

PRODUCT AND SERVICES AGREEMENT

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	City of Cupertino, a Municipal Corporation	ADDRESS:	10300 Torre Avenue, Cupertino, CA 95014-3202
CONTACT NAME:	Bill Mitchell	TELEPHONE:	
EMAIL:	BillM@cupertino.org		

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

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

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

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Active Network, LLC
 717 N Harwood Street, Suite 2500, Dallas, TX 75201
 Telephone: (469) 291-0300

Products and Services General Terms

1. AGREEMENT STRUCTURE AND SCOPE.

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

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

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

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

2. FINANCIAL TERMS.

2.1. Fees; Payment Terms; Currency. Fees, currency, and payment terms are specified in the applicable Schedule. Unless otherwise specified in the Schedule, all amounts owed by Client that are not directly collected by Active are due from Client within 30 days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. In the event of any non-payment or delay in paying a fee, Client agrees to reimburse Active for any fees and expenses incurred in its collection efforts. Payment of fees is under no circumstances subject to or conditioned upon the delivery of future Products or functionality. Except as otherwise provided in a Schedule, after the Initial Term, Active may modify the fees once per calendar year upon 30 days' notice, provided that any such increase will not exceed 8 % percent over the then-current fees. (For example: If the increase in fees is 5%, the calculation will be $5\% \times 4.25\% = 0.21\%$. Therefore the new total percent of the fees would be $4.25\% + 0.21\% = 4.46\%$) In the event of verified overpayment or error in fees collected by Active, Active shall refund Client any overpayment within 30 days of verification. All fees to be charged are contained in the attached Schedule of Fees.

2.2. Taxes. The prices in this Agreement do not include Taxes. Client is responsible for and agrees to pay any and all Taxes. If Client is tax-exempt, Client will send Active a copy of its valid tax-exempt certificate (or, as applicable, its reseller's certificate) prior to execution of any Schedule. Client is solely responsible for determining which, if any, Taxes apply to Client's use of the Products and for collecting, remitting, and reporting the correct amounts of all such Taxes to the applicable governmental authorities, even if Active provides Client with tools that assist Client in doing so. In the event that a governmental authority requires Active to pay any Taxes attributable to Client's use of the Products, Client agrees to defend, indemnify, and hold Active harmless from all such Taxes and all costs and expenses related thereto.

3. LIMITED RIGHTS AND OWNERSHIP; INDEMNIFICATION.

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

3.2. Restrictions. Unless otherwise set forth in a EULA, Product Attachment, or Schedule, Client will not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party: (a) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Protected Materials; (b) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Products in whole or in part, for competitive purposes or otherwise; (c) allow access to, provide, divulge, or make available the Protected Materials to any user other than those who are licensed to have such access; (d) write or develop any derivative works based upon the Products; (e) modify, adapt, translate, or otherwise make any changes to the Products or any part thereof; (f) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a service bureau basis; (g) disclose or publish, without Active's prior written consent, (i) performance or capacity statistics, or the results of any benchmark test performed on the Products, or (ii) the terms (but not the existence) of this Agreement or other valuable trade secrets of Active or its licensors; (h) without Active's prior written consent, perform or disclose or cause to be performed or disclosed any information related to any security penetration or similar tests; (i) disclose or otherwise use or copy the Protected Materials except as expressly permitted herein; (j) remove from any Products identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices' functionality or features; (k) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or Intellectual Property rights, title, or interests of Active in and to any Products; (l) use the Products for other than authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others; (m) take any steps to avoid or defeat the purpose of security measures associated with the Products, such as sharing of login and password information, or attempt to circumvent any use restrictions; or (n) except as expressly permitted by this Agreement, use the Protected Materials for hosting purposes.

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

3.4. Active Indemnification. Active shall indemnify, defend, and hold harmless Client and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including for any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out, pertaining to, or related to the active negligent

performance of this Agreement by Active or Active's employees, officers, officials, agents or independent contractors, except to the extent such liability arises as a result of the active negligence or tortious conduct of Client or of its agent. Such costs and expenses shall include reasonable attorneys' fees of counsel of Client's choice, expert fees and all other costs and fees of litigation.

