit Account Number: _____

1. Introduction.

This Three Party Escrow Service Agreement (the "**Agreement**") is entered into by and between The Active Network, Inc., located at 10182 Telesis Court, San Diego, CA 92121 (the "**Depositor**") and Depositor's affiliates and subsidiaries, and by Oakland, California, located at #1 Frank Ogawa Plaza, Oakland, CA 94612 (the "**Beneficiary**") and by Iron Mountain Intellectual Property Management, Inc. ("**Iron Mountain**") on this 11 day of December, 2006 (the "**Effective Date**"). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

The use of the term "**Services**" in this Agreement shall refer to Iron Mountain Services that facilitate the creation, management, and enforcement of software and/or other technology escrow accounts as described in Exhibit A attached hereto. A Party shall request Services under this Agreement (i) by submitting a work request associated for certain Iron Mountain Escrow Services via the online portal maintained at the Website located at www.ironmountainconnect.com or any other Websites or Web pages owned or controlled by Iron Mountain that are linked to that Website (collectively the "**Iron Mountain Website**"), or (ii) by submitting a written work request attached hereto as Exhibit G-1 (each, individually, a "**Work Request**"). The Parties desire this Agreement to be supplementary to the License Agreement and pursuant to Chapter 11 United States [Bankruptcy] Code, Section 365(n).

2. Depositor Responsibilities.

- (a) Depositor shall provide all information designated as required to fulfill a Work Request ("**Required Information**") and may also provide other information ("**Optional Information**") at their discretion to assist Iron Mountain in the fulfillment of requested Services.
- (b) Depositor must authorize and designate one or more persons whose action(s) will legally bind the Depositor ("**Authorized Person(s)**") who shall be identified in the Authorized Person(s)/Notices Table of this Agreement) and who may manage the Iron Mountain escrow account through the Iron Mountain Website or via written Work Request. Authorized Person(s) will maintain the accuracy of their name and contact information provided to Iron Mountain during the Term of this Agreement (the "**Depositor Information**"). Depositor will inform Iron Mountain of any change in Authorized person as it change from time to time.
- (c) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement ("**Deposit Material**") to Iron Mountain within ninety (90) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain via the Iron Mountain Website or using the form attached hereto as Exhibit G-2.
- (d) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement free of any liens or encumbrances as of the date of their deposit. Any Deposit Material liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement;
- (e) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted the necessary decryption tools and keys to read such material are deposited contemporaneously;
- (f) Depositor agrees to update, enhance or otherwise modify such Deposit Material promptly upon its release of a new version of the Deposit Material to its other licensees such that the Deposit Material is maintained as corresponding to the newest released version of the Deposit Material.

3. Beneficiary Responsibilities.

- (a) Beneficiary shall provide all information designated as required to fulfill any Beneficiary Work Request ("**Required Information**") and may also provide other information ("**Optional Information**") at their discretion to assist Iron Mountain in the fulfillment of requested Services.
- (b) Beneficiary must authorize and designate one or more persons whose action(s) will legally bind the Beneficiary ("**Authorized Person(s)**") who shall be identified in the Authorized Person(s)/Notices Table of this Agreement) who shall manage the Iron Mountain escrow account through the Iron Mountain Website or via written Work Request.

Exhibit 10

Authorized Person(s) will maintain the accuracy of their name and contact information provided to Iron Mountain during the Term of this Agreement (the "**Beneficiary Information**").

- (c) Beneficiary acknowledges, that in the absence of a Work Request for verification Services which are not permitted under this Agreement, that, as between Beneficiary and Iron Mountain, Beneficiary assumes all responsibility for the completeness and/or functionality of all Deposit Material.

4. Iron Mountain Responsibilities.

- (a) Iron Mountain agrees to use best efforts to provide the Services requested by authorized Depositor and Beneficiary representatives in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all Required Information at any time upon notification to the Party originating the Work Request.
- (b) Iron Mountain will conduct a deposit inspection upon receipt of any Deposit Material and associated Exhibit G-2. If Iron Mountain determines, in its reasonable discretion, that the Deposit Material does not match the description provided by Depositor represented in Exhibit G-2 attached hereto, Iron Mountain will provide Depositor with notice by electronic mail, telephone, or regular mail of such discrepancies. Iron Mountain will work directly with the Depositor to resolve any such discrepancies prior to accepting Deposit Material. Iron Mountain will provide Depositor with notice from time to time during the first ninety (90) days from the Effective date as a reminder that submission of initial Deposit Material is required. Iron Mountain may also send notices every ninety (90) days thereafter to Depositor and/or Beneficiary related to Deposit Material activity if such Services are requested in a Work Request.
- (c) Iron Mountain will provide notice by electronic mail, telephone, or regular mail to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("SOW"). Iron Mountain and the requesting Party will mutually agree in writing to a SOW on the following terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of Verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the Paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein.
- (e) Iron Mountain will hold and protect all Deposit Material in physical and/or electronic vaults that are either owned or under the direct control of Iron Mountain.
- (f) Iron Mountain will permit the replacement and/or removal of previously submitted Deposit Material upon Work Request that may be subject to the written joint instructions of the Depositor and Beneficiary.
- (g) Iron Mountain will strictly follow the procedures set forth in Exhibit G-3 attached hereto to process any Beneficiary Work Request to release Deposit Material.

5. Title to Deposit Material.

The Deposit Material provided to Iron Mountain by Depositor pursuant to this Agreement shall remain the exclusive property of Depositor. The Deposit Material may be made available to Beneficiary only in accordance with the provisions of this Agreement. If the Deposit Material is delivered to Beneficiary pursuant to this Agreement, it shall remain the exclusive property of Depositor. Iron Mountain does not have and will not have any interest in the Deposit Material or any part thereof held hereunder in that Iron Mountain is serving only as escrow holder and has only possession of the Deposit Material. Depositor transfers to Iron Mountain the title to the media upon which the proprietary technology and materials are stored. However, the transfer does not include ownership of the proprietary technology and materials contained on the media such as copyright, trade secret, patent or other intellectual property rights. Depositor grants to Iron Mountain the right to transfer the Deposit Material to Beneficiary in accordance with the provisions of this Agreement. This provision shall survive termination of this Agreement.

6. Payment.

The Paying Party shall pay to Iron Mountain all fees as set forth in the Work Request form attached hereto as Exhibit G-1 ("**Service Fees**"). Except as set forth below, all Service Fees are due to Iron Mountain within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the Term of this Agreement. The Paying Party is liable for any taxes related to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of 1.0% per month (12% per annum) or the maximum rate permitted by law, whichever is less. Delinquent accounts may be referred to

Exhibit 10

a collection agency at the sole discretion of Iron Mountain. Notwithstanding, the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement. All Service Fees will not be subject to offset except as specifically provided hereunder.

7. Term and Termination.

- (a) The initial "Term" of this Agreement is for a period of one (1) year from the Effective Date and will automatically renew for additional one (1) year Terms and continue in full force and effect until one of the following events occur:
 - (i) Depositor and Beneficiary provide joint written instructions of their intent to cancel this Agreement within sixty (60) days to Iron Mountain; (ii) Beneficiary provides a sixty (60) day written notice regarding cancellation of this Agreement to both Depositor and Iron Mountain; or (iii) Iron Mountain provides a sixty (60) day written notice to the Depositor and Beneficiary Authorized Persons that it can no longer perform the Services under this Agreement.
- (b) In the event this Agreement is terminated under Sections 6(a)(i) or 6(a)(iii) above, Depositor and Beneficiary may provide Iron Mountain with joint written instructions authorizing Iron Mountain to forward the Deposit Material to another escrow company and/or agent or other designated recipient. If Iron Mountain does not receive joint written instructions within sixty (60) calendar days after the date of the notice of termination, Iron Mountain shall return or destroy the Deposit Material.
- (c) In the event of the nonpayment of Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with notice by electronic mail and/or regular mail. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending notice by electronic mail and/or regular mail of termination to all Parties. Iron Mountain shall have no obligation, to take any action under this Agreement, except to maintain the confidentiality of the Deposit Material, so long as any Iron Mountain invoice issued for Services rendered under this Agreement remains uncollected. .

8. Warranties.

- (a) Iron Mountain. ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY OF ANY CLAIMED BREACH OF ANY WARRANTIES AND SUCH PARTY'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE RETURN OF THE PORTION OF THE FEES PAID TO IRON MOUNTAIN BY PAYING PARTY FOR SUCH NON-CONFORMING SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. THE WARRANTY PROVIDED IS SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN SECTION 11(c) HEREIN.
- (b) Depositor. Depositor warrants that all Depositor Information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor Information during the Term of this Agreement.
- (c) Beneficiary. Beneficiary warrants that all Beneficiary Information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary Information during the Term of this Agreement.

9. Insurance.

Iron Mountain shall, at its sole cost and expense, throughout the term of this Agreement, procure and maintain in full force and effect, the following insurance coverage, with an insurance carrier that is rated B+ or better by A.M. Best.

TYPE OF INSURANCE	COVERAGE AMOUNT	TYPE OF INSURANCE	COVERAGE AMOUNT
General Liability	\$2,000,000 General Aggregate	Crime Insurance	\$2,000,000 Each Occurrence
General Liability	\$1,000,000 Each Occurrence	Umbrella Coverage	\$5,000,000 General Aggregate
Professional Liability	\$1,000,000 Each Occurrence		

All certificates of insurance shall name the Parties as additional beneficiaries with respect to General Liability coverage.

All certificates of insurance shall require that the Parties be provided with advance written notice of cancellation of the

Exhibit 10

stated coverage, and Iron Mountain shall request that its insurer use its best efforts to provide at least thirty (30) days' advance written notification of such cancellation.

10. Confidential Information.

Iron Mountain shall use best efforts to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not disclose, transfer, make available or use the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third Party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will immediately notify the Parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will not be required to disobey any order from a court or other judicial tribunal, including, but not limited to, notices delivered pursuant to Section 13(g) below.

Beneficiary understands that the Deposit Material is proprietary information of Depositor. Beneficiary agrees that it (i) will not disclose the Deposit Material; (ii) will not use the Deposit Material for activities other than those expressly permitted by this Agreement; and (iii) will take all steps reasonably necessary to protect the confidentiality of the Deposit Material, to prevent it from entering the public domain, and to insure that it is not disclosed, reproduced, duplicated or used for any unauthorized purpose. This provision shall survive termination of this Agreement.

11. Indemnification and Limitation of Liability.

(a) Depositor and Iron Mountain shall defend, indemnify and hold harmless the other, its corporate affiliates and its officers, directors, employees, and agents and its successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying Party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

(b) NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE DEPOSIT ITEMS); (IV) THEFT; OR (V) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

12. Consequential Damages Waiver.

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

13. General.

- (a) Incorporation of Work Requests. All Depositor and/or Beneficiary Work Requests are incorporated into this Agreement.
- (b) Purchase Orders. The terms and conditions of this Agreement prevail regardless of any conflicting or additional terms on any Purchase Order or other correspondence. Any contingencies or additional terms contained on any Purchase Order are not binding upon Iron Mountain. All Purchase Orders are subject to approval and acceptance by Iron Mountain.
- (c) < INTENTIONALLY DELETED >
- (d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.

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- (e) Right to Rely on Instructions. With respect to release or termination, Iron Mountain may act in reliance upon any instruction, instrument, or signature of Depositor's or Beneficiary's President or authorized delegate. With respect to all other matters, Iron Mountain may act in reliance upon any such notice from an employee of a Party. Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine. Iron Mountain will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Iron Mountain shall not be responsible for failure to act as a result of causes beyond the reasonable control of Iron Mountain.
- (f) Force Majeure. Except for the obligation to pay monies due and owing, no Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (g) Notices. All notices regarding Exhibit G-3 shall be sent by commercial express mail. All other correspondence, including invoices, payments, and other documents and communications, shall be sent by (i) electronic mail; (ii) via regular mail to the Parties at the addresses specified in the Authorized Persons/Notices Table which shall include the title(s) of the individual(s) authorized to receive notices; or (iii) via the online portal maintained at the Iron Mountain Website. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of physical or e-mail addresses. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice or last known address of the other Parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities by mail, through messenger or commercial express delivery services.
- (h) No Waiver. No waiver of rights under this Agreement by any Party shall constitute a subsequent waiver of this or any other right under this Agreement.
- (i) Assignment. No assignment of this Agreement by any Party or any rights or obligations of any Party under this Agreement is permitted without the written consent of all Parties, which shall not be unreasonably withheld or delayed. However, Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of parties.
- (j) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for either Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by notice to the others.
- (k) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (l) Attorneys' Fees. In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- (m) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (n) Dispute Resolution. (a) The Parties agree to resolve all claims, disputes and controversies past, present or future arising out of or related to, this Agreement against each and against respective employees, officers, directors, agents and employees in final and binding arbitration in Oakland, California under the rules of the Judicial Arbitration and Mediation Service ("JAMS") for commercial arbitration.
 - (b) The Parties agree to waive any rights to trial by jury, adjudication in a different venue and notice requirements.

Exhibit 10

- (c) The arbitrator will be an individual knowledgeable about the subject matter of the dispute mutually agreed upon by the Parties from a JAMS panel. If the Parties cannot agree on an arbitrator, each Party will select an individual from the JAMS list, and the two so selected will choose the arbitrator from another JAMS panel.
- (d) The arbitrator will apply the substantive law of California without regard to the principles of conflicts of law or U.S. law, as applicable. The arbitrator will have the exclusive authority to resolve disputes relating to interpretation, applicability and enforcement of this Agreement.
- (e) The arbitration process, including selection of the arbitrator, exchange of requests for information and the arbitration hearing will be completed within sixty (60) days following the institution of the arbitration by a party, and the actual arbitration hearing shall be limited to 1 day.
- (f) The arbitrator will provide a written opinion setting forth the reasons for the decision within ten (10) days of the arbitration hearing. The Parties may enter judgment on any arbitration award in any court having jurisdiction.
- (g) This Article shall survive termination of this Agreement. This Section has no applicability unless the dispute involves a claim by or against Escrow Agent.
- (h) The arbitrator shall award all costs (excluding arbitration costs) and reasonable attorney fees to the prevailing party in any arbitration or litigation. Each Party agrees to split arbitration costs excluding legal fees. For this purpose, arbitration costs shall be the fees paid to JAMS and to the arbitrator(s).
- (j) The Arbitrator shall not have the authority to award special, consequential or punitive damages.
- (k) The arbitrator shall have the authority to grant injunctive relief and other equitable remedies if money damages are insufficient.
- (l) Any claim must be submitted to arbitration within twelve (12) months of the termination of this Agreement.
- (m) This Article shall survive termination of this Agreement.
- (o) Regulations. All Parties are responsible for and warrant - to the extent of their individual actions or omissions - compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (p) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (q) Survival. Sections 6 (Term and Termination), 7 (General Indemnity), 8 (Warranties), 10 (Confidential Information), 11 (Limitation of Liability), 12 (Consequential Damages Waiver), and 13 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.

**NOTE: SIGNATURE BLOCKS AND AUTHORIZED PERSONS/NOTICES TABLE FOLLOW ON THE NEXT
PAGE**

Exhibit 10

The Parties agree that this Agreement is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of the Parties.

Note: If contracting electronically via the online portal, clicking the "I Accept" button displayed as part of the ordering process, evidences agreement to the preceding terms and conditions (the 'Agreement'). If you are entering into this Agreement via the online portal on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must select the "I Decline" button.

DEPOSITOR

SIGNATURE:	
PRINT NAME:	
COMPANY NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

BENEFICIARY

SIGNATURE:	
PRINT NAME:	
COMPANY NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	<u>ipmcontracts@ironmountain.com</u>

Exhibit 10

AUTHORIZED PERSONS/NOTICES TABLE

Please provide the name and contact information of the Authorized Persons under this Agreement. All Notices will be sent to these individuals at the addresses set forth below.

DEPOSITOR

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent electronically and/or through regular mail to the appropriate address set forth below.

PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
EMAIL ADDRESS		EMAIL ADDRESS	
STREET ADDRESS 1		STREET ADDRESS 1	
PROVINCE/CITY/STATE		PROVINCE/CITY/STATE	
POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

BENEFICIARY

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent electronically and/or through regular mail to the appropriate address set forth below.

PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
EMAIL ADDRESS		EMAIL ADDRESS	
STREET ADDRESS 1		STREET ADDRESS 1	
PROVINCE/CITY/STATE		PROVINCE/CITY/STATE	
POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmcontracts@ironmountain.com OR Iron Mountain, Attn: Contract Administration, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

EXHIBIT G-1 Escrow Service Work Request
Deposit Account Number: _____

SERVICE Check box (es) to order service	SERVICE DESCRIPTION	ONE-TIME FEES	ANNUAL FEES	PAYING PARTY Check box to identify the Paying Party for each service below.
<input type="checkbox"/> Add and Manage New Escrow Account	Iron Mountain will open a new escrow deposit account that includes a minimum of one (1) Depositor and one (1) complete set of Deposit Material. All Deposit Material will be securely stored in controlled vaults that are owned and/or operated by Iron Mountain. Account services include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management and submission of electronic Work Requests, and secure destruction of deposit materials upon account termination. Iron Mountain will assign a Client Manager for each escrow account. These Managers will provide training from time to time to facilitate secure Internet access to escrow account(s). Assigned Managers will also ensure timely fulfillment of Work Requests (e.g., deposit updates, new beneficiary enrollment) and communication of status.	\$1,050	\$950	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Beneficiary	Iron Mountain will fulfill a Work Request to add a new Beneficiary to an escrow account, where possible, and provide notice as appropriate to all relevant Parties.	N/A	\$650	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	Iron Mountain will send periodic notices to Depositor and/or Beneficiary related to Deposit Material as specified within the terms of the agreement	N/A	\$350	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add File Comparison and Analysis Test	Iron Mountain will fulfill a Work Request to perform a File Comparison and Analysis Test, which includes a final report sent to Client, on Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material. [Not currently permitted under the terms of this Agreement.]	\$2,500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Compile Test	Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes a final report sent to Client, on Deposit Material. Client and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment. [Not currently permitted under the terms of this Agreement.]	Custom Quote	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
Add Deposit Usability Test - Binary Comparison	Iron Mountain will fulfill a Work Request to perform one a Deposit Compile Test Binary Comparison which includes a final report sent to Client, on Deposit Material. Client and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment. [Not currently permitted under the terms of this Agreement.]	Custom Quote	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
Add Deposit Usability Test - Full Usability Test	Iron Mountain will fulfill a Work Request to perform one a Deposit Compile Test Full Usability which includes a final report sent to Client, on Deposit Material. Client and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment. [Not currently permitted under the terms of this Agreement.]	Custom Quote	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Dual Vaulting	Iron Mountain will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.	N/A	\$500	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Release Deposit Material	Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Materials" the Escrow Service Agreement.	\$500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Custom Services	Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	\$150/hour	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Delete Account	Iron Mountain will fulfill a Work Request to terminate an existing escrow account by providing notice to all Parties to the Agreement, removing Deposit Material from the vault and then either securely destroying or returning the Deposit Material via commercial express mail carrier as instructed. All accrued Services Fees must be collected by Iron Mountain prior to completing fulfillment to terminate an existing escrow account.	No Charge	No Charge	No Charge
<input type="checkbox"/> Replace/Delete Deposit Materials	Iron Mountain will replace/delete deposit material in accordance with the terms of the Agreement. Materials will be returned as directed by depositor or destroyed using Iron Mountain Secure Shredding.	No Charge	No Charge	No Charge

Upon Escrow Service Agreement execution, please provide your initials below in the appropriate location to indicate your acceptance of this Escrow Services Work Request inclusive of agreed Services pricing and indication of which Party is financially responsible for payment of specific Services.

DEPOSITOR INITIALS _____

BENEFICIARY INITIALS _____

Note: Work Requests may be submitted electronically through their escrow account online OR may complete this form along with any other supporting exhibits required and email and/or fax this Work Request to their assigned Client Manager at Iron Mountain for fulfillment.

EXHIBIT G-2

DEPOSIT MATERIAL DESCRIPTION

COMPANY NAME: _____ ESCROW ACCOUNT NUMBER: _____

DEPOSIT NAME _____ AND DEPOSIT VERSION _____ (Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Internet File Transfer			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? ☐ Yes or ☐ No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:

Iron Mountain Intellectual Property Management, Inc.
 Attn: Vault Administration
 2100 Norcross Parkway, Suite 150
 Norcross, GA 30071
 Telephone: (770) 239-9200
 Facsimile: (770) 239-9201

Exhibit G-3
Release Of Deposit materials

Deposit Account Number: _____

Iron Mountain will use the following procedures to process any Beneficiary Work Request to release Deposit Material.

1. **Release Conditions.** Depositor and Beneficiary agree that Iron Mountain will provide notice via commercial express mail to the Depositor if a Beneficiary under this Agreement submits a Deposit Material release Work Request based on one or more of the following conditions (defined as "**Release Conditions**"):
 - (i) Breach of the License Agreement by the Depositor for the Deposit Material covered under this Agreement; or
 - (ii) Failure of the Depositor to function as a going concern or operate in the ordinary course; or
 - (iii) Depositor is subject to voluntary or involuntary bankruptcy.
 - (iv) Failure of Depositor to maintain source code in accordance with Exhibit 8 Support and Maintenance Agreement
2. **Release Work Request.** A Beneficiary may submit a Work Request to Iron Mountain to release the Deposit Material covered under this Agreement. Iron Mountain will send a written notice of this Beneficiary Work Request within five (5) business days to the authorized Depositor representative(s).
3. **Contrary Instructions.** From the date Iron Mountain mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor representative(s) shall have ten (10) business days to deliver to Iron Mountain contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Contrary Instructions shall be on company letterhead and signed by an authorized Depositor representative. Upon receipt of Contrary Instructions, Iron Mountain shall send a copy to an authorized Beneficiary representative by commercial express mail. Additionally, Iron Mountain shall notify both Depositor representative(s) and Beneficiary representative(s) that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. Iron Mountain will continue to store Deposit Material without release pending (i) joint instructions from Depositor and Beneficiary that accept release of Deposit Material; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) receipt of an order from a court of competent jurisdiction.
4. **Release of Deposit Material.** If Iron Mountain does not receive Contrary Instructions from an authorized Depositor representative, Iron Mountain is authorized to release Deposit Material to the Beneficiary or, if more than one Beneficiary is registered to the deposit, to release a copy of Deposit Material to the Beneficiary. Iron Mountain is entitled to receive any uncollected Service fees due Iron Mountain from the Beneficiary before fulfilling the Work Request to release Deposit Material covered under this Agreement. This Agreement will terminate upon the release of Deposit Material held by Iron Mountain.
5. **Right to Use Following Release.** Beneficiary has the right under this Agreement to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.

EXHIBIT G-4
ESCROW DEPOSIT QUESTIONNAIRE

[Verification Services are not currently permitted under the terms of this Agreement.]

Introduction

From time to time, technology escrow beneficiaries may exercise their right to perform verification services. This is a service that Iron Mountain provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

Purpose of Questionnaire

In order for Iron Mountain to determine the deposit material requirements and to quote fees associated with verification services, a completed deposit questionnaire is requested. It is the responsibility of the escrow depositor to complete the questionnaire.

Instructions

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Iron Mountain Technology Escrow Services to the attention of Shane Ryan at shaneryan@ironmountain.com.

Escrow Deposit Questionnaire

General Description

1. What is the general function of the software to be placed into escrow?
2. On what media will the source code be delivered?
3. What is the size of the deposit in megabytes?

Requirements for the Execution of the Software Protected by the Deposit

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)
2. How many machines are required to completely set up the software?
3. What are the software and system software requirements, to execute the software and verify correct operation?

Requirements for the Assembly of the Deposit

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)
2. How many build processes are there?

Exhibit 10

3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?
4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?
6. How many separate deliverable components (executables, share libraries, etc.) are built?
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
8. What, if any, third-party libraries are used to build the software?
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?
11. Do you have an internal QA process? If so, please give a brief description of the testing process.
12. Please list the appropriate technical person(s) Iron Mountain may contact regarding this set of escrow deposit materials.

Please provide your contact information below:

Name: _____
Telephone: _____
Company: _____
Address: _____
City, State _____ Postal Code _____
Country: _____
E-mail: _____

For additional information about Iron Mountain Technical Verification Services, please contact Shane Ryan at 978-667-3601 ext. 100 or by e-mail at [mailto: shaneryan@ironmountain.com](mailto:shaneryan@ironmountain.com).

www.ironmountain.com

Statement of Work
Template
For
City of Oakland
Point-of-Sale (POS) Project

Date: 5 December 2006

City of Oakland
Project Manager

Signature: Andrew Hopkins

Print Name: ANDREW HOPKINS

Active Network
Project Manager

Signature: G. Boisvert

Print Name: GORDON BOISVERT

Statement of Work
For
Point-of-Sale (POS) Project

1. Scope

Introduction

The following Statement of Work (SOW) describes in detail, the products and services to be delivered by Active Network (Active) under this Agreement with the City of Oakland (City). In this fixed service ("Service"), Active Network (Active) will provide the following services to install a Point-of-Sale (POS) system in designated City departments and facilities, as more fully set forth in this Statement of Work (SOW):

1. Install and configure all software included in the Active solution specified by Active and purchased by the City.
2. Create functional interfaces to designated City systems including Oracle Accounts Receivables (AR), Local Tax system (Active, Inc.), Parking (City of Inglewood) and CEDA Building Permit System (Municipal Systems)
3. Provide End-User and System Administration training

Active will apply industry practices and reasonable effort to complete installation, configuration, testing, and training in a timeframe as to achieve the earliest possible deployment. The parties in an effort to achieve this goal will establish Critical Path Milestone dates (CPM) for the project. These CPMs must be met by Active unless mutually revised by both parties. The CPMs shall be established at the Initial Conference kickoff meeting which will include the specification of timelines, deliverables, and roles and responsibilities.

Approach, Tasks and Deliverables

2.1 Approach

1. The project will be implemented based upon the following phases:
 - A. Business Process Review – Preliminary Analysis
 - B. Project Kickoff and Project Plan Finalization
 - C. Hardware Acquisition, Installation and Configuration
 - D. Software Installation and Configuration
 - E. Software Integration
 - F. 1st Application Deployment
 - G. 2nd Application Deployment
 - H. Park & Recreation Safari Upgrade Deployment
 - I. Systems Acceptance Test
 - J. Documentation Review & Acceptance
 - K. Project Closure and Formal System Acceptance
1. Project phases will be conducted concurrently when possible.
2. Active will use industry standards to implement its SQL solution and apply the same industry standards to all 3rd Party products included in the ACTIVE solution
3. The City shall conduct a series of Functional Tests at the conclusion of each project phase which meet the conditions stated in the Acceptance Criteria. The tools used by the City for testing functionality may include Test Scripts, demonstrations and/or industry standards for verifying hardware configuration, software installation, etc.
 - a. The City shall provide Active Network with copies of all test scripts and advise them of test results, errors or “bugs” encountered during testing and any variations in system performance.
 - b. These Functional Tests shall not be deemed successfully completed until:
 - i. Variations between System functions and System documentation have been corrected or deemed not critical to the deployment and are to be fixed in a future release;
 - ii. Errors or “bugs” in System functions have been corrected.
 - c. In the event that the System does not perform as required during any of the Functional Tests, as per the Acceptance Testing, Section 9, of the master agreement, *and Active Network is unable to fix any reported problems* that failure shall be governed by the terms and conditions agreed to by both parties in the master agreement.

4. ACTIVE and the City shall execute a Signoff Process at the successful completion of each project phase.

PHASE A: BUSINESS PROCESS REVIEW – PRELIMINARY ANALYSIS

Task:

Active Network:

1. Interview City department representatives regarding specific cash handling / reconciliation procedures
2. Determination of application changes that may be required for the City of Oakland's' needs. Note: these changes will be added to the Payment Manager application over a period of releases based upon need and timing considerations.

City:

1. Departments to provide examples of current documentation used for reconciliation deposit forms, copies of invoices
2. Provide copy of City's Administrative Instruction governing cash handling procedures and reconciliation of monies

Deliverables:

Active Network:

1. Determine best practices to deploy Active Network products
2. Create initial project plan
3. Create initial integration planning
4. High level requirement specification for changes to the Payment Manager application

City:

1. City PM to review Active Network initial project plan and provide feedback to Active PM
2. City Database Analyst and Oracle Developers to review Active Network initial integration plan and provide feedback

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE A (Business Process Review) has been completed when all deliverables are satisfactorily completed or exchanged. The Signoff Process will be executed and a copy maintained by both parties.

PHASE B: PROJECT KICK-OFF MEETING AND PROJECT PLAN FINALIZATION

Task:

Active Network:

1. Will conduct a project kick-off meeting with key City of Oakland stakeholders to introduce team members, discuss project implementation approach, roles and responsibilities and to finalize the project plan including work schedule.
2. Review the project schedule which will be used to provide the agreed services.

City:

1. Oakland Treasury Manager, Project Manager, IT representatives, Department Managers / Supervisors, and Domain Experts responsible for department collection of monies

Deliverable:

Active Network:

1. Project Plan to include:
 - a. Project objectives and approach
 - b. Project schedule/timeline and tasks
 - c. Resource roles and responsibilities

City:

1. Name of the server and IP Address that will host SQL data / tools
2. Create folder on SQL Server and name the folder 'Active'
3. Establish security / access privileges to access the folder in #4
4. Provide a copy of technical guidelines and/or restrictions required for Active Network interfaces / connectors creation

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE B (the Project Kickoff) has been completed when all deliverables are satisfactorily completed or exchanged. The Signoff Process will be executed and a copy maintained by both parties.

PHASE C: HARDWARE ACQUISITION, INSTALLATION AND CONFIGURATION

Task:

Active Network:

1. To ensure all required POS equipment has been shipped.

2. Set up the necessary software for testing 3rd Party equipment to ensure proper operation
3. Work with IT personnel to test all 3rd party equipment to ensure proper operation.

City:

1. Purchase required server(s), install virus protection software, and configure based upon industry standards and City guidelines
2. Assign IP Address(es) to designated servers
3. Ensure all POS equipment has arrived
4. Install on City's network and test to ensure functional operation

Deliverable:

Active Network:

1. Verify the functionality of all required server(s) and 3rd Party hardware

City:

1. Demonstrate that server(s) are configured as specified and operate as required on the City's network

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE C (HARDWARE ACQUISITION, INSTALLATION AND CONFIGURATION) will be deemed completed upon verification by Active Network of the functionality of the configured server(s) and 3rd Party hardware at which time the Signoff Process will be executed and a copy maintained by both parties

PHASE D: ACTIVE NETWORK SOFTWARE INSTALLATION AND CONFIGURATION

Task:

Active Network:

1. Install and configure all software products included in the scope of services for this project
2. To set up all necessary infrastructure. (database, payment server and finance export)
3. To train Oakland personnel how to enter the POS items for sale, GL accounts, locations, terminals, users, etc.
4. Conduct initial training of Oakland personnel

5. Test and verify software products operate as specified
6. Provide Domain Experts with Item / User sheets

City: (N/A)

1. IT personnel available for knowledge transfer regarding workstation configuration and application deployment
2. IT personnel to set up necessary server components
3. Department personnel to enter (POS items for sale, GL accounts, locations, terminals, users, etc.) as part of the training.
4. To create a copy of the database to be used for testing
5. Domain Experts to complete and return Item / User sheets provided by Active project manager.
6. Domain Experts to work with Active staff to create test scripts for cash handling and closing processes

Deliverable:

Active Network:

1. Verify the functionality of all installed software

City:

1. Execute test scripts to verify software functionality

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE D (ACTIVE SOFTWARE INSTALLATION AND CONFIGURATION) will be deemed completed upon successfully execution of a Test Scripts at which time the Signoff Process will be executed and a copy maintained by both parties.

PHASE E: ACTIVE NETWORK SOFTWARE INTEGRATION

Task:

Active Network:

1. Meet with City personnel to determine:
 - a. Data required for transfer
 - b. Transfer method
2. Determine best method of connectivity to each application

3. Create integration documents for each application that specifies how and what data is to be transferred, including:
 - a. Determine deliverables by each party
4. Creation of test plans in conjunction with City personnel
5. Set up integration in test system
6. Move integration to production system once approved by Oakland

City:

1. Oakland PM to ensure technical cooperation from other City software developers (i.e. Active, Inc., Municipal Software, City of Inglewood, etc.)
2. Provide Oracle AR integration support
3. Develop test plans in conjunction with Active
4. Provide test data for test scripts
5. Execute test plans to verify integration acceptance

Deliverable:

Active Network:

1. Provide functional integration to other City databases / application

City:

1. Execute test scripts to verify functionality of integration with other City systems

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE E (ACTIVE SOFTWARE INTEGRATION) will be deemed completed upon successful execution of a Test Scripts at which time the Signoff Process will be executed and a copy maintained by both parties.

PHASE F: 1ST APPLICATION DEPLOYMENT

Task:

Active Network:

1. Final audit of data set up in previous phase for designated department
2. Training of all users for the department
3. Training of department supervisors
4. Training of finance for audit, financial export, etc

5. Active lead to install appropriate icons and configure on representative number of workstations and provide *knowledge transfer* to IT personnel regarding:
 - a. Workstation configuration and application deployment
6. Training of IT staff to support infrastructure
7. Go live support for the department
8. Post mortem of implementation

City:

1. Department Domain Experts available during deployment and to obtain training
2. IT project team available during deployment and to obtain training

Deliverable:

Active Network:

1. Successful deployment of Active software solution to designated City department
2. On-site support during initial software usage
3. Troubleshooting support, if required

City:

1. Monitor City's network segment to evaluate performance and impact
2. Execute Test Scripts
3. Log and report errors encountered or excessive slow system response

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE F (1st APPLICATION DEPLOYMENT) will be deemed completed upon successful execution of a Test Scripts at which time the Signoff Process will be executed and a copy maintained by both parties.

PHASE G: 2nd APPLICATION DEPLOYMENT

Task:

Active Network:

1. Final audit of data set up in previous phase for designated departments
2. Training of agreed specified number of department users ~~for the~~ departments
3. Training of department supervisors
4. Go live support for the departments
5. Post mortem of implementation

City:

1. Department Domain Experts available during deployment and to obtain training
2. Oakland lead to install appropriate icons and configure on department workstations
3. IT project team available during deployment

Deliverable:

Active Network:

1. Successful deployment of Active software solution to designated City departments
2. On-site support during initial software usage
3. Troubleshooting support, if required

City:

1. Monitor City's network segment to evaluate performance and impact
Domain Experts execute Test Scripts
2. Log and report errors encountered or excessive slow system response

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE G (2nd APPLICATION DEPLOYMENT) will be deemed completed upon successful deployment of POS to designated departments and execution of Test Scripts at which time the Signoff Process will be executed and a copy maintained by both parties.

