

# **AMENDMENT #1 TO THE AGREEMENT**

This Amendment No. 1 (this "**Amendment 1**") is made effective as of \_\_\_\_\_ (the "**Amendment 1 Effective Date**") by and between the City of Cupertino ("**Client**") and Active Network, LLC ("**Active**") and amends that certain Product and Services Agreement Contract #01210310, dated as of December 4, 2017, (the "**Agreement**") entered into by the Parties. Client and Active are also individually referenced herein as a "Party" and collectively as the "Parties." Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

**NOW THEREFORE** in consideration of the mutual covenants, recitals and promises contained in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereto hereby agree as follows:

**1. Changes to the Agreement.**

- A. The first sentence of Section 6.1 of the Recreation and Membership Management Product Attachment is deleted in its entirety and replaced with the following:

"Unless otherwise set forth in the applicable Schedule, this Product Attachment will commence on the Effective Date and will continue in effect until the earlier to occur of (i) its termination in accordance with the terms and conditions below and (ii) December 4, 2027 (the "Term")."

- B. Exhibit A, Schedule Quote Number 01440456, is deleted in its entirety and replaced with Schedule Quote Number 00126566, attached hereto.

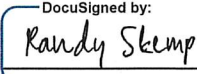
**2. Full Force and Effect.** Except as expressly modified herein, the Agreement remains in full force and effect. All references in the Agreement to "this Agreement," "hereto," "hereof," "hereunder" or words of like import referring to the Agreement shall mean the Agreement as amended by this Amendment 1. In the event any of the terms and conditions of the Agreement conflict with the terms and conditions of this Amendment, the terms and conditions of this Amendment 1 shall prevail only as to the subject matter expressly stated herein.

**3. Counterparts.** This Amendment 1 may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document, binding against each of the Parties. To the maximum extent permitted by law or by any applicable governmental authority, this Amendment 1 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.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment 1 as of the Amendment 1 Effective Date.

**Active Network, LLC**

by its authorized signatory

By:   
042FAC5901474C9...  
 Name: Randy Skemp  
 Title: Vice President, Sales  
 Date: 11/3/2022 | 9:03 AM CDT

**City of Cupertino**

by its authorized signatory

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_



## Schedule

Company Address 5850 Granite Parkway, Suite 1200  
Plano, TX 75024  
US

Contract # 01210310  
Created Date 9/22/2022  
Quote Number 00126566  
Currency USD

Prepared By Sharon Kramer  
Opportunity Owner Scott Yeske  
Owner Email [scott.yeske@activenetwork.com](mailto:scott.yeske@activenetwork.com)

Contact Name Marilyn Pavlov  
Phone 408- 777-3238  
Email marilynnp@cupertino.org

Bill To Name City of Cupertino  
Bill To Contact Bill Mitchell  
Bill To Address 21979 San Fernando Ave  
Cupertino, CA 95014 United States

Ship To Contact Bill Mitchell  
Ship To Address 21979 San Fernando Ave  
Cupertino, CA United States

Product	Product Type	Description	Quantity	Fee %	Total Price
ACTIVENet - Public Interface Fee Set up - absorbed by client	SaaS		1		
ACTIVENet - Staff Interface - Technology Fee	SaaS	Rates for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.	1	1.50	
ACTIVENet - Public Interface - Online Transaction Fee	SaaS	Rates for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.	1	4.25	
ACTIVENet - Staff Interface - Payment Processing Fee - Credit Card	SaaS	Rates for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.	1	2.75	
ACTIVENet - Staff Interface - Payment Processing Fee - Electronic Cheque/Check Processing	SaaS		1	0.50	
ACTIVENet - (credit card refunds - flat fee)	SaaS		1		0.10
ACTIVENet - Functionality: Facilities	SaaS	ACTIVENet - Functionality: Facilities	1		
ACTIVENet - Functionality: Private Lessons	SaaS		1		
ACTIVENet - Functionality: Program & Activity Registration	SaaS	ACTIVENet - Functionality: Program & Activity Registration	1		
ACTIVENet - Functionality: Memberships	SaaS		1		
ACTIVENet - Functionality: FlexReg	SaaS	ACTIVENet - Functionality: FlexReg	1		
ACTIVENet - Functionality: POS (Point-of-sale)	SaaS	ACTIVENet - Functionality: POS (Point-of-sale)	1		
ACTIVENet - ACH Remittance - "Daily" Every 72 Hours	Service	Daily remittances are processed by Active on non-holiday business days 72 hours after the transaction day. Payments take one to three banking business days to process.	1		



Schedule

ACTIVENet Connect	SaaS	Annual Subscription Fee	1	3,000.00
ACTIVENet Hub - Advanced	SaaS	Annual Subscription Fee	1	15,000.00
ACTIVENet - SaaS				

Total Price USD 18,000.00

Annual Projected Contract Value USD 286,000.00

Active reserves the right, and may take additional measures to verify Client's account which may consist of reviewing publicly available data and/ confirmation of Client provided information. Such verification measures will be completed in advance of remittance.

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

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

Quote Acceptance Information

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PO# (if applicable): \_\_\_\_\_