4. DISCLAIMERS AND LIMITATION OF LIABILITY.

THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES, IF ANY, SET FORTH HEREIN AND IN THE PRODUCT ATTACHMENTS ARE LIMITED TO THEIR EXPRESS TERMS AND ARE IN LIEU OF, AND ACTIVE, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY (a) WARRANTY THAT THE PRODUCTS ARE ERROR-FREE OR "BUG"-FREE, ACCURATE, SECURE, OR RELIABLE; (b) WARRANTY THAT THE PRODUCTS WILL OPERATE WITHOUT INTERRUPTION; (c) WARRANTY THAT ALL ERRORS WILL BE CORRECTED OR THAT THE PRODUCTS WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (d) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (e) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (f) WARRANTY THAT THE PRODUCTS WILL MEET CLIENT'S REQUIREMENTS. ACTIVE WILL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, STATUTE, TORT, OR OTHERWISE), INCLUDING DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT ACTIVE HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SPECIFIC PRODUCT UNDER THE APPLICABLE SCHEDULE GIVING RISE TO SUCH CLAIMS DURING THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE. FOR THE PURPOSES OF THIS SECTION 4 AND ANY INDEMNIFICATION PROTECTING ACTIVE UNDER THIS AGREEMENT, REFERENCE TO ACTIVE WILL ALSO INCLUDE ITS SUPPLIERS AND LICENSORS.

5. TERM AND TERMINATION.

5.1. Term. The term of this Agreement will be set forth in the applicable Product Attachment.

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

6. GENERAL PROVISIONS.

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

6.2. Suspension. Active will be entitled to suspend any or all Services or deactivate Client's account, including suspending its performance and obligation to remit payments hereunder, upon 30 days' written notice to Client in the event Active reasonably believes that Client is in breach of this Agreement. Client will be entitled to suspend its performance and obligations to remit payments hereunder, upon 30 days' written notice to Active in the event that Client reasonably believes that Active is in breach of this Agreement.

6.3. Force Majeure. Neither party will incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, or occurrences, and without any negligence on the part of the party seeking protection under this subsection, including internet service provider or third party payment delays or failures, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a time equal to the time lost due to the delay so caused.

6.4. Assignment. Active may assign this Agreement and any or all of its rights and obligations herein without Client's approval, if the intended assignee is financially and technically capable of performing Active's obligations under this Agreement. Except as provided in an applicable Product Attachment, Client may not assign or transfer this Agreement without the prior written consent of Active.

6.5. Export; Anti-Bribery. The Products may include encryption software or other encryption technologies that may be controlled for import, transfer, export, or other purposes under Export Laws. Client may not export, re-export, transfer, or re-transfer or assist or facilitate in any manner the export, re-export, transfer, or re-transfer of or provide access to any portion of the Products in violation of Export Laws, as determined by the laws under which Client operates, including: (a) if applicable, to any country on Canada's Area Control List; (b) if applicable, to any country subject to U.N. Security Council embargo or action; (c) if applicable, contrary to Canada's Export Control List Item 5505; (d) to countries subject to U.S. economic sanctions and embargoes; and (e) to persons or entities prohibited from receiving U.S. exports

or U.S.-origin items, including, to any person or entity appearing on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; the Bureau of Industry and Security's Denied Persons List, Entity List, or Unverified List; or the Department of State Debarred List. Client hereby represents and covenants that: (i) Client is eligible to access the Products under Export laws and all other applicable laws; and (ii) Client will import, export, re-export, transfer, or re-transfer the Products to, or use or access the Products in, any country or territory only in accordance with Export Laws and all other applicable laws. Furthermore, Client hereby represents and covenants that, in connection with its respective activities conducted under this Agreement, it will comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended, if applicable, the U.K. Bribery Act of 2010, as amended, and the Convention on Combating Bribery of Foreign Public Officials and has not and will not make or receive, directly or indirectly, any payments or gifts, or offers or promises of payments or gifts or things of value in exchange for anything that may arise out of this Agreement in a manner that would violate these laws and rules or any other applicable anti-corruption or anti-bribery laws or regulations.

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

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

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

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

6.10. Amendments; No Waiver. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party against which it is sought to be enforced.

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

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

6.13. Governing Law and Venue. This Agreement will be governed by the laws of the State of California, without giving effect to the conflict of law provisions thereof. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement.