PHASE H: PARK & RECREATION SAFARI UPGRADE DEPLOYMENT

Task:

Active Network:

1. Final audit of data set up in previous phase for designated department
2. Training of an agreed number of key users
3. Training of an agreed number of department supervisors
4. Training of finance for audit, financial export, etc
5. Active lead to *upgrade a representative number of Park & Recreation workstations* with POS module, icon(s) and configure perimeters and provide *knowledge transfer* to IT personnel regarding:
 - i. Workstation upgrade, configuration and application deployment
6. Go live support for the department
7. Post mortem of implementation

City:

1. Park & Recreation Domain Experts will be available during deployment and to obtain training
2. IT personnel will upgrade and configure the remaining workstations.
3. Use Train-the-Trainer technique to train remaining City personnel
4. IT project team will be available during deployment and to obtain training

Deliverable:

Active Network:

1. Successful upgrade of Park & Recreation workstation with POS feature(s)

2. On-site support during initial software usage
3. Troubleshooting support, if required

City:

1. Monitor City's network segment to evaluate performance and impact
2. Execute Test Scripts
3. Log and report errors encountered or excessive slow system response

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE H (PARK & RECREATION SAFARI UPGRADE DEPLOYMENT) will be deemed completed upon successfully deployment of 1 recreation location at which time the Signoff Process will be executed and a copy maintained by both parties

PHASE I: SYSTEM ACCEPTANCE TEST

Task:

Active Network:

1. Ensure entire deployed POS system is available for enterprise testing

City:

1. Coordinate the availability of all City department Domain Experts to execute test scripts for system wide POS testing
2. Coordinate IT project team availability to monitor test results

Deliverable:

Active Network:

1. On-site support during system wide POS testing
2. Troubleshooting support, if required

City:

1. Monitor City's network segment to evaluate performance and impact
2. Log and report errors encountered or excessive slow system response

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE I (SYSTEM ACCEPTANCE TEST) will be deemed completed upon successfully test results from execution of Test Scripts during a coordinated test of entire POS system. A successful completion of this Acceptance Test will result in the execution of the Signoff Process and a copy maintained by both parties

PHASE J: DOCUMENTATION REVIEW AND ACCEPTANCE

Task:

Active Network:

1. Provide a complete set of documentation which details all steps / processes required to complete Phase B – K where applicable.
2. Provide a complete set of documentation required by the City to maintain / administer POS system

City:

1. Coordinate the availability of Domain Experts / IT personnel to review Active Network submitted documentation

Deliverable:

Active Network:

1. Required documentation

City:

1. Documentation acceptance and review

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE J (DOCUMENTATION REVIEW AND ACCEPTANCE) will be deemed completed upon City's receipt of requested documentation in whatever format preferred by Active Network and which time the Signoff Process and a copy maintained by both parties

PHASE K: PROJECT CLOSURE AND FINAL ACCEPTANCE

The City will coordinate a final project meeting between the City and Active Network 120 days after completion of Phase J to review the results of all previously completed phases to assess the functional operation of the installed POS system; to determine if there are any outstanding Open Items; and to provide feedback regarding the POS system performance.

NOTE: The above meeting will be conducted in the most cost efficient manner available to both parties.

Task:

Active Network:

1. Availability of Active Project Manager or designate to participate in final project meeting.

2. Provide feedback, support and/or, if applicable, in response to any reported system errors

City:

1. Ensure availability of Treasury Manager, key Domain Experts and IT personnel for final project meeting

Deliverable:

Active Network:

- 1, Final project meeting participation and input

City:

1. Final project meeting by all designated City personnel

ACCEPTANCE CRITERIA

Active and Oakland will mutually agree that PHASE K (PROJECT CLOSURE AND FINAL ACCEPTANCE) will be deemed completed upon City's status report regarding the successful operation / performance of the installed Active Network POS system and which time the Signoff Process and a copy maintained by both parties

PROJECT IMPLEMENTATION PLAN

The implementation process begins with planning and preparation, including team conference calls, to get the process started. Active will set up an email distribution list of those dedicated to the project to help ensure consistent communication between all members of the Active team and the City's migration team.

ACTIVE IMPLEMENTATION TEAM

Active's Implementation Services Group will use a team-based approach to work with the City Team ("City Staff") to install, configure, and train City Staff so that City Staff is able to start using its *Payment Manager*. Led by the Active Project Manager, the Active team for this project will include a Data Profiling Analyst, a Technical Support Specialist, a System Specialist, and a City Training Consultant. The City's Team is led by the Project Manager and is assisted by the Technical/System Support Specialist and System Administrator. This project will involve Active' hardware and software setup, loading of the City's database, and training the City staff on System functions. The roles and responsibilities are listed below.

Active Project Manager

As soon as the contract between the City and Active is fully executed, Active will designate the Project Manager & Team for this project and will provide City with all appropriate contact information. The Project Manager has overall responsibility for the implementation process and master schedule, and he or she details the process and timing of the City's implementation, installation, and training. The ACTIVE Project Manager works closely with the City Project Manager to ensure that all assigned resources (ACTIVE and City) remain attentive to meeting the project completion. The ACTIVE Project Manager will meet weekly, or as deemed necessary, with the City Project Manager to provide a written project status report.

Conflict Resolution - The ACTIVE Project Manager will report any issues / problems that impede the progress of the project to the City Project Manager. The project managers will work closely to resolve any unresolved issues / problems. The ACTIVE Project Manager can request in writing that the City Project Manager escalate an issue that he / she believes is outside the collective ability of the project managers to resolve and which could have an adverse impact project completion and/or cost. The City Project Manager will meet with the ACTIVE Project Manager to assess the basis of the request and determine if the matter should be escalated to the Executive Committee. The City Project Manager will forward the issue in writing to the Executive Committee and request an executive decision as soon as possible.

The Project Manager ensures that the project stays on schedule and serves as a resource when there are questions that fall outside the purview of other team members. The Project Manager ensures a smooth transition from Sales to Implementation Services and is available to answer any questions about the project. When the project draws to a close,

the Project Manager facilitates transfer of support from Implementation Services to Customer Services.

Active Training Consultant

Active's Training Consultant will be assigned to work directly with the City. As the City learns how to use *POS Manager*, this Training Consultant will be the primary representative for the Active team. The Training Consultant provides an on-site overview of functions for each *POS Manager* module, trains the staff in its use of the system. Additionally, the Training Consultant provides tools to expand understanding and verify knowledge of the system.

Each training day typically starts at 8:30am and runs to _____. (Excluding breaks and lunch) Training typically continues at 1:30pm until 5pm (specific hours may vary depending on customary work hours). The City is responsible for making arrangements for the appropriate staff to be present once the City and the Training Consultant agree on the schedule.

Integration Analyst

Active's Integration Analyst will be assigned to work directly with the City and the City's vendors. The integration Analyst's role is to assist in determining the best method of connectivity for each of the City's business applications Active will be interfacing to. They will be responsible for creating integration documents for each application that specifics how and what data is to be transferred plus determine deliverables by each party. They will create test plans and set up the integration for testing.

CITY IMPLEMENTATION TEAM

The City has a designated project team composed of a Project Manager, Domain Experts Microcomputer Specialist, Database Analyst, System Analysts and Network Analyst. The roles and responsibilities of the City's Project Team is as follows:

City Project Manager – The City Project Manager will work closely with the ACTIVE Project Manager to ensure that the project is completed on schedule and within the fixed budget. The City Project Manager is the single Point of Contact (POC) between the City and Active, Inc (ACTIVE) for implementation of this project and is responsible for all official correspondence regarding the Local Tax project status. In addition, the City Project Manager is responsible for

- Providing direction and guidance to the City **project team members** as required by ACTIVE to maintain project momentum and provide any

resources within his domain as requested by ACTIVE in a timely manner to complete the all of the project phases scribed in this SOW

- Readily available and on-site as required by ACTIVE for the duration of this project
- Regularly meeting with ACTIVE Project Manager regarding project status
- **Weekly meeting with the Treasury Manager to appraise of project status and/or issues**
- Creating project status reports for Executive Management Team and City Council, if applicable
- Providing information and/or support to Executive Management Team for presentation(s) to City Council or Finance Committee, if applicable
- Receiving or coordinating the receipt of deliverables as a result of this Professional Services Agreement
- Providing any needed approvals for the City under the Change Control provision below.
- Ensuring that access to City facilities and to other relevant internal and external systems as needed and under the direction of City staff.

Domain Experts - Domain Experts are responsible for the following:

- Creating functional requirements
- Creating Test Scripts
- Executing Test Scripts
- Test and Deliverables Signoff

Technical Lead – Technical Lead will be responsible for the following:

- Report to the Project Manager regarding assigned project activities / tasks
- Actively participate in project team meetings and report status of activities / tasks to which assigned
- Working with ACS Systems Analyst, SQL Administrator, DBA, Microcomputer Specialist III and Desktop Support Group to ensure that technical activities / tasks stipulated in this Statement of Work or as directed by the Project Manager

- Identify and report project risks
- Ownership and responsibility for managing project risks assigned and executing Risk Mitigation Plan as directed by the Project Manager

Microcomputer Specialist / Desktop Support Group – The Microcomputer Specialist and/or Desktop Support Group will be responsible for:

- Receiving ACTIVE training and provide ACTIVE desktop application deployment support
- IP Address for DESIGNATED Server
- Installing the City's anti-virus and other support software on DESIGNATED server
- Verifying DESIGNATED server configuration
- Assigning DESIGNATED server physical location
- Base testing of DESIGNATED server functionality after installation on City's network

SQL Administrator – The SQL Administrator is responsible for:

- Receive ACTIVE training and provide SQL support

Systems Analysts – The Systems Analysts currently providing support for the existing Oracle Systems will be responsible for the following:

- Provide technical information regarding tables, files and indexes used to support the existing Oracle systems

Network Analyst – The City's Network Analyst will be responsible for providing:

- Network monitoring and analysis during base testing of DESIGNATED server after installation on City's network
- Network monitoring and analysis during System Acceptance Testing and Functional Testing as requested by City Project Manager and in conjunction with a request from ACTIVE Project Manager

Change Control

1. The objectives of change control ("Change Control") are to:
 - a. Assess the impact of scope changes on project schedules, resources, and pricing
 - b. Provide a formal vehicle for approval to proceed with any changes for this SOW
 - c. Establish the impact of all change requests
 - d. Provide a project audit record of all material changes to the original SOW
 - e. In the event that the City requests a material change in the scope of this SOW, as determined by ACTIVE in its sole discretion ("Change"),
 - f. ACTIVE and the City will review the Change through the following change control process.
 - g. In the event that ACTIVE determines a change is material, ACTIVE will complete the Change Request Form set forth in Attachment A to this SOW (the "Form") and provide the completed Form to the City.
 - h. Both ACTIVE and the City will have to provide written approval of the Change Request detailed in the Form, including the impact of the Change on the schedule, resources, and the price of the Service, before ACTIVE will make the Change.
 - i. In the event that the City accepts the Change Request set forth in the Form, the City will modify its P.O. or other forms for payment, if necessary and requested by ACTIVE
 - j. If the City does not accept the Change as set forth in the Form (including the impact on the schedule, resources, or price), the Parties will complete their obligations with respect to this Service as set forth in this SOW.
2. All changes to the Statement of Work must be approved by the City Council.

ATTACHMENT A**Change Request Form**

Change Request Number: _____ Initiated by: _____ Date: _____
Description of Change: _____ More details attached: ☐ Yes ☐ No

Impact if Change is not Incorporated: _____ More details attached: ☐ Yes ☐ No

Alternatives: _____ More details attached: ☐ Yes ☐ No

Proposed Change Type (Check one :)

☐ Problem/Not following plan ☐ Improvement ☐ Change in Environment
☐ Scope ☐ Other (Explain :) _____

Documents and Deliverables (Check all that apply :)

☐ Contract Agreement ☐ Payment Schedule ☐ Delivery Schedule
☐ Project Plan ☐ Quality Plan ☐ Work Plan
☐ Functional Spec ☐ Acceptance Spec ☐ Purchase Order
☐ Solution Component: _____

For Full Evaluation:

Cost to Evaluate: hours _____ Approved for Evaluation: _____
Recommended Evaluator: _____ ☐ Notified (When?) _____
Cost to Implement _____ Estimate prepared by: _____
Impact Summary: (Baseline, Functional, Cost, Resource, Schedule) _____ More details attached: ☐ Yes ☐ No

Decision: ☐ Approved ☐ Rejected ☐ Deferred Until (Date :) _____

Customer Project Manager: _____ Signed: _____

PS Consultant: _____ Signed: _____

Apply to Project Plan Revision: _____ Applied by: _____ Completion Date: _____
Close Date: _____

Signoff Process

1. The objectives of Signoff Process is to:
 - a. Formally document the successful testing / verification of the project phases outlined in this document
 - b. Provide an audit trail of each completed phase and the City personnel in acceptance of the completed phase and/or deliverable
 - c. City personnel will complete the Acceptance Certificate form included in this document



CITY OF OAKLAND Information Technology

ACCEPTANCE CERTIFICATE

Client:

Project:

Initiated By:

Date:

Milestone Reference:

Type: ☐ Proposal
☐ Plan
☐ Specification
☐ Form
☐ Manual

☐ Milestone

Description:

The above _____ has been reviewed by the <Dept or Agency> and fully meets the objectives expressed by the <Dept or Agency> and passes the acceptance criteria specified by <Dept or Agency> in the Statement of Work (SOW).

Signing for <Dept or Agency>

Date

<Dept or Agency> Representative

Information Technology Representative/Project Manager

Your Group Insurance Benefits

The Active Network

CLASS SOFTWARE SOLUTIONS LTD.

Class A - All employees hired prior to November 1, 1999 and employees with at least 12 months of coverage, other than Management Employees

Class B - All employees hired on or after November 1, 1999 with less than 12 months of coverage, other than Management Employees

GROUP INSURANCE PROGRAM

ARRANGED BY:

WHELTON INSURANCE CONSULTANTS LTD.

This Booklet provides you with a brief outline of the benefits for which you and, if applicable, your dependents are eligible. This booklet does not confer or create any contractual or other rights.

The exact terms of the benefits are described in the Group Policy G23044 issued by The National Life Assurance Company of Canada. All rights with respect to the benefits will be governed solely by the Group Policy and in the event of a discrepancy between the Booklet and the Group Policy, the terms of the Group Policy will apply.

All matters and questions which you may have regarding your benefits should be handled by your employer or, if applicable, the plan administrator who has been appointed by your employer.

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SUMMARY OF BENEFITS

This section provides a summary of the benefits for which you and, if applicable, your dependents, are eligible to be covered for. A more detailed description of the benefits follows this section.

LIFE INSURANCE BENEFIT

Basic Life Insurance For Employees

Classification

All Employees

Amount of Basic Life Insurance

Equal to 2 times annual earnings, rounded to the next higher multiple of \$1,000, if not already such multiple, to a maximum of \$50,000.

Reductions and Termination

Your Basic Life Insurance will reduce to 50% at age 65 and terminate at age 70.

SUMMARY OF BENEFITS

ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE BENEFIT

Basic Accidental Death and Dismemberment Insurance

Classification

All Employees

Amount of Basic Principal Sum

An amount equal to the employee's Basic Life Insurance.

Reductions and Termination

Your Basic Principal Sum will terminate at age 70.

LONG TERM DISABILITY INSURANCE BENEFIT FOR EMPLOYEES

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Classification
All Employees
Amount of Monthly Income Benefit
66 2/3% of the first \$2,250 of monthly earnings, plus 40% of the remaining amount of monthly earnings, rounded to the next higher multiple of \$1.00, if not already such multiple, to a maximum of \$5,000.

Reductions
Your Monthly Income Benefit is subject to the reductions described in the Long Term Disability Insurance Benefit.

Qualifying Disability Period
Your qualifying disability period shall be 120 days.

Maximum Benefit Period
To age 65.

Termination
Your coverage under the Long Term Disability Insurance Benefit will terminate on your 65th birthday.

- Covered Expenses
- Hospital Care
 - Nursing Care
 - Convalescent Home Care
 - Substance Abuse Treatment Facility
 - Ambulance, Laboratory and Out-Patient Charges
 - Prescription Drugs (Drug Card Plan)
 - Paramedical Care
 - Appliances
 - Physician's Services
 - Out of Canada Emergency Coverage
 - Out of Canada Referral Coverage
 - Accidental Dental Care
 - Vision Care

Cash Deductible
- All Covered Expenses Not subject to a Cash Deductible

- Benefit Percentage
- Out of Canada Referral Coverage 50%
 - All Other Covered Expenses 100%

The Benefit Percentage means that part of the Covered Expense that the Insurer pays after the Cash Deductible has been satisfied.

- Covered Expense Maximums
- Hospital Care Semi-private room rate.
 - Nursing Care \$10,000 in any continuous period of 12 months.

SUMMARY OF BENEFITS

SUMMARY OF BENEFITS

- Convalescent Home Care \$20 per day.
- Substance Abuse Treatment Facility Semi-private room rate.
- Paramedical Care \$750 in any calendar year. The maximum is applied separately to each practitioner.
- Out of Canada Referral Coverage \$50,000 per lifetime.
- Accidental Dental Care \$3,000 per lifetime.
- Vision Care \$250 in any continuous period of 24 months.

Additional maximums are applicable to the Covered Expenses provided under this Benefit. You should refer to the Benefit description for these maximums.

Lifetime Maximum Benefit

\$5,000,000 in respect of each insured person.

Termination

This Benefit will terminate on attainment of age 65 by the insured person.

EMPLOYEE ASSISTANCE PROGRAM BENEFIT FOR EMPLOYEES AND DEPENDENTS

This Benefit will terminate on attainment of age 65 by the insured person.

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Covered Expenses

Part A Services

- Diagnostic
- Preventive
- Restorative
- Minor Surgical
- Other (includes denture rebasing and relining)

Part B Services

- Endodontic Services
- Periodontic Services
- Oral Surgery

Part C Services

- Prosthodontic Services - Removable
- Prosthodontic Services - Fixed
- Major Restorative Services

Cash Deductible

- All Covered Expenses

Not subject to a Cash Deductible

Benefit Percentage

Part A Services

100%

Part B Services

100%

Part C Services

80%

The Benefit Percentage means that part of the Covered Expense that the Insurer pays after the Cash Deductible has been satisfied.

