

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ACTIVE NETWORK, LLC**, successor in interest to **THE ACTIVE NETWORK, INC.**, a Delaware limited liability company registered to do business in Colorado, whose primary address is 717 N. Harwood Street, Dallas, Texas 75201 (“Vendor” or “Active”).

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated February 3, 2014, and an Amendatory Agreement dated October 22, 2014 (the “Agreement”), to provide participant management for activity registrations, facility reservations, membership management, league scheduling, point of sales, marketing, donations, reports and public access; and

WHEREAS, the Parties wish to amend the Agreement to extend the term, increase funding and assume the terms and conditions of the existing agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Paragraph 8 of the Agreement, entitled “**TERM**” is amended to read as follows:

“**8. TERM:**

The term of this Agreement is from December 31, 2013 through December 31, 2023.”

2. Paragraph 9 B. of the Agreement under the heading of “**COMPENSATION, PAYMENT AND FEES FOR HOSTED OSFTWARE AND SERVICES**” is amended to read as follows:

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 the City that are not directly collected by Active are due from the City 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. Past due fees will accrue interest pursuant to the City’s Prompt Payment Ordinance. 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, Active may modify the fees once per calendar year upon 30 days’ notice, provided that

any such increase will not exceed 5% over the then-current transaction fees (exclusive of credit card processing costs).

3. Paragraph 9.D. of the Agreement under the heading of “**COMPENSATION, PAYMENT AND FEES FOR HOSTED SOFTWARE AND SERVICES**” is amended to read as follows:

“9. COMPENSATION, PAYMENT AND FEES FOR HOSTED SOFTWARE AND SERVICES:

D. The total compensation payable to Vendor for Hosted Software Services Charges set forth in Exhibit 1 and SOW Professional Services set forth in Exhibit 2 for the Term, shall not exceed the amount of **TWO MILLION TWO HUNDRED SEVENTY-EIGHT THOUSAND TWO HUNDRED SEVENTY-TWO DOLLARS AND ZERO CENTS (\$2,278,272.00)** (the “Maximum Purchase Amount”), payable directly to the Vendor by the City. In the event that the Maximum Purchase Amount is inadequate to pay for any Products or Services under this Agreement, the Vendor will not be obligated to provide any additional Products or Services under this Agreement, unless otherwise amended to increase the maximum Purchase Amount. Payment to Vendor for the Products and Service Charges invoiced by Vendor shall be made monthly by the City. Upon acceptance by the City of the applicable Professional Services, Vendor shall invoice the City for such Professional Services and the City shall pay such fees pursuant to Section 9 (f) below. The total obligation of the City hereunder shall be limited to funds appropriated for the purposes of this Agreement by the council of the City and County of Denver, paid into the Treasury of the City and encumbered for the purpose of this Agreement. Vendor acknowledges that (a) the City does not, by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. In the event that funds are not appropriated and Vendor has begun performance, the City will provide Vendor with prompt, not to exceed five (5) days’, written notice and reasonable documentation of failure to appropriate funds. Upon receipt of such notice, Vendor may immediately terminate this Agreement without further obligation to the City. Notwithstanding anything herein to the contrary, for the period prior to the date of termination, the City will pay Vendor for all Professional Services rendered and accepted, Service Charges incurred, and the prorated amount of all non-cancelable commitments entered into by Vendor exclusively on behalf of the City.”

4. This Second Amendatory Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

5. The Agreement is assumed by the Vendor and affirmed and ratified by the parties

in each and every particular.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: TECHS-201314203-03

Contractor Name: ACTIVE NETWORK, LLC.

By: DocuSigned by:
Randy Skemp
042PAC9901474C9...

Name: Randy Skemp
(please print)

Title: Vice President, Sales
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