6.14. Order of Precedence. To the extent any terms and conditions of these General Terms conflict with the terms and conditions of any Product Attachment, the provisions of the Product Attachment will control. To the extent any provision of these General Terms or any Product Attachment conflict with the provisions of a Third Party EULA for hardware Third Party EULA for hardware will control. In the event of a conflict between a Schedule and these General Terms or the applicable Product Attachment, the General Terms or the applicable Product Attachment (as applicable) will control, provided, however, that such standard variable terms such as price, quantity, license scope, payment terms, shipping instructions, and the like will be specified on each Schedule.

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

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

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

6.18. Insurance. Active shall comply with all the Insurance Requirements, attached and incorporated here as Exhibit B. Active must provide satisfactory proof of insurance and maintain it for the duration of the Agreement or longer as required by Client. Client will not execute the Agreement until Client has approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage.

Failure to comply with this provision may result in Client, at its sole discretion and without notice, purchasing insurance at Active's expense, deducting the costs from Active's compensation, or terminating the Agreement.

7. DEFINITIONS.

"Active" means Active Network, LLC, with a principal place of business at 717 N. Harwood St., Suite 2500, Dallas, TX, 75201, together with its Affiliates.

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

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

"Client" means the individual who accepts this Agreement (as described in the Preamble) and any business entity on behalf of which such individual accepts this Agreement.

"Desktop Software" means each Active-developed and/or Active-owned software product in machine readable object code (not source code) that is installed on desktop(s) or server(s) controlled by Client, the Documentation for such product, and any Updates and Upgrades thereto.

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

"Effective Date" means the date that Client accepts this Agreement (as described in the Preamble).

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

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

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

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

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

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

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

"Protected Materials" means Products, except for Hardware.

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

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

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

"Software" means the SaaS and the Desktop Software, collectively.

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

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

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

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

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

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

Recreation and Membership Management Product Attachment

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

1. SERVICES. Active will provide Services related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "Events"), including without limitation access to its SaaS. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Services and SaaS. SaaS provided hereunder are deemed delivered when access is made available to Client. Client's Advanced Package includes a Senior consulting services team and will be delivered by Active's enterprise consulting team. This team represents Active's most seasoned agents. Active commits for Client to have the same Lead Consultant throughout implementation barring any unexpected changes in staff availability due to leave of absences, resignations, etc. If there are changes in staff availability Active will replace your Lead Consultant with another Lead Consultant of equivalent work experience. Upon written request, Active will provide Client with the names and background of any Lead Consultant and any primary contacts between the Client and Active.

2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

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

2.2. Client will make reasonable efforts to promote and encourage the use and availability of the SaaS in connection with the promotion of Events. During the term of this Product Attachment, Active will be the sole and exclusive provider of registration software and other services similar to the Software and Services provided to Client hereunder for all of Client's Events for which registration begins during the term of this Product Attachment until the Event occurs. Client expressly understands and agrees that the exclusivity set forth in this [Section 2.2](#) is consideration in exchange for the pricing and other benefits being provided to Client hereunder.

2.3. Intentionally Omitted.

2.4. Client will: (a) not use the SaaS to transmit, publish, or distribute any material or information: (i) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable person would consider private in nature; (b) not attempt to gain access to any systems or networks that connect to the Services and SaaS except for the express purpose of using the SaaS for their intended use; (c) not engage in any activity that interferes with or disrupts the SaaS; (d) not use the SaaS in violation of the CAN-SPAM Act, Canadian Anti-Spam Legislation, or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.

3. INFORMATION COLLECTION.

3.1. End Users mean users who register for, sign up, or otherwise use the SaaS in connection with the Events. Active collects certain information from End Users (collectively, "**Participant Information**"). Client may login to Active's data management system to access the Participant Information. Client is responsible for the security of its login information and for the use or misuse of such information. Client will immediately disable a user's access who is using the SaaS on its behalf or notify Active in writing if any such user is no longer authorized or is using such information without Client's consent. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiaries, and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives covenant not to sue and agree to defend, indemnify, and hold harmless Active from any claims arising from Active providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client. In the event of any dispute between two or more parties as to account ownership, Client agrees that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties. Client agrees not to use the Software or Services to collect or elicit (a) any special categories of data, if applicable, (as defined in the European Union Data Protection Directive, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Active, and in such event, only in pre-defined fields within the Software that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the Software that are intended for that purpose.