Schedule of Fees

Current Provincial Fee Schedule for General Dental Practitioners.

Covered Expense Maximums

Class A:

Part A and Part B Services (combined)

\$1,500 in any calendar year.

Part C Services

\$1,500 in any calendar year.

Class B:

Part A, B and C Services (combined)

\$1,000 in any calendar year.

Benefits for some dental procedures are limited. You should refer to the Benefit description for these limits.

Termination

This Benefit will terminate on attainment of age 65 by the insured person.

Benefit

In the event of your death FROM ANY CAUSE, the amount of Life Insurance for which you are eligible will be paid to your beneficiary.

You name your own beneficiary and should you desire to change beneficiaries at any time you may do so (subject to any applicable law) by completing the necessary form which may be obtained from your employer.

Waiver of Premium Benefit

If you become disabled prior to age 65 and your disability lasts for a continuous period of 6 months, your Life Insurance will be continued without payment of further premiums while you remain disabled. The coverage being continued will terminate on your 65th birthday.

The amount of Life Insurance for which premium payments are being waived will be the amount of Life Insurance you were insured for on the date your total disability commenced.

This Benefit will be subject to proof of initial and continuing disability as set out in the Group Policy.

As used in this Benefit, "totally disabled" means your complete incapacity due to a medically determinable mental or physical impairment to perform substantially all of the essential duties of any occupation or employment for which you are reasonably qualified by education, training or experience.

Conversion Privilege

If your Life Insurance should terminate on or prior to your 65th birthday, you will, in specific circumstances, have a conversion privilege with respect to such insurance. The conversion privilege, if any, will be as set out in the Group Policy.

NOTE: The total amount of Life Insurance that you can convert during the lifetime of the Group Policy will be \$200,000.

Definitions

As used throughout this Benefit:

"Principal Sum" shall mean the amount of Basic Principal Sum which applies to you on the date of the accident.

"Loss" shall mean:

- (1) with regard to the hand or foot, complete severance through or above the wrist or ankle joint, but below the elbow or knee joint;
- (2) with regard to an arm or a leg, complete severance through or above the elbow or knee joint;
- (3) with regard to the thumb, complete loss of one entire phalanx of the thumb;
- (4) with regard to a finger, complete loss of two entire phalanges of the finger;
- (5) with regard to a toe, the complete loss of one entire phalanx of the big toe and all phalanges of the other toes;
- (6) with regard to an eye, the irrecoverable loss of the entire sight thereof;
- (7) with regard to speech, the complete and irrecoverable loss of the ability to utter intelligible sounds; and
- (8) with regard to hearing, the complete and irrecoverable loss of hearing.

"Loss of Use" shall mean the total and irrecoverable loss of use provided the loss is continuous for 12 consecutive months and such loss of use is determined to be permanent at the end of such period.

Benefit

If you suffer any of the losses listed in the Schedule of Amounts of Insurance (see below) as a direct result of an accident which occurred while you were covered under this Benefit, the Insurer will pay the amount of insurance specified for the loss in the Schedule provided the loss occurred within 365 days after the date on which the accident occurred. The amount payable will be subject to any limitations and exclusions included in this Benefit.

Schedule of Amounts of Insurance

Principal Sum for "Loss" of: Life; Both hands; Both feet; Sight of both eyes; One hand and one foot; One hand and sight of one eye; One foot and sight of one eye; Speech and hearing in both ears.

Two times the Principal Sum for: Quadriplegia (total paralysis of both upper and both lower limbs), paraplegia (total paralysis of both lower limbs), hemiplegia (total paralysis of both the upper and lower limbs of one side of the body).

Principal Sum for "Loss of Use" of: Both hands; Both feet.

Three-quarters of the Principal Sum for "Loss" of: One arm; One leg.

Three-quarters of the Principal Sum for "Loss of Use" of: One arm; One leg.

Two-thirds of the Principal Sum for "Loss" of: One hand; One foot; Sight of one eye; Speech; Hearing in both ears.

Two-thirds of the Principal Sum for "Loss of Use" of: One hand; One foot.

One-third of the Principal Sum for "Loss" of: Thumb and index finger of one hand; Four fingers on one hand; All toes on one foot.

One-quarter of the Principal Sum for "Loss" of: Hearing in one ear.

Exposure and Disappearance

If due to an accident you are unavoidably exposed to the elements and as a result of such exposure suffer a loss for which a benefit is otherwise payable hereunder, such loss will be covered under the terms of this provision.

If your body is not found within one year of an accident which results in the disappearance, sinking or wrecking of the conveyance in which you were riding at the time of the accident and such accident occurs under circumstances as would otherwise be covered hereunder, it will be presumed that you suffered an accidental loss of life at the time of such disappearance, sinking or wrecking, unless there is evidence to the contrary.

Rehabilitation

If you should sustain a loss for which a benefit is payable under this provision, and such loss requires you to undergo a rehabilitation program in order to be qualified to engage in a special occupation for which you would not have engaged except for such loss the Insurer will pay the reasonable and necessary expenses incurred for such program, provided the Insurer has approved the rehabilitation program in advance. Payment by the Insurer for the total of all expenses incurred shall not exceed \$10,000, nor shall payment be made for any expenses incurred more than 3 years after the date of the accident or for any expenses for room, board, or other ordinary living, travelling or clothing expenses. If a rehabilitation benefit is provided under any other provision included in the Group Policy, it will only be payable under one of the provisions.

Occupational Training

If you suffer an accidental loss of life for which a benefit is payable under this provision, the Insurer will pay the reasonable and necessary expenses incurred by your spouse if he or she engages in an occupational training program in order to become specifically qualified for active employment in an occupation for which he or she would not otherwise have sufficient qualifications provided the Insurer approves such program in advance. Payment by the Insurer for the total of all expenses incurred shall not exceed \$10,000 nor shall payment be made for any expenses incurred more than 3 years after the date of the accident or for any expenses for room, board or other ordinary living, travelling or clothing expenses. If the spouse should receive a benefit hereunder, he or she will not be eligible to receive a benefit under the Education benefit.

Education

If you suffer an accidental loss of life for which a benefit is payable under this provision, the Insurer will pay the reasonable and necessary expenses incurred as a result of your dependent's continuation of their education as a full-time student at an educational institute which is beyond the high school level provided that the dependent was enrolled as a full-time student at such institute at the time of your death or if the dependent is in high school at the time of your death, he or she enrolls as a full-time student at an educational institute which is beyond the high school level within 365 days of the date of your death. Payments will be made by the Insurer each year, for up to 4 successive years, that the dependent provides proof that he or she is a full-time student at an educational institute which is beyond the high school level. The amount of each payment shall not exceed \$5,000. If the spouse should receive a benefit hereunder, he or she will not be eligible to receive a benefit under the Occupational Training benefit.

Family Transportation and Accommodation

Should you be hospitalized more than 150 kilometers from your normal place of residence due to a loss for which a benefit is payable under this provision and you are under the regular care and attendance of a physician, the Insurer may pay the expenses for accommodation and transportation incurred by your immediate family members in visiting you. The expenses will only be reimbursed if (i) the Insurer deems the expenses to be reasonable and necessary, (ii) the expenses are a direct result of the visit, (iii) the transportation was by the most direct route to the hospital and (iv) the visit itself was deemed by the attending physician to be beneficial to your health. Payment by the Insurer for the total of all expenses incurred shall not exceed \$2,000.

If transportation is provided by a vehicle other than one operated under a license for the conveyance of passengers for hire, the reimbursement of transportation expenses will be limited to a maximum of \$0.20 per kilometer.

As used above, "immediate family" shall mean a person who is at least 18 years of age and who is your spouse, son, daughter, father, mother, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law.

If a family transportation and accommodation benefit is provided under any other provision included in the Group Policy, it will only be payable under one of the provisions.

Repatriation

Should you accidentally die while outside of your province of residence and a benefit is payable for such loss under this provision, the Insurer will reimburse the actual expenses, up to a maximum of \$10,000, which are incurred for the preparation of your body for transportation and the actual transportation of the body to its first resting place (e.g. funeral home) in proximity to your normal place of residence. The reimbursement of the expenses will be made to the individual who incurred the expenses.

If a repatriation benefit is provided under any other provision included in the Group Policy, it will only be payable under one of the provisions.

Home Alteration and Vehicle Modification

If you should suffer a loss for which a benefit is payable under this provision and such loss results in you requiring a wheelchair to be ambulatory, the Insurer will pay the one time costs associated with

- (1) alterations to your principal residence, which have been recommended, in writing, by a recognized organization providing support to wheelchair users and which have been made by an individual experienced in such alterations, so as to make the residence wheelchair accessible and habitable, and
- (2) modifications to a motor vehicle used by you which have been made by an individual experienced in such modifications and which have been approved by the appropriate Provincial licensing authorities, so as to make the vehicle accessible and/or drivable by you.

ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE BENEFIT FOR EMPLOYEES

Payment by the Insurer for the costs associated with the home alterations and vehicle modifications shall not exceed \$10,000 in total, nor shall payment be made for any expenses which are deemed by the Insurer to be unreasonable or unnecessary or which are incurred more than 365 days after the date of the accident which caused your loss.

Seat Belt

If you should sustain a loss for which a benefit is payable under this provision and such loss occurred while you were driving or riding in a motor vehicle and while you were wearing a seat belt the Insurer will pay an additional benefit equal to 10% of your Principal Sum provided

- (1) the motor vehicle was being used in a prudent manner at the time of the accident,
- (2) the operator of the motor vehicle had a valid driver's license for the type of motor vehicle being used, and
- (3) proof, satisfactory to the Insurer, that you were wearing a seat belt at the time of the accident is submitted to the Insurer at time of claim.

As used above, "motor vehicle" means a private passenger motor vehicle.

Day Care

If you should suffer an accidental loss of life for which a benefit is payable under this provision, the Insurer will pay the reasonable and necessary expenses incurred as a result of your dependent child's enrollment in a legally licensed Day Care Centre, provided the child was enrolled in the Day Care Centre at the time of your death or is enrolled in the Day Care Centre within 365 days of your death. Payments will be made by the Insurer each year that the child is enrolled in a legally licensed Day Care Centre, for up to four successive years or until the dependent child's twelfth birthday, if earlier. Proof that the dependent child is enrolled in the legally licensed Day Care Centre will be required by the Insurer before payments will be made. The amount of each payment shall not exceed \$5,000.

ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE BENEFIT FOR EMPLOYEES

Limitations

- (1) The total amount payable for all losses resulting from any one accident shall not exceed your Principal Sum, except with respect to hemiplegia, quadriplegia and paraplegia.
- (2) If as a result of any one accident, you should suffer more than one of the losses shown in the Schedule of Amounts of Insurance with respect to any one limb, payment will be made only for the one loss for which the largest amount is applicable.

Aggregate Limit of Indemnity

The Insurer's aggregate limit of indemnity for all losses resulting from any one aircraft accident for which coverage under this provision is provided is \$5,000,000. In the event this limit is insufficient to pay the full amount of indemnity for each individual involved in the accident, the amount payable for each individual shall be in the proportion that the limit of indemnity for any one such accident bears to the total amount of benefit that would have been payable except for such limit of indemnity.

Exclusions

No benefit will be payable for any loss that resulted either directly or indirectly from, or was in any manner or degree associated with, or occasioned by, any one or more of:

- (1) Suicide, while sane or insane, or intentionally self-inflicted injury.
- (2) War or any act of war, whether declared or undeclared.
- (3) Participation in any riot or civil strife.
- (4) Committing or attempting to commit a criminal offense or provoking an assault.

(5) Travel or flight in any vehicle or device for aerial navigation except:

- (a) riding as a passenger and not as a pilot, operator or member of the crew, in or on any aircraft having a current and valid certificate of air worthiness and piloted by a person who holds a current and valid pilot's license of a rating authorizing such person to pilot the aircraft, or
- (b) riding as a passenger and not as a pilot, operator or member of the crew, in or on any aircraft operated by the Canadian Armed Forces or by a similar military service of any duly constituted governmental authority of any other recognized country.

Boarding or alighting from the aircraft will be deemed to be part of the flight. However, this provision will not cover any loss sustained while and in consequence of riding as a passenger, pilot, operator or member of the crew in or on any aircraft owned, operated, chartered or leased by the Policyholder and/or your employer.

Definitions

As used throughout this Benefit:

"Total disability" and "totally disabled" shall mean:

- (1) During your qualifying disability period and the first 24 months thereafter during a continuous period of disability, that the Insurer has determined that you are unable to
 - (a) perform substantially all of the essential duties of your own occupation, and
 - (b) earn more than 80% of your indexed pre-disability monthly earnings,due to a medically determinable physical or medical impairment.
- (2) After the 24 months specified above, that the Insurer has determined that you are unable to earn more than 75% of your indexed pre-disability monthly earnings due to the medically determinable physical or mental impairment.

However, if you engage in any occupation or business except as specifically provided in this Benefit, you will be deemed to no longer be totally disabled.

"Qualifying disability period" shall mean the period for which you have actually been totally disabled during a continuous period of disability before you may receive a monthly income benefit. It will not include any period for which you are not

- (a) under the regular care and attendance of a legally licensed physician, other than yourself, who is a registered specialist in the field of medicine which is applicable to your disability, or
- (b) undergoing a course of medical treatment or participating in a program of rehabilitation which, in the opinion of the Insurer, is medically required.

The qualifying disability period that will be applicable to you will be as stated under the Summary of Benefits.

"Continuous period of disability" shall include all periods of total disability that meet all of the following conditions:

- (a) they commence while you are insured under this Benefit,
- (b) they are due to the same or related causes or causes,
- (c) during your qualifying disability period, they are not separated by a period of more than fourteen days during which you are not totally disabled, and
- (d) after you have completed your qualifying disability period, they are not separated by a period of more than six months during which you were not totally disabled.

"Indexed pre-disability monthly earnings" shall mean your average monthly earnings for the 12 month period immediately prior to the date your disability commenced, increased each March 1st coincident with or next following the anniversary of the date on which you became entitled to a monthly income benefit by the change in the Consumer Price Index (as published by the Government of Canada) during the immediately preceding calendar year.

Benefit

If the Insurer receives proof that you became totally disabled while insured under this Benefit, the Insurer will pay a monthly income benefit to you upon completion of your qualifying disability period provided you are then totally disabled. The amount of the monthly income benefit payments will be the amount for which you were insured on the date you became totally disabled.

Your monthly income benefit payments will cease on the earlier of:

- (1) The end of the maximum benefit period as stated under the Summary of Benefits.

- (2) The date you are no longer totally disabled.

- (3) The date you refuse to participate in a rehabilitation program which has been recommended by the Insurer.

- (4) The date you refuse to participate in a trial-work, part-time work or modified work program which has been recommended by the Insurer.

Recurrent Total Disability

If, within six months of your monthly income benefit ceasing due to your returning to full-time work, you are again totally disabled, such disability will be considered a continuation of the previous disability provided it is due to the same cause or causes related to the previous disability. If the subsequent period of disability is due to a different and unrelated cause or causes it will be considered a new disability.

Notwithstanding the above, no monthly income benefit is payable if your total disability re-occurs after the Long Term Disability Insurance Benefit has terminated and a period of 90 days has elapsed during which you were not so disabled.

Waiver of Premium

Premiums will be waived for any period during which you are receiving benefit payments under this Benefit.

Work Re-Entry

Once you have completed your qualifying disability period, you will be eligible to engage in

- (1) a trial work, part-time work or modified work program which has been approved by the Insurer, or

- (2) a rehabilitation program which has been approved by the Insurer,

with the intent of returning to full-time employment, without the Insurer deeming that you have ceased to be totally disabled.

During your participation in the program, your monthly income benefit will continue, but it will be reduced so that the total of the monthly income you are receiving under this Benefit, the income received from participation in the program and the sources described in the Benefit Reduction section does not exceed 100% of your indexed pre-disability monthly earnings (after tax earnings if the monthly income benefit is non-taxable).

The Insurer may pay the expenses incurred by you, other than usual employment expenses, which are associated with the approved trial-work, part-time work, modified work or rehabilitation program, provided the expenses were approved in writing, by the Insurer prior to being incurred.

The Insurer reserves the right to require that you engage in a reasonable part-time work, trial-work, modified work or rehabilitation program, which has been recommended by the Insurer to assist you in returning to gainful employment. If you do not co-operate or participate in the program you will no longer be eligible to receive a monthly income benefit under this Benefit.

Survivor Benefit

Should you die during a continuous period of disability in which you have been receiving or were entitled to receive a monthly income benefit, your spouse (or dependent children, if you have no spouse) will be eligible to receive a benefit equal to three times the net monthly benefit payment you received or which you were entitled to receive from the Insurer immediately prior to your death. The benefit will be payable upon receipt by the Insurer, at its Head Office, of proof of your death.

Benefit Reduction

The purpose of this Benefit is to extend to you a reasonable level of income when you are totally disabled. It is not designed to give you an income which would exceed or even equal your normal take-home pay when you are working. For this reason, your monthly income benefit will be reduced by any benefits you are entitled to receive from any of the following:

- (1) Workers' Compensation or similar legislation.

- (2) Canada or Quebec Pension Plan or U.S. Social Security Act (Will not include any benefits which apply to your spouse and child(ren) as a result of your disability.)
- (3) Any government legislated no-fault automobile insurance plan.

If, after taking the above reductions into consideration, the total amount of your monthly income from this Benefit and all sources listed below, still exceeds 85% of your indexed pre-disability monthly earnings (after-tax earnings if the benefit is non-taxable) then your monthly income benefit will be further reduced until it does not exceed such level.

