

AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE ACTIVE NETWORK, INC.**, a Delaware corporation registered to do business in Colorado, whose primary address is 10182 Telesis Court, San Diego, CA 92121 (“Vendor”) collectively referred to as the “Parties” and individually a “Party”.

WITNESSETH:

WHEREAS, the Parties entered into that certain Agreement dated August 24, 2010 (the “Agreement”), to provide an Enterprise Class Cashiering system intended for city departments, agencies, and constituents involving the acquisition, purchase, and installation of various software/hardware components as well as significant business process re-engineering; and

WHEREAS, the Parties wish to amend the Agreement to update the scope of work, amend the term, increase the compensation to the Contractor and to update other contract language as follows: and

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

1. All references to “Exhibit A” in the Agreement shall be amended to read: “Exhibit A and A-1, as applicable”. The scope of work marked as Exhibit A-1 is hereby added to the Agreement and is attached and incorporated hereto by reference.

2. Section 4 of the Agreement entitled “**TERM**” is hereby amended and restated in its entirety to read as follows:

“**4. TERM:** The term of this Agreement is from August 10, 2010 through August 9, 2018.”

3. Section 6(A)(i) of the Agreement entitled “**COMPENSATION AND PAYMENT**” is hereby amended and restated in its entirety to read as follows:

“**6. COMPENSATION AND PAYMENT:**

A. The Equipment.

(i) The total compensation payable to Vendor for acquiring and installing the Equipment shall not exceed the amount of **ONE MILLION NINE HUNDRED THOUSAND SEVEN HUNDRED TWENTY TWO DOLLARS ZERO CENTS (\$1,900,722.00)** (the “Maximum Purchase

Amount”), payable directly to Vendor by the City. Payment to Vendor for the work to be performed hereunder shall be made by the City in periodic installments subject to the phased delivery, installation, and acceptance of the Equipment, all as set forth in Exhibit A-1.”

4. Section 31 of the Agreement entitled “**CONTRACT DOCUMENTS; ORDER OF PRECEDENCE**” is hereby amended and restated in its entirety to read as follows:

“31. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:

This Agreement consists of Sections 1 through 39, which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Description of the Software and Statement of Work
Appendix A to Exhibit A	Change Request Form
Appendix B to Exhibit A	Milestone Acceptance form
Appendix C to Exhibit A	Payment Schedule - Certificates of Acceptance
Appendix D to Exhibit A	High Level Architecture/Integration Architecture
Appendix E to Exhibit A	Defect and Issue Criticality Levels
Exhibit A-1	Statement of Work
Exhibit B	Certificate of Insurance

In the event of (i) an irreconcilable conflict between a provision of Sections 1 through 39, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Sections 1 through 39
- Exhibit A
- Exhibit A-1
- Exhibit B”

5. A new Section 39 is hereby added immediately following Section 38 of the Agreement to read as follows:

“39. ELECTRONIC SIGNATURES AND ELECTRONIC

RECORDS: Vendor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or

is not an original.”

6. This 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, binding against each of the Parties. To the maximum extent permitted by law or by any applicable governmental authority, this Amendatory Agreement may be transmitted by facsimile, electronic mail (including pdf) or other transmission method with the same validity as if it were an ink-signed document and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

7. Except as herein amended, the Agreement is affirmed and ratified in each and every particular. All references in the Agreement to “this Agreement,” “hereto,” “hereof,” “hereunder” or words of like import referring to the Agreement shall mean the Agreement as amended by this Amendatory Agreement. In the event any of the terms and conditions of the Agreement conflict with the terms and conditions of this Amendatory Agreement, the terms and conditions of this Amendatory Agreement shall prevail only as to the subject matter expressly stated herein.

EXHIBIT LIST:

EXHIBIT A-1 – SCOPE OF WORK

[SIGNATURE PAGE FOLLOWS]

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 _____



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Exhibit B	Certificate of Insurance

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Sections 1 through 39
Exhibit A
Exhibit A-1
Exhibit B”

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EXHIBIT LIST:

EXHIBIT A-1 – SCOPE OF WORK

[SIGNATURE PAGE FOLLOWS]



Contract Control Number: TECHS-CE05035-01

Contractor Name: THE ACTIVE NETWORK INC

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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: TECHS-CE05035-01

Contractor Name: THE ACTIVE NETWORK INC

By: 

Name: RAM KRISHNAN
(please print)

Title: SENIOR VICE PRESIDENT
(please print)

ATTEST: [if required]

By: 

Name: A. TAN
(please print)

Title: SALES DIR.
(please print)