3.2. Both parties agree to use the collected information in compliance with (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy and personal information (e.g., by including, if applicable, an appropriate CAN-SPAM Act and Canadian Anti-Spam Legislation opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Active's privacy policy, as published on its website or otherwise provided by Active from time to time.

3.3. Should the Client receive a request for information which was collected or disclosed in correlation with this Agreement under the California Public Records Act, Client will immediately notify Active to allow Active a reasonable opportunity to seek protective legal treatment for such confidential and/or proprietary information except as required under the California Public Records Act or other applicable law, rule, regulatory authority, regulation or legal process.

4. FEES.

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

4.2. Active may suspend its performance hereunder, including remitting payments, or terminate the Agreement or this Product Attachment in the event it reasonably believes that Client's use of the Services or SaaS is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. Prior to suspension of performance, Active shall notify Client and give Client 24 hours to cure. If Active reasonably believes that a transaction may be fraudulent or otherwise contrary to law, Active may issue an invoice or offset an equivalent amount from Client's account or any payment Active owes to Client and return the value to the End User (as set forth below) and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so. Client may suspend its performance hereunder after providing Active with a thirty day notice to cure, including remitting payments, or terminate the Agreement or this Product Attachment in the event it reasonably believes that Active's use of the Services or SaaS is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of an Active-associated party to perform hereunder.

4.3. If the Schedule indicates that Client is paying on a subscription basis, Client will be invoiced for the first year of subscription fees upon the date of the first live operational use of the SaaS for the Event(s) ("**Go-Live Date**"), with subsequent annual subscription fees being invoiced upon each anniversary of the Go-Live Date.

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

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

4.6. In the event Client is entering into this Product Attachment and using the Services and/or SaaS for the benefit of a third-party Event or organization ("**Third Party Recipient**"), Client agrees that Active can remit amounts directly to the Third Party Recipient identified by Client. In addition, Client will cause each Third Party Recipient to agree to and comply with provisions that are at least as protective of Active as Section 4 of the General Terms and Section 5 of this Product Attachment in Client's agreement with such Third Party Recipient. Should Client fail to obtain such agreement to such provisions and the failure results in costs or damages to Active, Client agrees to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys' fees. In addition, Client is responsible and liable for each Third Party Recipient's compliance with the terms and conditions of the Agreement.

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

4.8. When Active is acting as the merchant of record and Client elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the term of the Agreement, Active may, upon at least 5 business days' prior written notice, (i) require Client to send to Active Client's books and records related to its sales tax payments, and/or (ii) visit Client's premises during Client's normal business hours to review Client's sales tax payments.

5. **INDEMNIFICATION.** Client will defend, indemnify, and hold Active harmless from and against any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Active to the extent that such Claim is (a) based upon (i) injury or death to a person or damage to property resulting from the participation in an Event operated by Client in connection with the Services and/or SaaS; (ii) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (iii) use or unauthorized disclosure of Participant Information by Client or other third parties to whom access is given to Participant Information as provided hereunder; (iv) Client's use of the Services and/or SaaS in violation of Section 2.4 of this Product Attachment; (v) any claims for refunds, reversals or chargeback requests from End Users; or (b) brought by a Third Party Recipient or brought in connection with Active's payment to a Third Party Recipient of any fees due hereunder in accordance with the Agreement.

6. TERM AND TERMINATION.

6.1. Unless otherwise set forth in the applicable Schedule, the initial term of this Product Attachment will be for 5 years from the Effective Date (the "Initial Term") with the option to renew one two (2) year term thereafter (each, a "Renewal Term"), unless either party gives written notice to the other party to terminate this Product Attachment no less than 12 months prior to the expiration of the then-current term. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Services and/or SaaS that are related to or interoperable with Services or SaaS set forth in a previously entered into Schedule, the term of such subsequent Schedule will be concurrent and coterminous with the term of the previously entered into Schedule.

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

6.3. Notwithstanding the termination or expiration of this Product Attachment or the Agreement under any circumstance other than in the event of Active's material, uncured breach of the Agreement, the parties agree that Active will continue to be the exclusive provider of registration software and other services similar to the Services and SaaS for all of Client's Events for which registration begins during the term of this Product Attachment, until the scheduled event occurs.