- (1) Workers' Compensation or similar legislation.
- (2) Canada or Quebec Pension Plan or U.S. Social Security Act (Will include both benefits which apply to you and your spouse and child(ren) as a result of your disability).
- (3) Any government legislated no-fault automobile insurance plan.
- (4) Any other government plan.
- (5) Any benefit plan, or retirement or pension plan which is provided by or through or administered by your employer or a related employer.
- (6) Any group, association, or franchise insurance plan.
- (7) Any plan or arrangement for which you receive a salary, wage, or other payment from any employer during your total disability (Will not include any payments which are received by you from an employer due to your participation in an approved trial-work, modified work, part-time work or rehabilitation program).
- (8) Damages for loss of income received from a third party and arising out of the same circumstances that caused the total disability.

LONG TERM DISABILITY INSURANCE BENEFIT

Limitations and Exclusions

No monthly income benefit is payable with respect to a total disability during any of the following periods:

- (1) Any period during which you are not under the regular care and attendance of a legally licensed physician, other than yourself, who is a registered specialist in the field of medicine which is applicable to your disability, or you are not undergoing a course of medical treatment or participating in a program of rehabilitation which, in the opinion of the Insurer, is medically required.
- (2) For any period you are on a pregnancy leave of absence.
- (3) For any period you are on a parental leave of absence.
- (4) For any period during which you are in receipt of pregnancy benefits, parental leave benefits, pregnancy-related sickness benefits or any combination of such benefits under the Employment Insurance Act.
- (5) For any period during which you are either permanently or temporarily outside of Canada. If you become disabled while outside of Canada, the disability will be deemed not to have commenced until the date of your return to Canada. However, if you are outside of Canada when the disability commences and you cannot return to Canada due to a medical reason, as verified by a legally licensed physician who is satisfactory to the Insurer, your disability will be deemed to have commenced on the date it commenced and not on the date that you return to Canada and, if applicable, a benefit will be payable while you are outside of Canada.
- (6) For any period you receive a severance allowance as a result of your employment being terminated, if your benefits are being extended after your termination due to the applicable laws of the province where you reside.

No monthly income benefit will be payable if your total disability resulted either directly or indirectly from, or was in any manner or degree associated with, or occasioned by, any one or more of:

LONG TERM DISABILITY INSURANCE BENEFIT

- (1) War or any act of war, whether declared or undeclared.
- (2) Participating in any riot or civil commotion.
- (3) Intentional self-inflicted injury, while sane or insane, or intentional self destruction while sane or insane.
- (4) The commission of or an attempt to commit a criminal offense or provoking an assault.
- (5) While on active duty (including active duty for training purposes) in the armed forces of any nation, international organization or combination of nations or in any civilian non-combatant unit which serves with such forces in combat.

Pre-Existing Condition Exclusion

No monthly income benefit will be payable for your total disability if it:

- (1) is caused by, contributed to by, or resulted from a mental or physical impairment (i) which was sustained or contracted, or (ii) for the symptoms of which you were treated by a legally licensed physician, or (iii) for which you were taking medication as prescribed by a legally licensed physician, during the 3 months prior to the date on which your insurance commenced under this Benefit, and
- (2) begins in the first 12 months after the date you became insured under this Benefit.

Plan Termination

Termination of the Group Policy will not affect any claims incurred prior to termination and benefits will continue for such claims as though the policy was still in force.

Benefit

The Insurer will reimburse you for all covered expenses which are incurred by you or your insured dependents in an amount equal to the Benefit Percentage as outlined under the Summary of Benefits. Such amount will be subject to the Cash Deductible, any dollar maximums shown in the Summary of Benefits, and the limitations and exclusions included in this Benefit. The covered expenses apply separately to each insured person.

Covered Expenses

A charge made for any of the following services and supplies shall be considered to be a covered expense provided:

- (1) The charge is deemed to be reasonable and customary by the Insurer. If the charge is in excess of what is deemed reasonable and customary, it will only be covered up to the level which has been deemed reasonable and customary.
- (2) The charge is incurred after the person became insured under this Benefit.
- (3) The services or supplies are deemed by the Insurer to be medically necessary.
- (4) Coverage of the services or supplies is not prohibited under the Provincial Hospital or Provincial Medicare Act of your province of residence.

Out-of-province including out-of-country expenses are payable in excess of the benefits provided by the Provincial Hospital and/or Provincial Medicare Act of your province of residence, where not prohibited by government legislation or regulation.

Hospital Care

- (1) Room and board charges made by a hospital, as shown in the Summary of Benefits.

- (2) Hospital services and supplies furnished during a hospital confinement (not including special nursing services).

Nursing Care

Private duty nursing when (i) certified in writing by the attending physician as medically necessary and (ii) performed in the patient's home by a registered graduate nurse or registered nursing assistant, provided the nurse is not a relative of yours and does not have the same legal residence as you. All private duty nursing care must be pre-approved by the Insurer.

Convalescent Home Care

Room and board charges made by a convalescent home which is licensed by the appropriate licensing authority, to the extent that the charges are not covered by any other plans and do not include any part of a charge exceeding the limit stated under the Summary of Benefits, for a maximum of 120 days during any one continuous period of confinement provided the confinement:

- (1) occurs within 48 hours following a hospital stay of at least 3 consecutive days,
- (2) is for the same cause or causes as the preceding hospital stay,
- (3) has been recommended and approved, in writing, by a legally licensed physician, and
- (4) is primarily for rehabilitation or convalescent care and not primarily for custodial care.

"Continuous period of confinement" as used above, shall include all periods of confinement in a convalescent home which are due to the same or related cause or causes except periods of confinement separated by more than (i) 30 consecutive days, with respect to you and (ii) 180 consecutive days with respect to your dependent, during which you or your dependent was not so confined.

Substance Abuse Treatment Facility

Room and board charges made by a substance abuse treatment facility which is licensed by the appropriate licensing authority, to the extent that the charges are not covered by any other plans and do not include any part of a charge exceeding the limit stated under the Summary of Benefits, subject to a cumulative lifetime maximum of 60 days of confinement, provided:

- (1) The facility is located in your province of residence.
- (2) Confinement in the facility is the result of the insured person's involvement in a substance abuse rehabilitation program and is not primarily for custodial care.
- (3) A benefit with respect to the confinement is payable under the Provincial Hospital Act and/or Provincial Medicare Act of your province of residence. The insured person must confirm that a benefit is payable, in writing, with the administrators of such Acts prior to the confinement occurring.
- (4) The insured person has received approval for the confinement from the Insurer prior to the confinement occurring.

Ambulance, Laboratory and Out-Patient Charges

- (1) Use of professional ambulance service (including, where necessary, use of air ambulance and scheduled common carrier), to transport the insured person in a medical emergency to the nearest hospital equipped to provide the required treatment.
- (2) X-ray examinations and other diagnostic laboratory services.
- (3) Out-patient charges.

Prescription Drugs (Drug Card Plan)

- (1) The following items are covered when prescribed by a legally licensed physician, surgeon or dentist:
 - (a) Prescribed drugs which bear a valid Drug Identification Number (DIN) and are listed as prescription-requiring in the federal or provincial drug schedule.
 - (b) Prescribed drugs which bear a valid Drug Identification Number (DIN) and which by convention require a prescription.
 - (c) Extemporaneous preparations or compounds provided one of the ingredients is eligible for coverage.
 - (d) Insulin supplies, such as needles, syringes, lancets and diagnostic testing materials.
- (2) The quantity of drugs which may be dispensed for any one prescription will be limited to that amount sufficient for up to a 34-day period, except in the case of drugs for long term therapy (maintenance drugs) for which up to a 100 day supply is allowable.
- (3) Items not covered, whether prescribed or not, include:
 - (a) Over-The-Counter (OTC) drugs.
 - (b) Alcohol, alcohol swabs, disinfectants, cotton or bandages.
 - (c) Vitamins, other than injectable vitamins, minerals, dietary supplements, infant formulas or injectable Total Parenteral Nutrition (TPN) solutions.
 - (d) Diaphragms, condoms, contraceptive jellies/sponges/foams/suppositories, Intrauterine Devices (IUDs), contraceptive implants or appliances normally used for contraception.
 - (e) Proprietary drugs bearing a General Product (G.P.) number.
 - (f) Homeopathic preparations.
 - (g) Prescriptions dispensed by a physician, dentist, clinic or by any non-accredited hospital pharmacy or for treatment as an outpatient in a hospital, including emergency status and investigational status drugs.
 - (h) Preventative immunization vaccines and toxoids.

- (i) All allergy extracts, compounded by a lab, which do not bear a Drug Identification Number (DIN).
- (j) Habit breaking drugs for, but not limited to, smoking, obesity, drugs and alcohol.
- (k) Drugs considered lifestyle drugs such as, but not limited to, drugs for the treatment of infertility or erectile dysfunction.

Paramedical Care

Services performed by a licensed Chiropractor or Podiatrist, Chiropractor, Masseuse, Naturopath, Homeopath, Osteopath, Speech Therapist, Physiotherapist, Psychologist, or Acupuncturist, excluding any charges in excess of the limits stated in the Summary of Benefits.

Appliances

The Insurer will rent or purchase at its option the following:

splints excluding dental splints,
apnea monitors for respiratory dysrhythmias,
canes and walkers,
crutches,
casts,
burn garments,
sleeves for lymphoedema following mastectomy,
support hose (calendar year maximum of \$100 per insured person),
braces with rigid support,
orthopedic shoes which have been custom made, customized or custom molded for the Insured and which were recommended, in writing, by a legally licensed physician, up to a calendar year maximum of \$300 per insured person,
artificial eyes (repairs and replacements covered up to a calendar year maximum of \$1,000 per insured person),
artificial limbs and prostheses other than myoelectric and electric prostheses (repairs and replacements covered up to a calendar year maximum of \$2,000 per insured person),
wigs required as a result of chemotherapy or bodily injury (lifetime maximum of \$500 per insured person),
back supports,

stump socks,
shoulder harnesses,
head halter,
traction apparatus,
cervical collar,
colostomy and ileostomy apparatus and supplies,
catheters,
external breast prosthesis (two per insured person in any calendar year),
surgical bras (two per insured person in any calendar year),
diabetic monitoring and administration equipment (lifetime maximum of \$1,000 per insured person),
non-electric wheelchairs (lifetime maximum of \$2,000 per insured person) or electric wheelchairs where medically necessary (lifetime maximum of \$4,000 per insured person).
hospital beds,
bed rail,
trapeze bar,
transcutaneous nerve stimulator (lifetime maximum of \$2,000 per insured person),
intermittent positive pressure breathing machine,
aerosol equipment, mist tents and nebulizers for cystic fibrosis, acute emphysema, chronic obstructive bronchitis or chronic asthma,
oxygen tent and oxygen supplies,
sphygmomanometers (lifetime maximum of \$200 per insured person).
Foot orthoses which have been specifically designed and constructed for the Insured and which were recommended, in writing, by a physician or legally licensed surgeon, up to a calendar year maximum of \$300 per insured person.
Hearing aids obtained on a written prescription of a physician licensed as a otolaryngologist (excluding charges for batteries) up to \$500 per insured person in any 5 consecutive calendar years.

Physician's Services

- (1) Charges made by a legally licensed physician or surgeon in your province of residence, in excess of the current tariff of the relevant Medical Association, where not prohibited by any government legislation or regulations.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (2) Charges made by a legally licensed physician or surgeon in respect of services performed outside of your province of residence but excluding any benefit payable under the provincial government plan and where not prohibited by any government legislation or regulations.

Out of Canada Emergency Coverage

Charges made for services performed outside of Canada provided that:

- (1) The services are required for emergency treatment of an injury, disease or pregnancy while travelling.
- (2) The emergency occurs within the first 90 days of the insured person's absence from Canada.
- (3) The services are defined under this Benefit, except that any charges for hospital room and board will be limited to ward level.
- (4) The services would have been covered if they had been performed in Canada.

Out of Canada Referral Coverage

Charges made for services performed when an insured person is referred outside of Canada for medical treatment provided that:

- (1) The treatment cannot be provided in Canada.
- (2) The services are defined under this Benefit, except that any charges for hospital room and board will be limited to ward level.
- (3) The treatment is deemed to be medically necessary as certified in writing by at least two physicians practicing in Canada, one of whom regularly attends the insured person, the other whom specializes in the field of medicine applicable to the condition being treated and neither of whom is the insured person nor a member of his family.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (4) The treatment must be accepted as normal treatment for the condition and must not be considered experimental.
- (5) A benefit for the treatment must be payable under either the Provincial Hospital or Provincial Medicare Act of your province of residence. This must be confirmed, in writing, with the administrators of such Act prior to the services being performed.
- (6) The Insurer has approved the treatment, in writing, prior to the treatment being performed.

Travel Assist

This coverage is provided by the Insurer through World Access Canada Inc.

To make use of this coverage simply phone the number on your TRAVEL ASSIST card and provide whatever information is requested by the co-ordinator at World Access Canada Inc.

The following charges and services will be supplied with respect to a medical or personal emergency while you and/or your insured dependents are travelling outside of Canada for the purpose of vacation or business provided the medical or personal emergency occurs during the first 90 days after the commencement of the absence from Canada:

- (1) Multilingual assistance by telephone or telex, 24 hours a day, 365 days a year. (This includes interpretation services in most major languages.)
- (2) Assistance in locating appropriate medical care.
- (3) If required to obtain needed emergency medical treatment, an advancement of funds will be provided for such treatment, subject to a maximum of \$5,000.
- (4) If your or your insured dependent's medical condition requires it, transportation to a medical facility or repatriation to a hospital in Canada, under proper medical supervision, if needed, will be arranged.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (5) If you and/or your insured dependents are travelling together and miss a pre-arranged return flight home due to the hospitalization or death of one member, economy class transportation will be arranged and paid for to the original point of departure in Canada. (If the return tickets have any redeemable value only the additional costs necessary after applying such value to the transportation will be provided.)
- (6) If you or your insured spouse is hospitalized and as a result your insured children are left unattended, economy class transportation will be arranged and paid for to their usual home in Canada. If needed an escort will be arranged. (If valid transportation tickets should exist only the additional costs necessary for the return tickets after applying the value of the original tickets will be provided.)
- (7) If you or one of your insured dependents are travelling alone and are hospitalized for at least 7 consecutive days, round-trip economy class transportation will be arranged for a spouse, parent, child, brother or sister to visit. (The visit must be considered by the attending physician to be beneficial to the patient.)
- (8) If a transportation benefit is provided under 5, 6 or 7 above, charges incurred for commercial accommodation and meals will be reimbursed, up to a maximum of \$150 per day for a period of up to 7 days. (For reimbursement retain the receipts and submit them to World Access Canada Inc. upon returning to Canada.)
- (9) If you or one of your insured dependents should die while travelling outside of Canada, all necessary authorizations and arrangements will be made to return the remains to their province of usual residence. A maximum of \$3,000 will be provided. (The cost of a burial coffin will be excluded.)

Note: The maximum amount provided under 5, 6, 7, 8 and 9 above, during any one travel emergency will be \$10,000.

- (10) Assistance in replacing lost or stolen documents or tickets.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (11) Assistance in locating legal assistance and, if needed, arranging cash advances from credit cards, family or friends to pay bail or legal fees.
- (12) A message center where messages will be held for and from you or your insured dependent who is travelling, for up to 15 days.

The following limitations will apply to this Covered Expense:

- (1) You and/or your insured dependent will be responsible for any services requiring payment of \$200 or less. (For these services submit the receipts to the government body administering the Provincial Hospital or Provincial Medicare Act of your province of residence and the Insurer for reimbursement.)
- (2) Services will not be provided in (i) Canada, (ii) countries designated from time to time (it is your responsibility to enquire with World Access Canada Inc., whether the services are provided in a particular country prior to your or your insured dependent's departure), and (iii) any countries where the local authorities refuse to permit the providing of the services described above.

Neither the Insurer nor World Access Canada Inc. and its affiliated companies will be responsible for the availability, quantity, quality or results of services requested and received under this Covered Expense or the failure of you and/or your insured dependents to receive medical services for any reason.

Accidental Dental Coverage

Charges by a legally licensed dentist for treatment necessitated by a traumatic injury to sound natural teeth or the surrounding tissues provided:

- (1) The damage is not due to an object or food placed wittingly or unwittingly in the mouth.
- (2) The injury occurs while the insured person is insured under this Benefit.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (3) The charges are incurred within twelve months of the injury. However, if the charges are to be incurred more than 60 days after such injury, a treatment plan must be submitted to the Insurer at its Head Office within 60 days of the injury.
- (4) The treatment is the least expensive that will provide a professionally adequate result.
- (5) No payment will be made by the Insurer for any part of the charge which exceeds the amount shown for the treatment in the Current Provincial Fee Schedule for general practitioners in your province of residence.

The total amount payable under this covered expense during the lifetime of the insured person (whether or not the insured person is continuously insured) including any amount payable for charges incurred following discontinuance of the insured person's insurance under this Benefit shall not exceed the limit stated in the Summary of Benefits.

Vision Care

The following items are covered excluding any charge in excess of the items stated in the Summary of Benefits.

- (1) Ocular examination (including refraction) limited to not more than one in any continuous period of 24 months for an adult and not more than one in any continuous period of 12 months for a dependent child (unless covered under provincial legislation and regulation.)
- (2) Cost of frames, lenses and fitting of prescription glasses and contact lenses.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Extension of Benefits

If you or your insured dependent is disabled on the date your or their insurance is discontinued under this Benefit, benefits will be available during the continuance of such disability but only while this Benefit remains in force and only with respect to the charges for covered expenses which arise as a result of the disability, provided such charges are incurred within three months of the date of the discontinuance.

As used above "disabled" and "disability" mean

- (1) with respect to you, a state of incapacity resulting from disease, injury or pregnancy by which you are unable to perform substantially all of the essential duties of any occupation or employment for which you are reasonably qualified by education, training or experience, and
- (2) with respect to your dependent, that due to injury, disease or pregnancy your dependent is confined to hospital or is receiving treatment by a legally licensed physician or surgeon.

Survivor Benefit

If you die while insured under this Benefit and prior to any continuance of insurance as provided under the Extension of Benefits section, insurance under this Benefit will be continued with respect to your dependents who were insured under this Benefit on the date of your death, without payment of premiums. The insurance will terminate on the earliest of:

- (1) 2 years following the date of your death, and
- (2) the date the dependent no longer qualifies as a dependent, and
- (3) the date of termination of this Benefit with respect to active employees.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Coordination of Benefits

The Group Policy includes a Coordination of Benefits provision. This provision operates in the event that you and/or your insured dependents are covered under this policy as an employee and as a dependent or as a dependent of more than one employee, or under another Group Plan, or individual insurance plan, or any government legislated automobile insurance plan including the Quebec Automobile Insurance Plan, and ensures that payments made by all plans do not exceed the actual expenses incurred.

Exclusions

"Covered Expenses" shall not include any charge:

- (1) For any services or benefits which are "insured services or benefits" under any government legislation or regulation and to the extent that insurance for such service is prohibited by law.
- (2) For or in connection with general health examinations.
- (3) For or in connection with the treatment of pre-existing dental disease or orthodontic malocclusion in order to facilitate treatment for a traumatic injury to sound natural teeth or the surrounding tissues.
- (4) For or in connection with a surgical procedure or treatment performed for primarily cosmetic reasons, or for hospital confinement for such procedure or treatment.
- (5) For or in connection with any services or supplies which are for the sole purpose of facilitating the insured person's participation in sports or recreational activities and not for other daily living activities.
- (6) For services or treatments due to insurrection or war, declared or undeclared, whether or not the insured person is actually participating in such insurrection or war.
- (7) Which occurs as a result of participation in a riot or civil commotion.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (8) Which results from the commission of or attempted commission of a criminal offense or the provoking of an assault.

- (9) Which results from an intentionally self-inflicted injury while sane or insane.

- (10) For services for which the insured person is not required to make payment or where payment is received as a result of legal action or settlement.

- (11) For any drugs, medicines, medical testing, surgical procedures and appliances considered by the Insurer to be experimental and not recognized by the Canadian Medical Association as an established standard treatment for the condition.

- (12) For private duty nursing where:

- (a) services are performed by a registered graduate nurse unless such qualified individual is required to administer intravenous medication or narcotics and to continuously monitor the vital signs of the patient;
- (b) services are performed by a registered nursing assistant when the care could be administered by a less qualified individual;
- (c) no record of the nurse's daily duties are submitted as part of the proof of claim.

- (13) For any orthotic appliance which was not specifically designed and constructed for the insured person and which was not recommended, in writing, by a legally licensed physician or surgeon.

- (14) For any fees charged in respect of services performed by a legally licensed physician or surgeon in your province of residence which are not included in the current tariff of the provincial government plan.

SUPPLEMENTARY HEALTH INSURANCE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (15) For or in connection with any services received or performed outside of Canada which (i) are due to a pregnancy (includes childbirth, miscarriage or any complications incident to a pregnancy) and which are received or performed after the 32nd week of gestation, or (ii) are due to the deliberate inducement of a miscarriage.
- (16) For any emergency services provided outside of Canada if the absence from Canada was for a purpose other than business or vacation travel.
- (17) For which the insured person incurs while attending an accredited educational institute, college or university outside of Canada.
- (18) For or in connection with any services or supplies received outside of Canada during an emergency if such services or supplies could have been delayed until the insured person returned home without endangering the insured person's health.
- (19) For which the insured person may apply and receive indemnity or compensation under any Worker's Compensation Act.

EMPLOYEE ASSISTANCE PROGRAM BENEFIT FOR EMPLOYEES AND DEPENDENTS

Benefit

The services available to you and your insured dependents under this Benefit are provided through the services of Family Guidance Group Inc., an independent employee assistance program firm staffed by professional psychologists, social workers and addiction counsellors.

To make use of the services provided under this Benefit, simply phone the number on your EMPLOYEE ASSISTANCE PROGRAM card.

The following services will be provided to you and your dependents, on a confidential basis, if you or they should be experiencing a personal or family problem.

- (1) Access to a 24 hour a day, 365 day a year, hot-line for bilingual assistance to handle a personal crises situation or arrange counselling to help with a personal problem.
- (2) Direct short term counselling.
- (3) Referral to a community resource, if it is determined that direct short term counselling will not satisfactorily resolve the personal problem and that long-term or specialized assistance is required. If you or your insured dependent should be referred to an outside community resource any costs that may be incurred as a result of the referral will be your responsibility.
- (4) Telephone counselling will be provided to you and your insured dependent, when applicable.

If you or your insured dependent are unsure whether a problem will be covered under this Benefit, simply phone Family Guidance Group Inc. and ask if the problem is covered.

The Insurer will not be liable for the negligent or willful acts of any community service agency to which you or your insured dependent may be referred to by Family Guidance Group Inc.

EMPLOYEE ASSISTANCE PROGRAM BENEFIT FOR EMPLOYEES AND DEPENDENTS

Bereavement Extension

If you should die while insured under this Benefit, the insurance shall be continued with respect to your dependents who were insured under this Benefit on the date of your death, without payment of premiums. The insurance will terminate on the earliest of:

- (1) six months following the date of your death,
- (2) the date your dependent no longer qualifies as a dependent, and
- (3) the date this Benefit terminates with respect to active employees.

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Benefit

The Insurer will reimburse you for all reasonable and necessary charges, pertaining to yourself and your dependents, for the following covered expenses performed or prescribed by a legally licensed dentist. Payment will be made up to the amount set for General Practitioners in the applicable Provincial Association Schedule of Fees subject to the Benefit Percentage, Cash Deductible and any dollar maximums shown in the Summary of Benefits, and the limitations and exclusions included in this Benefit.

WHEN YOU OR YOUR DEPENDENTS ARE VISITING A DENTIST, IT IS IMPORTANT THAT YOU REFER THIS BOOKLET TO HIS/HER ATTENTION SO THAT HE/SHE MAY ADVISE YOU IF HIS/HER PRESCRIBED SERVICES ARE COVERED BY THE GROUP POLICY.

When a course of treatment is expected to exceed \$1,000 or when an alternative course of treatment is available, you may want to submit a treatment plan, prepared by the dentist, for review prior to the treatment commencing. This will enable the Insurer to determine for you what level of coverage will be provided under this Benefit with respect to the proposed treatment, thus avoiding any potential misunderstandings.

Covered Expenses

Part A Services

(1) Diagnostic

- Examinations (not more than once in 3 consecutive calendar years)
01101, 01102, 01103
- Recall examinations (not more than (i) 2 recall oral examinations in a calendar year and no more than 1 per day and (ii) 2 emergency and specific oral examinations in total during a calendar year and no more than 1 per day)
01202, 01205, 01204

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- X-rays: complete series (not more than once in 3 consecutive calendar years); bitewings (up to six films in any calendar year); panoramic film (not more than once in any 3 consecutive calendar years)
02102, 02101, 02111-02125, 02131-02136, 02141-02146, 02201-02204, 02209, 02304, 02401, 02402, 02409, 02411, 02412, 02419, 02504, 02509, 02601, 02701-02704, 02709, 02801, 02802, 02809, 02911-02919, 02931-02934, 02939, 02921
- Laboratory examinations
04101, 04201, 04311-04313, 04321-04323, 04401, 04501, 04509
- Consultations (not more than 2 units per calendar year)
05101-05104, 05109, 05201, 05202, 05209, 93111, 93112, 93119

(2) Preventive

- Dental prophylaxis (not more than twice in any calendar year and excludes periodontal scaling and root planing within a six month period)
11101, 11201, 11301, 11102, 11202, 11302, 11103, 11203, 11303
- Fluoride treatment (not more than twice in any calendar year)
12101, 12102
- Other preventive: oral hygiene instruction (not more than once per family per lifetime); pit and fissure sealants for first tooth and each additional tooth same quadrant (limited to children under 18 years of age)
13211-13214, 13219, 20111, 20119, 13401, 13409
- Occlusal equilibration (not in conjunction with the delivery and post-insertion of (i) single restorations at the same appointment or (ii) fixed or removable prosthesis by the same dentist for a period of three months: limited to 2 units per calendar year)
43311-43314, 43319

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- (3) Restorative (Services only covered if necessitated by decay or traumatic injury)
 - Amalgam restorations
21101-21105, 21211-21215, 21221-21225
 - Retentive pins
21401-21405
 - Tooth coloured composite restorations: permanent anteriors, acid etch/bond technique (not to be used for Veneer Applications or Diastema Closures)
23101-23105, 23111-23115, 23221-23225, 23211-23215, 23321-23324, 23311-23314, 23501-23505, 23511-23514, 23401-23405, 23411-23415
 - Gold foil restorations (reimbursement made only to the level of the suggested fee for the similar class of restoration using amalgam or composite)
24101-24104, 24201-24203
 - Crown-single-preformed (limited to children under 18 years of age)
22201, 22211, 22301, 22311, 22401, 22411

(4) Minor Surgical

- Removal of tooth, erupted tooth (uncomplicated)
71101, 71109
- Surgical removals
71201, 71209, 72111, 72119, 72211, 72219, 72221, 72229, 72231, 72239
- Removal of residual roots
72321, 72329, 72331, 72339
- Secondary haemorrhage control
79402

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

year); TMJ intra-oral appliance impression, insertion and adjustment (limited to once every 4 years)
43111, 43211, 43221, 43231, 43241, 43251, 43261, 43281, 43289,
43411-43416, 43419, 43421-43426, 43429, 43611, 43612,
43621-43623, 43629, 43721, 43722

(3) Oral Surgery

- Surgical exposure of tooth: transplantation of a tooth (up to a maximum of \$150); surgical repositioning of a tooth (up to a maximum of \$150)
42331, 42339, 72511, 72519, 72521, 72529, 72531, 72539, 72611,
72619, 72631, 72639, 72641, 72649

- Alveoloplasty
73111, 73121

- Gingivoplasty and/or stomatoplasty
73211, 73221, 73222

- Osteoplasty
73152, 73153, 73154, 73161

- Surgical excision and incision
74111, 74112*-74118*, 74631, 74632*-74638*,
75111, 75112, 75121, 75122
(* - to a maximum of \$150)

- Fractures: open reduction - mandibular (to a maximum of \$750); open reduction - maxilla (to a maximum of \$750)
76201, 76202-76204, 76301, 76302-76304, 76911-76913, 76961, 76962

- Frenectomy
77801, 77802, 78102

- Miscellaneous
79111, 79311-79313, 79321, 79322, 79331, 79341, 79332, 79342,
79333, 79343, 79601-79604

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- Drugs
96201, 96202

Part C Services

(1) Prosthodontic - Removable

- Complete dentures
51101-51103, 51301-51303

- Partial dentures
52101-52103, 52301-52303, 52401-52403

- Cast chrome cobalt (not gold)
53101-53103, 53201-53203, 53304, 53104, 53301, 53302, 53205

- Precision attachment of cast chrome cobalt (not gold, limited to \$550 plus lab fees)
53401-53403, 53611, 53621

- Denture adjustments (limited to twice in any calendar year)
54201, 54202, 54209, 54301-54303

- Miscellaneous: denture/implant retained prosthesis prophylaxis and polishing (limited to once every two years)
55501, 55509, 56511-56513, 56521-56523

(2) Major Restorative Services

- Restoration inlays (limited to amalgam restorations equivalent)
25111-25114, 25121-25124, 25131-25134, 25141-25144

- Onlay restorations
25511, 25521, 25531

- Retentive pins in onlays
25601-25605

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

- Crowns - single restorations only (porcelain or acrylic limited to teeth 1-6)
27111, 27114, 27201, 27211, 27301, 27311, 25711-25713,
25721-25723, 27501, 27502, 27601, 27602

- Other restorative services: recement/rebond inlays, onlays, crowns and
veneers (limited to once per year)
29101-29103, 29109, 29301-29303, 29309, 25731-25733,
25741-25743, 25751, 25752, 27401, 27409, 27122

(3) Prosthodontic Services - Fixed

- Pontics (porcelain or acrylic limited to teeth 1-6)
62101, 62501, 62502, 62701, 62103

- Retainers - inlay, onlay
67321, 67322, 67331, 67341

- Repairs (porcelain or acrylic limited to teeth 1-6)
66111-66113, 66119, 66211-66213, 66219, 66301-66303, 66309

- Retainers - crowns (porcelain or acrylic limited to teeth 1-6); telescoping
crown unit (to a maximum of \$450 plus lab); precision attachments (to a
maximum of \$150 plus lab)
67102, 67201, 67202, 67211, 67311, 67301, 67502, 67212, 67312

- Retentive pins in abutments
69301-69305

- Other: provisional coverage in extensive or complicated restorative dentistry
(to a maximum of \$50 plus lab)
69701, 69702

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Part C Services: Exclusions and Limitations

Covered expenses will not include any charges incurred directly for or as a result
of the following:

- (1) The replacement of an existing appliance (fixed bridgework, removable
partial or complete dentures) which has been lost or stolen.
- (2) The replacement of, or addition to an existing appliance (fixed
bridgework, removable partial or complete dentures) unless (i)
necessitated by the extraction of one or more additional natural teeth, (ii)
the existing appliance is at least 4 years old and cannot be repaired, or
(iii) the existing appliance is temporary and is replaced with a permanent
bridge or a permanent denture.

If the replacement appliance is of a different type, the maximum amount
payable will be limited to the current coverage of the type of appliance
being replaced.

- (3) The initial installation of an appliance (fixed bridgework, partial or
complete dentures), unless the appliance is required to replace one or
more natural teeth which have been extracted.

- (4) The initial provision of crowns, inlays onlays or veneers unless the
insured person's tooth is broken down by decay or traumatic injury and
cannot be restored with an amalgam or composite restoration.

- (5) The replacement of crowns, inlays, onlays or veneers unless (i) the
insured person's tooth is further broken down by decay or traumatic
injury and cannot be restored with an amalgam or composite restoration,
and (ii) a continuous period of 4 years has elapsed since the last date on
which the crown, inlay, onlay or veneer was provided.

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Coordination of Benefits

The Group Policy includes a Coordination of Benefits Provision. This provision operates in the event that you and/or your insured dependents are covered under the policy as an employee and as a dependent or as a dependent of more than one employee, or under another Group Plan, or individual insurance plan, or any government legislated automobile insurance plan including the Quebec Automobile Insurance Plan and ensures that payments made by all plans do not exceed the actual expenses incurred.

Survivor Benefit

If you die while insured under this Benefit and prior to any continuation of insurance that may be provided, the insurance under this Benefit will be continued with respect to your dependents who are insured under this Benefit on the date of your death, without payment of premiums. The insurance will terminate on the earliest of:

- (1) 2 years following the date of your death, and
- (2) the date the dependent no longer qualifies as a dependent, and
- (3) the date of termination of this Benefit with respect to active employees.

Limitations

If the date your or your dependent's insurance commenced is more than 31 days after the date you or your dependent became eligible, covered expenses will be limited to \$200 for the first 12 months of coverage, during which time full premiums must be paid.

DENTAL EXPENSE BENEFIT FOR EMPLOYEES AND DEPENDENTS

Exclusions

The determination of "Covered Expenses" shall not include any charge:

- (1) For services or treatment due to insurrection or war, declared or undeclared, whether or not the insured person is actually participating in such insurrection or war.
- (2) For services or treatment due to participation in any riot or civil commotion.
- (3) For services or treatment due to the commission of or attempted commission of a criminal offense or provoking an assault.
- (4) For services or an examination performed by a legally licensed dentist solely for the use of a third party.
- (5) For intentionally self-inflicted injury while sane or insane.
- (6) For recent duplication of services by the same or a different dentist.
- (7) For a broken appointment.
- (8) For a full mouth reconstruction, for a vertical dimension correction, or for a correction of a temporomandibular joint dysfunction.
- (9) For endodontics and coping with respect to over-dentures.
- (10) For services or treatment considered by the Insurer to be experimental and not recognized by the Canadian Dental Association as an established, standard treatment for the condition.
- (11) For services or treatment which the insured person received while attending an accredited educational institute, college or university outside of Canada.
- (12) For services or treatment performed for primarily cosmetic reasons.

- (13) For services or treatment for which an insured person is not required to pay, including any expenses reimbursed, assumed or allowed under any other non-contractual plan, scheme, or arrangement.
- (14) For services for which the insured person receives payment as a result of legal action or settlement.
- (15) For services or treatment furnished or started before the date on which the insured person on whose account the charge was made became insured under this Dental Expense Benefit.
- (16) For the placing of crowns to restore occlusal height or as a preventive measure.
- (17) For the permanent splinting of teeth.
- (18) For any services or treatment prohibited by law.
- (19) For which the insured person may apply for and receive indemnity or compensation under any Worker's Compensation Act.

Your Eligibility

You are eligible, and will continue to be eligible, to be covered for the insurance described in this booklet while you meet all of the following conditions:

- (1) You are a full-time employee and are actively working for your employer.
- (2) You are a full-time resident of Canada.
- (3) You have been continuously employed by your employer for at least as long as the waiting period defined below.
- (4) You are under 70 years of age.
- (5) You are insured under the Provincial Hospital and/or Provincial Medicare Plan of your province of residence. (This condition only applies to the insurance provided under the Supplementary Health Insurance Benefit.)

Your waiting period: 3 months of continuous employment for your employer.