7. ASSIGNMENT.

7.1. Client may not resell, assign, or transfer any of its rights or obligations hereunder except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without Active's prior written approval will be null and void.

7.2. Client will cause each Schedule hereunder to be assigned to (a) the purchaser of all or substantially all of Client's assets or equity securities or (b) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((a) and (b) together, a "Change of Control").

7.3. Client will provide written notice to Active of any proposed or completed Change of Control as soon as permissible and in any event within 5 days of the public announcement or close of the transaction, whichever occurs first. Within the 30 day period following such notice, Active will have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee is a competitor of Active or a party with whom Active does not want to do business. Client agrees to require that the purchaser or assignee (as outlined in this [Section 7](#) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule.

8. MISCELLANEOUS.

8.1. [Sections 5](#), [6](#), and [8](#) of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

8.2. Intentionally left blank.

Schedule

Company Address 717 North Harwood Street, Suite 2500
Dallas, Texas 75201 US

Created Date 11/21/2017
Quote Number 01440456
Currency USD

Prepared By Janette Onizuka
Email Janette.Onizuka@activenetwork.com

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Phone
Email billm@cupertino.org

Bill To Name City of Cupertino
Bill To Contact Bill Mitchell
Bill To Address 10300 Torre Avenue
Cupertino, CA 95014

Ship To Contact Bill Mitchell

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Transaction Fees

Product	Fee	Fee %	Product Description
ACTIVE Net - Public Interface Fee Set up - absorbed by client			
ACTIVE Net - Staff Interface - Technology Fee		1.50%	Migration Loyalty Rates for Initial term of contract of 5-years for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE
ACTIVE Net - Public Interface - Online Transaction Fee		4.25%	Migration Loyalty Rates for Initial term of contract of 5-years for U.S. organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.
ACTIVE Net - Staff Interface - Payment Processing Fee - Credit Card		2.75%	Migration Loyalty Rates for Initial term of contract of 5-years for U.S. organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net and Canadian organizations exceeding
ACTIVE Net - Staff Interface - Payment Processing Fee - Electronic Cheque/Check Processing		0.50%	
ACTIVE Net - Support Advanced Package			Support package for organizations migrating to ACTIVE Net.
ACTIVE Net - (credit card refunds - flat fee)	0.10		

The fees described herein are exclusive and not cumulative. For example a single transaction may not be charged more than 4.25% fee for credit card charge or a 2% fee for an Electronic Check Processing charge via the Staff Interface. These fees are the exclusive fees to be paid by Client and shall not be increased by any credit card company fees or charges for the Initial Term of the Agreement.



Product	Product Type	Product Description	Quantity	Sales Price	Total Price
ACTIVE Net - Functionality: Facility Reservation	SaaS		1		
ACTIVE Net - Functionality: Private Lessons	SaaS		1		
ACTIVE Net - Functionality: Activity Registration	SaaS		1		
ACTIVE Net - Functionality: Memberships	SaaS		1		
ACTIVE Net - Functionality: Daycare	SaaS		1		
ACTIVE Net - Functionality: Equipment Lending & POS	SaaS		1		
ACTIVE Net - Technical Services: Financial Export	Service	ACTIVE Net Technical Services: Financial Export consists of the following Services: remote configuration, testing & training	1	1,400.00	1,400.00
ACTIVE Net - Service Package: Brochure Export	Service	This service creates a brochure export with style tags for import into a publishing software (InDesign & XPress). Consists of the following Services: Remote configuration, testing, & training	1	1,400.00	1,400.00
ACTIVE Net - Primary Transportation (to be reimbursed)		Quoted prices for onsite services do not include the costs of transporting Active Network resources onsite. If onsite services are required, economy primary transportation costs for Airfare	1	3,500.00	3,500.00
ACTIVE Net - Service Package Advanced 6	Service	<p>ACTIVE Net Service Package Advanced 6 consists of the following Services:</p> <ul style="list-style-type: none"> • onsite business process review • remote functionality review & data collection preparation • remote data collection review • remote data entry (inventory and policy controls) • onsite & remote user testings • onsite & remote train the trainer training • remote Go Live preparation • remote hardware configuration • 1 day System optimization training provides the opportunity to review system configuration post Go Live and leverage user experience to enhance operations. <p>The scope of Services is contained to the 6 functionalities listed below.</p> <ol style="list-style-type: none"> 1. Facility Reservation 2. Private Lessons 3. Activity Registration 4. Memberships 5. Daycare 6. Equipment Lending & POS <p>** Refer to below for Services Payment Schedule for Advanced 6 package</p>	1	32,100.00	32,100.00**