Date Your Coverage Commences

Your coverage will commence on the latest of:

- (1) the date you satisfy the conditions of eligibility,
- (2) the date you complete an application for coverage, and
- (3) the date of approval by the Insurer of any required evidence of insurability,

provided you are then actively at work. If you are not actively at work on the date your coverage is to commence, your coverage will not commence until you return to work.

GENERAL INFORMATION

If you complete your application for coverage more than 31 days after you have satisfied the conditions of eligibility, you will be required to provide satisfactory evidence of your insurability to the Insurer for all coverages.

Date Changes In Your Coverage Take Effect

An increase in your coverage will take effect on the later of:

- (1) the date you become eligible for the change in coverage, and
- (2) the date of approval by the Insurer of any required evidence of insurability,

provided you are then actively at work. If you are not actively at work on the date your coverage is to increase, the increase will not take effect until you return to work.

A decrease in your coverage will take effect automatically on the date of the change.

Evidence of insurability will be required as specified in the Summary of Benefits and as detailed in the Group Policy.

Date Coverage On Your Dependents Commences

If you are insured, you may apply to cover your dependents. The coverage on your dependents will commence on the date you apply for it provided you applied within 31 days of first being eligible to do so. If you apply for the coverage more than 31 days after you were first eligible to do so, you will be required to furnish satisfactory evidence of insurability of your dependents to the Insurer, at your expense, before the coverage on your dependents may commence.

If you already have dependents covered, all future dependents will become covered automatically on the date they become dependents.

If on the date a dependent is to become covered, the dependent is confined to a hospital or other treatment facility for the purpose of medical care or treatment, the coverage with respect to the dependent shall not become effective until the

GENERAL INFORMATION

date the dependent is no longer so confined. This paragraph will not result in postponing the effective date of the coverage on a child born while you have other dependents covered.

For the purposes of the Supplementary Health Insurance Benefit a dependent will not become covered unless the dependent is covered under the Provincial Hospital and/or Provincial Medicare Plan of your province of residence.

Conditions Under Which You May Waive Coverage

If your spouse is covered for benefits which are comparable to the benefits under the Supplementary Health Insurance Benefit and/or Dental Expense Benefit you may decline to cover yourself and your dependents or your dependents only, for such benefits under the Group Policy.

If the coverage under your spouse's plan should cease because the plan terminated or eligibility for such coverage ceased, you may make application to cover under the Group Policy those persons who had been covered under your spouse's plan.

Such application must be made within 31 days after the cessation of the coverage under your spouse's plan and the coverage under the Group Policy shall be effective on the day following the date of termination of the coverage under your spouse's plan.

No benefits, other than the Supplementary Health Insurance Benefit and the Dental Expense Benefit may be waived.

Conditions Under Which Your Coverage Terminates

Your coverage under the Group Policy terminates when your employment terminates, unless otherwise provided in the Summary of Benefits.

Information may be obtained from your employer regarding the status of your coverage in the event of layoff, leave of absence, or absence caused by disability.

Submission Of Claim

Written proof stating the occurrence, character and extent of the loss for which a claim is being made must be furnished to the Insurer at its Head Office as follows:

- (1) With respect to Life and Accidental Death and Dismemberment Benefits, as soon as possible after the loss, but in any event within one year of the date of the loss.
- (2) With respect to the Long Term Disability Benefit, within 90 days of the commencement of the period for which the Insurer is liable.
- (3) With respect to the Supplementary Health Insurance Benefit and the Dental Expense Benefit, the claim must be submitted in the calendar year in which the claim was incurred or the calendar year immediately following the calendar year in which the claim was incurred. However, if the plan or your employment should terminate, proof of the loss must be submitted to the Insurer at its Head Office within 90 days of the date of such termination.

Discontinuance of the Group Policy

Your employer hopes and expects to continue the plan indefinitely, but the possibility of unforeseen circumstances makes it necessary to reserve the right to amend, suspend or entirely discontinue the plan at any time.

The following terms are used in this Booklet.

“Actively at Work” means that you are:

- (1) at work and performing all of the usual and customary duties of your occupation on a full-time basis, if it is a scheduled work day, or
- (2) capable of performing all of the usual and customary duties of your occupation on a full-time basis, if you are not at work due to it being a non-scheduled work day, holiday or vacation day. You will not be considered to be actively at work if you are either hospital confined or disabled to a degree that you could not have reported to work.

“Dependent” shall mean:

- (1) Your spouse. Spouse shall mean either:

- (a) an individual who is married to you by reason of a valid religious or civil marriage ceremony, while not legally separated from you,
- or

- (b) your common-law spouse.

If you have had more than one spouse, spouse shall mean the individual most recently qualified.

- (2) Each unmarried child, step-child, legally adopted child or common-law child of yours provided the child is not employed on a full-time basis, relies fully upon you for support and maintenance and fits one of the following descriptions:

- (a) the child is under 21 years of age, or
- (b) the child is at least 21 years of age but under 25 years of age and is attending an accredited educational institute, college or university on a full-time basis.

DEFINITIONS

- (3) each unmarried child, step-child, legally adopted child or common-law child of yours, regardless of such child's age, if the child, due to a mental or physical handicap, is incapable of earning their own living and relies fully upon you for support and maintenance provided such handicap commenced while the child was a dependent child as defined in clause (2) and that proof of such handicap was received by the Insurer at its Head Office within 31 days of the applicable of the maximum ages stated in clause (2).

However, for the purpose of this plan, anyone who is:

- (a) in the armed forces of any country or state or international organization or a civilian force auxiliary to any military force, or
- (b) at least 65 years of age,

will be excluded from this definition.

"Common-law spouse" shall mean a person who resides with you and who has resided with you for at least 12 months and whom you publicly represent as your spouse.

"Common-law child" shall mean a child of your common-law spouse from another relationship and who resides with you and is in your and your common-law spouse's care and custody.

"Annual earnings" shall mean all forms of annual gross base earnings, have been received by you as employment earnings from your employer and which have been reported to the Insurer at its Head Office. Annual earnings will not include any additional forms of income such as, but not limited to, overtime, bonuses and dividends which you may have received from your employer.

However if your earnings include commission earnings, his "annual earnings" will be calculated as follows.

If you have been employed for at least two calendar years the average of your annual gross base earnings plus commissions as set forth on your T-4 Taxation Forms for the immediately preceding two calendar years.

DEFINITIONS

- (1) If you have been employed for at least one calendar year but less than two calendar years your annual gross base earnings plus commissions as set forth on your T-4 Taxation Forms for the prior year.
- (2) If you have been employed for less than one calendar year an amount that is estimated by your employer. This estimate must reflect a reasonable expectation of the amount that will be earned. The Insurer will verify the estimate with your employer at the time a claim is submitted..

- (3) Any change in your "annual earnings" will be deemed to take effect only on April 1, in each year.

"Monthly earnings" shall mean the total of the annual earnings you have received from your employer divided by 12.

"Full-time employee" shall mean a person who customarily works a regularly scheduled work week of at least 20 hours per week with the employer.

"Calendar year" shall mean the period from any January 1st to the next following December 31st, both inclusive.

"Pregnancy" shall include childbirth or a miscarriage and any disease or infirmity from or aggravated by the pregnancy.

"Pregnancy leave of absence" shall mean:

- (1) any period of pregnancy taken by you pursuant to Provincial or Federal statute or pursuant to a mutual agreement between you and your employer, or
- (2) any pregnancy leave which your employer requires you to take pursuant to Provincial or Federal statute.

However, if you have not taken or been required to take a pregnancy leave of absence, you will be deemed to have commenced a pregnancy leave of absence on the date of your child's birth. Your leave will be deemed to continue until you are again actively at work or if you are unable to return to work as a result of a disability, the end of the period specified by Provincial or Federal statute for a pregnancy leave of absence.

DEFINITIONS

NOTES

"Parental leave of absence" shall mean:

- (1) any period of parental leave taken by you pursuant to Provincial or Federal statute, or
- (2) any period of parental leave taken by you pursuant to a mutual agreement between you and your employer.

"Emergency" means a sudden, unexpected occurrence that requires immediate medical attention.

POST IN A
CONSPICUOUS
PLACE

BUSINESS TAX CERTIFICATE

CITY OF OAKLAND



The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland under any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 5.04.1904, of the O.M.C., you are allowed a renewal grace period until March 1st of the following year.

EXPIRES
DECEMBER 31, 2006

ACCOUNT NUMBER	224914
BUSINESS NAME	ACTIVE.COMBOWARE DIVISION
ADDRESS	937 ENTERPRISE DRIVE SACRAMENTO, CA 95825
BUSINESS CLASSIFICATION	COMPUTER SERVICE TO OTHER SOFTWARE SERV.

DECLARATION OF COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.

The Contractor certifies that it will comply with the Americans with Disabilities Act by:

- A. Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor's goods, services and facilities for people with disabilities;
- B. Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;
- C. Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor's program would result;
- D. Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;
- E. Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities; and
- F. If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.

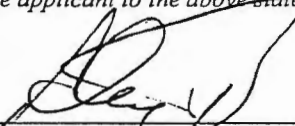
The undersigned authorized representative hereby obligates the applicant to the above stated conditions under penalty of perjury.

The Active Network, Inc
Company Name

937 Enterprise Dr, Sacramento, CA
Address

1-800-661-1196
Phone

June 15/2006
Date


Signature of Authorized Representative

Alex Barnettson
Type or Print Name

Sr. Vice President
Type or Print Title



OFFICE OF THE CITY ADMINISTRATOR
Contract Compliance & Employment Services Division
(510) 238-3970

SCHEDULE D OWNERSHIP, ETHNICITY and GENDER QUESTIONNAIRE

Part I: OWNERSHIP & ETHNICITY of PRIME:

Firm or Individual Name The Active Network, Inc.

Phone (800) 661-1196

Street Address 937 Enterprise Dr City Sacramento State CA Zip 95825 Federal ID # 330884962

City of Oakland Business License Number _____ Completed by: _____ Phone if different from above _____

(Please check one and explain below)

- ☐ Self Employed, Name of Owner _____ ☒ Corporation, State of Incorporation California
- ☐ Partnership, General or Limited _____ Names of Partners _____
- ☐ Joint Venture, Names of Participants _____

Ownership Interests

All owners must be listed
in this information

Ethnicity	African American	American Indian/Alaskan Native	Asian or Pacific Islander	Caucasian	Filipino	Hispanic	Other
Number of Owners							
% Of Total Ownership							
Women							
Joint Venture Ownership							

Part II: CERTIFICATIONS

Please attach a copy of the
certification letter or provide the
certification number and expiration
date.

- ☐ Minorily-owned Business Enterprise (MBE)? Cert # _____ Expiration Date: _____
- ☐ Woman-Owned Business Enterprise (WBE) Cert # _____ Expiration Date: _____
- ☐ Disadvantaged Business Enterprise (DBE) Cert # _____ Expiration Date: _____
- ☐ Oakland Certified Local Business Enterprise Cert # _____ Expiration Date: _____
- ☐ Other Cert # _____ Expiration Date: _____

Part III: Ethnicity and Gender of Employees

			Male							Female				
Employment Category		Total Employees	Oakland Residents											
			African American							African American				
			American Indian/Alaskan Native							American Indian/ Alaskan Native				
			Asian/ Pacific Islander							Asian/ Pacific Islander				
			Caucasian							Caucasian				
			Hispanic							Hispanic				
			Other							Other				
			African American							African American				
			American Indian/ Alaskan Native							American Indian/ Alaskan Native				
			Asian/ Pacific Islander							Asian/ Pacific Islander				
			Caucasian							Caucasian				
			Hispanic							Hispanic				
			Other							Other				
Project Management	52				2	42					6	2		
Professional	156		7	2	8	66	4	4	1		62		2	
Technical	219		3		24	121	4	8	1	13	38	2	3	
Clerical	79		2			10	1		10	8	44	4		
Trades														

AFFIRMATIVE ACTION INFORMATION I certify that I/we shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, national origin, age, disability, Acquired Immune Deficiency Syndrome (AIDS) AIDS related complex, or any other arbitrary basis and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375). I certify that I/we shall not discriminate against any employee or applicant for employment because they are disabled veteran of the Viet Nam era and shall insure compliance with all provisions of 41CFR60-250, where applicable.

I declare under penalty of perjury that the foregoing is true and correct. Signature

Title Sr. Vice President Date June 15, 2006



Please be advised that the ethnicity and gender information contained in this Schedule D will be used for reporting and tracking purposes ONLY.

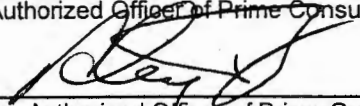
Schedule E

(To Be Completed By Prime Consultant Only)

PROJECT CONSULTANT TEAM

Name and Prime Location of All Firms Participating (Including Prime and Sub consultants)	Check if DBE	Check if MBE**	Check if WBE**	Check if LBE	Check if SLBE	Nature of Participation	% of Project Work	Dollar Value of Participation*
Oakland Computer Company, Oakland, CA	✓			✓	✓	Hardware / services	20	\$36,000
The Active Network Sacramento, CA						Software / services	80	\$150,194
TOTALS							100	\$186,194

Name - Authorized Officer of Prime Consultant Firm (Print or Type)



Signature - Authorized Officer of Prime Consultant Firm

Date

June 15, 2006

*This information is subject to change during final negotiations. If reported information changes after negotiations Project Manager to submit an updated Schedule E to Contract Compliance for review.

**Please denote ethnicity. This information will be used for tracking purposes only.

CITY OF OAKLAND



CONTRACT COMPLIANCE & EMPLOYMENT SERVICES • 250 FRANK H. OGAWA PLAZA, SUITE 3341 • OAKLAND, CA 94612

Office of the City Administrator

12/11/2006

(510) 238-3970
FAX (510) 238-3363
TDD (510) 238-3724

Dear Business Owner:

Congratulations. Based on a review of the Declaration of Nondiscrimination (Schedule N-1) and supporting documentation, it has been determined that your firm is in full compliance with the Equal Benefits Ordinance, Chapter 2.32 of the Oakland Municipal Code.

Enclosed, please find a certificate of compliance. Provided benefits currently in place have not changed, the enclosed certificate satisfies the compliance review for future submittals to the City of Oakland, including grant applications.

While the certificate does not bear an expiration date, please be advised that updated documentation is required for all substantive changes to the current compliance status. Substantive changes may include, but not limited to: an open enrollment period after the date of this correspondence that includes benefits different from those reviewed for compliance; changes to the current collective bargaining agreement that affect the conditions of compliance with the Equal benefits Ordinance; and/or changes to personnel policies affecting compliance with the Equal Benefits Ordinance. Please notify this office should any of these changes occur.

Should you have questions regarding this correspondence or the attached certificate, please contact Sophany Hang at (510) 238-3970 or via e-mail at Shang@oaklandnet.com. Remember, attaching a copy of the attached certificate satisfies the compliance review process.

Again, congratulations on this most recent accomplishment and best wishes in all of your efforts to do business with the City of Oakland.

Sincerely,

Mrs. Deborah Lusk-Barnes
Contract Compliance & Employment Services Division

Enclosure



City of Oakland

Equal Benefits Ordinance

Certificate of Compliance

is hereby awarded to

The Active Network, Inc.

For satisfying all requirements necessary for compliance with the Equal Benefits Ordinance

Shelley Davenport for

Deborah Barbes

Contract Compliance & Employment Services Manager

12/11/04

Date



Equal Benefits - Declaration of Nondiscrimination

Equal Access



Section A Vendor/Contractor/Consultant/*CFAR Information


- 1 Name of Company The Active Network
- 2 Name of Company Contact Alex Barnettson
- 3 Phone Number 800-661-1196 Fax Number 604-432-9708
- 4 Vendor Number (If Known) N/A Federal ID or Social Security # 330884962
- 5 Approximate Number of Employees in the U.S. 350
- 6 Are any of your employees covered by a collective bargaining agreement or union trust fund? Yes ☐ No ☒
- 7 Union Name(s) N/A

Section B Compliance Questions

- 1 Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees.
Yes ☒ or No ☐ (please check one)
- 2 Does your company provide or offer access to any benefits to employees with **domestic partners?
Yes ☒ or No ☐ (please check one)

Section C Compliance Questions

- 3 Please check each benefit that applies to answers 1 & 2 above and list as "other" any additional benefits not listed below. Some benefits (i.e. bereavement leave) are provided to employees because they have a spouse or domestic partner. Other benefits (i.e. medical insurance) are provided directly to the spouse or domestic partner.

		Yes, this benefit is offered to Employees only	Yes, this benefit is offered to Employees and their Spouses	Yes, this benefit is offered to Employees and their Domestic Partners	No this benefit is not offered at all	Yes, documents were submitted for this benefit.
Benefit						
a Health	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b Dental		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Vision		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d Retirement (Pension, 401(k), etc)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e Bereavement		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Family Leave		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g Parental Leave		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h Employee Assistance Program		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i Relocation & Travel		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j Company Discount, Facilities & Events		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k Credit Union		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l Child Care		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m Other		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* CFAR is a City Financial Assistance Recipient

** The term "Domestic Partner" is defined as same or opposite-sex couples registered with a state or local government domestic partnership registry.



Equal Benefits - Declaration of Nondiscrimination

Equal Access



Section D. Submitting Documents to Support Compliance Determinations

Please remember: Copies of documents must be submitted to justify each benefit marked under Section B-3 above. Your company can not be certified as complying with the City's Equal benefits Ordinance without proper documentation. For example, to document medical insurance, submit a statement from your insurance provider or a copy of the eligibility section from your plan document. To document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information please call the designated agency contract administrator or project manager.

Section E. Winning Compliance Through Reasonable Measures

Business owner, please note: If you can not offer a benefit in a nondiscriminatory manner because of reasons outside your control, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form with all necessary attachments, and have your application approved by the City. For more information, the contract administrator or project manager holds the appropriate Reasonable Measures Application Form.

*Effective January 1, 2002, Assembly Bill 25, Domestic Partner Coverage requires carriers to offer domestic partner (DP) coverage to employer groups under the same terms and conditions as coverage provided to dependents of the employee.

Section F. Substantial Compliance

A temporary compliance status is available for contractors that have indicated a willingness to comply but have requested additional time within which to fulfill all compliance requirements. Under this scenario, the contractor may enter into contracts with the City before the compliance process is completed. Substantial compliance status may be awarded to a contractor at the discretion of the City staff, within certain parameters.

Section G. Declaration of Non-Discrimination

① Declaration:

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

② Date & Address

06 / 15 / 2006
Month Date Year
937 Enterprise Drive
(Address)
Sacramento (City) CA (State)

③ Signature

④ Name of Signatory (please print)

Alex Barnettson



Did you submit supporting documentation for each benefit offered?

Yes ☒ No ☐

(please check one)

FOR CITY USE ONLY

Based upon a review of this questionnaire and any other factors I have cited below, I have determined that this person (is) (is not) an independent contractor.

Date

12-11-06

 City Attorney/Assistant City Attorney/
 Deputy City Attorney

PART A: INDEPENDENT CONTRACTOR QUESTIONNAIRE TO BE COMPLETED BY PROPOSED CONTRACTOR

Name of Contractor The Active Network
 SSN or Corporate Taxpayer ID No. of Contractor Federal ID: 330884962

Please answer questions ☐yes ☐no whenever possible. When a more extensive explanation is required and there is no space on this form, please attach a separate sheet.

The word contract refers to the agreement the City is contemplating entering into with you.

NOTE: IF YOU ARE A CORPORATION, YOU NEED NOT COMPLETE THE REMAINDER OF THIS QUESTIONNAIRE IF YOU RETURN IT SHOWING, ABOVE, YOUR CORPORATE FEDERAL TAXPAYER NUMBER AND ATTACHING A COPY OF YOUR CERTIFICATE OF CORPORATE GOOD STANDING ISSUED BY THE STATE OF CALIFORNIA.

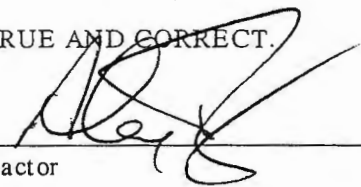
	Yes	No
1. Have you performed services for the City in any year(s) prior to 199__? If yes, please indicate which years.		
2. Have you received any training, guidance, or direction from the City as to how the City expects the job (for which your services are contemplated) to be done. If yes, please describe what you are expecting (or have received) in the way of training or direction. _____		✓
3. Will your services under the contract be performed on City property? If no, please describe where the services are to be performed. _____ _____	✓	
4. Do you expect to devote any full days (6 or more hours) or full weeks (30 or more hours) towards performing the services under the contract? If yes, please indicate approximately how many full days and/or full weeks you expect to devote during the life of the contract 51 days	✓	
5. Are there any set or fixed hours or days of the week during which the City is expecting you to perform services under the contract? If yes, please indicate the days and hours during which you will be performing services. _____		✓

	Yes	No
6. Please provide the date on which you expect to complete your services under the contract. <u>June 2007</u>		
7. In order to perform services under the contract, do you intend to provide your own supplies or equipment? If yes, briefly describe the equipment/supplies. <u>We will bring own laptop and handouts</u>	✓	
8. If your response to No. 7 is yes, has the City promised to or will you be expecting the City to reimburse you in any way for the cost of the supplies or equipment?		✓
9. Other than the above-referenced supplies and equipment, do you anticipate incurring any <u>unreimbursable</u> out-of-pocket expenses in the performance of the contract with the City? If yes, please describe. <u>airfare</u>	✓	
10. Do you have federal and state employer identification numbers? If so, please provide these numbers. <u>federal ID #: 330 884962</u>	✓	
11. Within the <u>past two years</u> have you performed the same type services (as called for in the contract) for any client or customer <u>other than</u> the City? If yes, please identify the client or customer and briefly describe the services performed. <u>Many cities including San Clemente, Concord, and Cerritos</u>	✓	
12. Do you <u>currently</u> have clients or customers other than the City for whom you are or will perform services during the duration of the contract? If yes, please identify client or customer by name and briefly describe the nature of services performed. <u>similar services for Austin, TX and Edmonds, WA</u>	✓	
13. In the past two years have you notified any insurance company in conjunction with obtaining a business-related insurance policy that you are self-employed? If yes, please indicate the insurance company and the nature of the business-related policy. _____ _____		✓
14. Do you have your own <u>employees</u> to help you perform the services called for by your contract? (Do not refer to independent contractors you may use to assist you.) <u>We are a corporation of ~500 employees</u>	✓	
15. Within the <u>past two years</u> have you been the <u>employee</u> of any employer (received a W-2)? If yes, state the employer(s), the date(s) of employment, and the nature of the services performed. _____ _____		✓
16. Do you have an office or business address other than your own home address, a City of Oakland office or your employer's business address? If yes, please state the address. <u>Yes, we are a corporation with 11 offices</u>	✓	

	Yes	No
17. With regard to the following, please indicate whether you have:		
a. an existing business letterhead? (please attach)	✓	
b. an existing business phone number other than your home number? (please indicate #)	✓	
c. filed for a fictitious business name? If yes, please attach a certified copy of the County issued certificate and an affidavit of publication.		
d. done public advertising for your business? If yes, please attach the ad copy or briefly describe your advertising efforts.	✓	
18. If you have answered parts or all of No. 17 with <input type="checkbox"/> Yes, <input type="checkbox"/> are the services represented in your answers the same type of services you will be performing for the City?	✓	
19. Do you have a license from any governmental agency to perform the services under the contract? If yes, please state the type of license and name of the licensing agency. _____		✓
20. Please describe the extent of any personal financial investment you have made in order to be self-employed. You may either choose to indicate the actual dollar amount of investment or, without disclosing any dollar amount, briefly describe any purchases, leases or other types of financial commitments made by you for self employment purposes. _____ _____ _____ _____	N/A	

I VERIFY THAT THE RESPONSES ABOVE ARE TRUE AND CORRECT.

June 15, 2006
Date


Contractor

PLEASE INDICATE WHETHER YOU OBJECT IF THE CITY DECIDES TO TREAT YOU AS A SHORT-TIME CONTRACT EMPLOYEE RATHER THAN AN INDEPENDENT CONTRACTOR AND THE REASON FOR YOUR OBJECTION. _____

**PART B: INDEPENDENT CONTRACTOR QUESTIONNAIRE TO BE COMPLETED
BY REQUESTING DEPARTMENT**

Contracting Dept. or Agency _____
 Dept. or Agency Liaison _____ (Ext. _____)
 Name of Contractor _____
 Contractor EIN or SSN _____

To be completed by the City Department or Agency, and attached in completed form with Part A (completed by the Contractor) and submitted for written approval to the City Attorney **before** submission of contract.

1. Briefly describe the work to be performed by the Contractor. _____

2. Will this contract require the Contractor to personally perform all services or will the Contractor have the option of assigning duties to his or her own employees or assistants?

3. Do you intend to give the Contractor instructions on how to do the work under the contract?

4. Briefly describe the extent to which you are planning to supervise or oversee the work of the Contractor. _____

5. Will the work of the Contractor end because this is a finite project or will it end because there are not funds to support the continuation of the Contractor's work beyond a date certain?

6. Describe the extent to which the Contractor will work on or at City facilities or sites (rather than in the Contractor's own offices). _____

7. Are all services to be performed by the Contractor clearly distinguishable from the duties performed by any employee in any City of Oakland job classification?

8. If your response to No. 7 is "No", identify job classifications having material duties which are similar. (Verify with OPRM if uncertain.) _____

9. Will the Contractor be paid on an hourly basis? If yes, please state the amount per hour.

PART B: INDEPENDENT CONTRACTOR QUESTIONNAIRE (Continued)

10. Will the Contractor be paid on a total project basis? And, if the Contractor will be paid on a basis other than hourly or by total project basis, please describe _____

11. Over how long a period of time will services under this contract be performed? _____

12. Will the services require the Contractor's full-time attention for any give day (6 or more hours) or given week (30 or more hours) during the duration of the contract? If yes, please indicate the approximate amount of time _____

13. Describe the extent to which the City is requiring the Contractor to perform the services on fixed days of the week or at fixed hours. _____

14. Will the Contractor be asked to keep hourly records and report time spent on the project by the hour or portions thereof? _____

15. Will the Contractor be reimbursed or expect reimbursement for expenses incurred in the performance of this contract? _____

16. Is the City expecting the Contractor to put in a minimum number of hours per week on the project? _____

17. Will the Contractor be expected to attend meetings scheduled by the City? If so, describe the type and frequency of meetings. _____

18. Is there is a reason why the City cannot or should not employ the person as a temporary civil-service-exempt employee? If there is such a reason, briefly explain below: _____

I VERIFY THAT THE ABOVE RESPONSES ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Date

Department or Agency Liaison



Office of the City Manager - Contract Compliance and Employment Services

DECLARATION OF COMPLIANCE - LIVING WAGE ORDINANCE

The Oakland Living Wage Ordinance (the "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than \$25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than \$100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy Agency Resolution No. 98-13 C.M.S.

The contractor or city financial assistance recipient (CFAR) further agrees:

- (a) To pay employees a wage no less than the minimum initial compensation of \$9.90 per hour with health benefits, as described in Section 3-C "Health Benefits" of the Ordinance, or otherwise \$11.39 per hour, and to provide for the annual increase pursuant to Section 3-A "Wages" of the Ordinance. Effective July 1st of each year, contractor shall pay adjusted wage rates.
- (b) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and at least ten additional days per year of uncompensated time off pursuant to Section 3- B "Compensated Days Off" of the Ordinance.
- (c) To inform employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service and (2) the 2005 Earned Income Tax Outreach Kit www.cbpp.or/eic/2005.
- (d) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and
- (e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

The Active Network, Inc

Company Name

937 Enterprise Dr, Sacramento, CA

Address

800

Area Code

661-1196

Phone

Jun 15/2006

Date

Alex Barnettson

Type or Print Name

Sr. Vice President

Type or Print Title

CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS Schedule O

To be completed by City Representative prior to distribution to Contractor

City Representative _____ Phone _____ Project Spec No. _____

Department _____ Contract/Proposal Name _____

This is an ☒ Original ☐ Revised form (check one). If original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name The Active Network, Inc Phone 800 - 661 - 1196

Street Address 937 Enterprise Drive City Sacramento, State CA Zip 95825

Type of Submission (check one) ☒ Bid ☐ Proposal ☐ Qualification ☐ Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name The Active Network, Inc Phone 800 - 661 - 1196

Street Address 937 Enterprise Drive City Sacramento, State CA Zip 95825

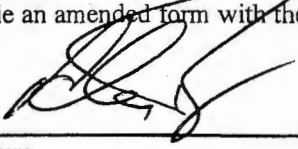
The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I /we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.



Signature

06 / 15 / 2006
Date

Alex Barnettson
Print Name of Signer

Sr. Vice President
Position

To be Completed by City of Oakland after completion of the form

Date Received by City: / / By _____

Date Entered on Contractor Database: / / By _____



CITY OF OAKLAND

NUCLEAR FREE ZONE DISCLOSURE FORM - S

I, Alex Barnettson, the undersigned, a
(Name)

Sr. Vice President of The Active Network
(Title) (Business Entity)

(hereinafter referred to as Business Entity am duly authorized to attest on behalf of the business Entity)

- I. Neither this Business Entity nor any of its subsidiaries, affiliates or agents engages in nuclear weapons work or anticipates entering into such work for the duration of its contract(s) with the City of Oakland.
- II. The appropriate individuals of authority are cognizant of their responsibility to notify the Office of Finance of the City of Oakland if the Business Entity or any of its subsidiaries, affiliates or agents subsequently engages in nuclear weapons work.

I declare that the foregoing is true and correct to the best of my knowledge.

June 15, 2006
(Date)

(Signature and Name)

Alex Barnettson

The Active Network
(Name of Business Entity)

937 Enterprise Drive
(Street Address)

Sacramento, CA 95825
(City, State and Zip Code)

The Active Network
(Name of Parent Company)

INSTRUCTIONS FOR NUCLEAR FREE DISCLOSURE FORM -S

On November 8, 1988, the citizens of Oakland adopted Measure T, which declared the City of Oakland to be a Nuclear Free Zone. On December 6, 1988, the City Council approved Ordinance No. 11062 CMS, designated as the Nuclear Free Zone Act. This ordinance mandates a policy for the City of Oakland concerning its relations with companies that knowingly engages in nuclear weapons work.

Under this ordinance, the City is restricted from doing business with professional and consulting service providers, which would be considered nuclear weapons makers. In order to implement this provision, the City is using Nuclear Free Zone Disclosure Form-S to determine whether a potential service provider to the City of Oakland is in compliance with Ordinance No. 11062. Once the Form is on file with the Office of Finance, the service provider will be eligible to enter into professional or consulting service contracts with the City of Oakland.

Please review the following definitions to determine whether you or your firm and/or any of its agents, subsidiaries or affiliates would be considered nuclear weapons makers under Oakland's Nuclear Free Zone Act.

A "nuclear weapons maker" is any entity knowingly engaged in nuclear weapons work and any of its agents, subsidiaries or affiliates which are engaged in nuclear weapons work. If an entity is a nuclear weapons maker, then its controlling owner(s) would also be classified as a nuclear weapons maker(s). However, if an entity is owned by a nuclear weapons maker but is not itself engaged in nuclear weapons work, the entity would not be considered a nuclear weapons maker.

"Nuclear weapons work" is any work that has as its purpose the development, testing, production, possession, maintenance or storage of nuclear weapons, the components of nuclear weapons, or any secret or classified research or evaluation of nuclear weapons.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. Nuclear weapon includes the means of transporting, guiding, propelling, triggering or detonating the weapon. Nuclear weapon also includes any component of a nuclear weapon, i.e., any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon or be a part of a nuclear weapon.

In the event a firm or individual is unable or unwilling to submit Nuclear Free Zone Disclosure Form -S, said firm or individual would be considered a nuclear weapon maker and therefore restricted from entering into a contract with the City of Oakland. Such firm or individual has the right to have this restriction reviewed. The review process will be initiated once the Office of Finance has been requested to do so by the restricted firm or individual.

The restriction against contracting with a nuclear weapons maker may be waived if the City Council determines, after public hearing, that a specific contract is essential to the proper functioning of the city government and that no reasonable alternative exists.

ACORD**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)
11/20/2006PRODUCER
Aon Risk Services Inc. of Central California
8880 Cal Center Drive, Suite 450
Sacramento CA 95826 USATHIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY
AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS
CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE
COVERAGE AFFORDED BY THE POLICIES BELOW.

PHONE: (916) 369-4800

FAX: (916) 369-4801

INSUREDthe Active Network, LTD
#300-6400 Roberts Street
Burnaby, BC V5G 4C9 CAN**INSURERS AFFORDING COVERAGE**

NAIC #

INSURER A:	Hartford Casualty Insurance Co	29424
INSURER B:	Hartford Fire Insurance Co.	19682
INSURER C:	Twin City Fire Insurance Company	29459
INSURER D:	Illinois Union Insurance Company	27960
INSURER E:		

COVERAGES

SIR May Apply

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YYYY)	POLICY EXPIRATION DATE(MM/DD/YYYY)	LIMITS	
B		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENTL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	57UUNUL1708 Package, incl Int'l	04/16/06	04/16/07	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COMP/OP AGG	\$2,000,000
B		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON OWNED AUTOS	57UUNUL1708	04/16/06	04/16/07	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	
						BODILY INJURY (Per accident)	
						PROPERTY DAMAGE (Per accident)	
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	
						OTHER THAN AUTO ONLY: EA ACC AGG	
A		EXCESS /UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	57RHUAE4488 Umbrella Liability	04/16/06	04/16/07	EACH OCCURRENCE	\$10,000,000
						AGGREGATE	\$10,000,000
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	57WEPT4788	04/16/06	04/16/07	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> 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
D		OTHER Prof Liability	BMI20030959 Technology E & O	04/16/06	04/16/07	Limit	\$1,000,000
						Self Insured Retention	\$50,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

The City of Oakland is named as an Additional Insured against loss from liability arising out of the named insured operations providing software/hardware & services. The insurance is primary and non-contributory.

CERTIFICATE HOLDERCity of Oakland
attn: Anthony Hopkins
150 Frank H Ogawa Plaza, #7216
Oakland, CA 94612 USA**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Alvin M. Misha

ACORD 25 (2001/08)

ACORD CORPORATION 1988

Holder Identifier :

Certificate No : 570020189068

the Active Network, LTD
Hartford Insurance Company
Policy # 57UUNUL708
April 16, 2006 - April 16, 2007

Additional Insured Provision - pg 12, section f.
"any other party, as Additional Insured
Waiver of Subrogation - pg 15, item 8b
Primary and Non-Contributory wording - pg 14, item #7

AB

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

- (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

- (b) You are not engaged in the business or occupation of providing such services.

necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A 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.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees and Volunteer workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative if You Die

Your legal representative if you die, but only with respect to duties as such. That representative will

have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), 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 vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance 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 vendor's 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:

- (i) The exceptions contained in Sub-paragraphs (d) or (f); or
- (ii) 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.

b. Lessors of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
- (2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

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

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 person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- 2. Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(5) Property Damage to Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

* (a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

* (b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer of Rights Of Recovery

If the Insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The Insured must do nothing after loss to impair them. At our request, the

Insured will bring "suit" or transfer those rights to us and help us enforce them.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the Insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the Insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper; or

- b. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.