ACTIVE Net - Service Package: Insights Training	Service	Report training on ACTIVE Insights functionality and learning best practices. Performed remotely for max 5 participants.	1	1,400.00	1,400.00
ACTIVE Net - Technical Services: GIS Import	Service	ACTIVE Net Technical Services: GIS Import consists of the following Services: • remote configuration, testing & training	1	1,400.00	1,400.00
ACTIVE Net - ACH Remittance - "Daily" Every 72 Hours	Service	Daily remittances are processed by Active on non-holiday business days 72 hours after the transaction day.	1		
ACTIVE Net - Service Package: Remote Refresher	Service	1 day service to review system configurations and/or user functionality questions post Go Live	1	1,400.00	1,400.00
Class Maintenance	Service	Class Maintenance from Dec 1, 2017 to Nov 30, 2018. Any unused portion of Class Maintenance from date of go-live with ACTIVE Net will be credited back to Client.	1	12,153.44	12,153.44
ACTIVE Net - Certification Registration -	Service	Insights Reporting Tool Certification Course. Addition al staff at additional cost of \$600 per person	2	0.00	0.00
ACTIVE Net - Hardware	Hardware	Client will be purchasing up to \$48,000 in hardware (actual hardware pieces TBD)	1	48,000.00	48,000.00

Service Total: USD 54,753.00

Total Price: USD 102,753.44

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

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

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

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



** Services Payment Schedule

Description	Milestone	Price
Service Package Advanced 6	Upon Completion of on-site Business Process Review (Week 1)	\$8,025.00
Service Package Advanced 6	Upon Completion of the date of the last service meeting for Week 7: Data Sheet Review	\$8,025.00
Service Package Advanced 6	Upon Completion of the date of the last service meeting for Week 13: End User Testing	\$8,025.00
Service Package Advanced 6	Upon Completion of Go-Live (note: Going Live is equivalent to Acceptance)	\$8,025.00
ACTIVE Net-Service Package: Brochure Export	Upon Completion of the date of the last service meeting for the Brochure Export	\$ 1,400.00
ACTIVE Net-Service Package: Insights Reports Training	Upon Completion of the date of the last service meeting for the Insights Reports Training	\$ 1,400.00
ACTIVE Net-Technical Services: Financial Export	Upon Completion of the date of the last service meeting for the Financial Export Testing	\$ 1,400.00
ACTIVE Net-Technical Services: GIS Import	Upon Completion of the date of the last service meeting for the GIS Import Testing	\$ 1,400.00
ACTIVE Net-Service Package: Remote Refresher (1 Day)	Go-Live Services Support Complete	\$1,400.00

Quote Acceptance Information

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PO# (if applicable): _____

Exhibit B: Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES

Additional Insureds:

City, its City Council, boards and commissions, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

Workers' Compensation:

Statutory coverage as required by the State of California and Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

General Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:

\$1,000,000 each occurrence

\$1,000,000 aggregate - all other

Property Damage:

\$500,000 each occurrence

\$1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above .

Cyber Liability:

Insurance, with limits not less than:

\$2,000,000 each occurrence

\$2,000,000 aggregate - all other

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Software Provider in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Software Provider maintains broader coverage and /or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Software Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. ABSENCE OF INSURANCE COVERAGE.

City may direct Software Provider to immediately cease all activities with respect to this Agreement if it determines that Software Provider fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Software Provider.

3. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.

A Certificate of Insurance, on an Accord form, and completed coverage verification shall be provided to City by each of Software Provider's insurance companies as evidence of the stipulated coverages prior to the Commencement Date of this Agreement, and annually thereafter for the term of this Agreement. All of the insurance companies providing insurance for Software Provider shall be licensed to do insurance business in the State of California and shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202
