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| TO: | GENERAL COMMITTEE |
| SUBJECT: | GAME ON LIVE STREAMING PILOT PROJECT |
| WARD: | ALL |
| PREPARED BY AND KEY CONTACT: | R. BELL, MANAGER OF RECREATION FACILITIES EXT. 4452 |
| SUBMITTED BY: | B. ROTH, DIRECTOR OF RECREATION SERVICES |
| GENERAL MANAGER APPROVAL: | D. MCALPINE, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICE |
| CHIEF ADMINISTRATIVE OFFICER APPROVAL: | M. PROWSE, CHIEF ADMINISTRATIVE OFFICER |

RECOMMENDED MOTION

1. That the Director of Recreation Services and Manager of Recreation Facilities be delegated authority to execute the agreement(s) between the City of Barrie and GAMEONSTREAM INC. (GAMEONSTREAM) to pilot a recording and live streaming opportunity for ice users at the Holly Community Centre, subject to the agreement(s) conforming to the following:
 - a) The agreement(s) entered into between the City of Barrie and GAMEONSTREAM shall be for a three (3) year term and include a five (5) percent revenue sharing fee for the City;
 - b) The installation of cameras, recording devices, adherence to all applicable privacy and recording laws and that regulations will be the responsibility of GAMEONSTREAM;
 - c) GAMEONSTREAM will ensure that the City of Barrie is named in its liability coverage by providing a completed Certificate of Insurance over two (2) million dollars; and
 - d) The agreement(s) shall contain any other terms and conditions deemed necessary by the General Manager of Community and Corporate Services and in a form approved by the Director of Legal Services.

PURPOSE & BACKGROUND

Report Overview

2. The purpose of this report is to obtain approval to enter into agreements with GAMEONSTREAM to allow for a pilot opportunity to record and live stream events held on the ice pads at the Holly Community Centre.
3. The City of Barrie was approached by representatives of GAMEONSTREAM to look at the opportunity of installing video cameras within the Holly Recreation Centre over and around the ice pads. GAMEONSTREAM provides automated video capture, encoding and internet streaming of live events and the viewing of archived recordings of live events.

ANALYSIS

4. Should the GAMEONSTREAM devices be installed, patrons would be able to live stream hockey and other events that their organization has asked GAMEONSTREAM to record. Live Streaming is turning into a highly used avenue for parents, coaches and players to view games when attendance is difficult.
5. GAMEONSTREAM has worked with organizations to provide this opportunity in Markham, Vaughan and Toronto with positive results. The company has secured the rights to stream these games through the appropriate governing bodies.
6. If an agreement is in place between the organization (such as a hockey team, association or club) and GAMEONSTREAM, parents, participants and coaches can pay a fee to have the game broadcasted and those who were unable to attend can watch the game live on their devices. There is also an opportunity for coaches and players to look at game footage afterward and evaluate plays, skills, and the outcome of games.
7. It is proposed that the City enter into three (3) year agreements with GAMEONSTREAM as a pilot opportunity to allow the City and GAMEONSTREAM to assess the interest in the community. The proposed agreements are attached as appendix "A" and "B" to Staff Report REC005-19.
8. The following are highlights of the proposed agreements:
 - a) GAMEONSTREAM would be responsible for all costs and work to install the cameras and recording devices as well as any costs should there be any damage to the facility.
 - b) Under the proposed terms of the agreement, it would also be responsible for ensuring that it adheres to all applicable privacy and recording laws and regulations.
 - c) GAMEONSTREAM would be required to name the City of Barrie in its liability coverage by providing a completed certificate of insurance over two (2) million dollars.
 - d) The proposed agreement would also include a provision that would result in the City receiving 5% of GAMEONSTREAM's revenues as the host facility. It is estimated that this would equate to approximately \$3,000 per year.
 - e) All Event advertising/promotion including television/radio and print, must include the full "Holly Community Centre" name, if the Facility's name is used in the advertising; and
 - f) GAMEONSTREAM Inc. would agree to abide by the City of Barrie's Advertising policies.
9. The Recreation Department worked with the Legislative Services Branch regarding addressing privacy concerns. GAMEONSTREAM has agreed to meet all the requirements that would impact users of the arena within a City of Barrie facility. The City's IT department was also consulted and, because the company brings in their own cable feed, there is no impact to the City of Barrie's Wi-Fi or network systems.
10. At the conclusion of the three year period, City staff and GAMEONSTREAM would evaluate the success of the pilot. If other parties offered similar technology at the time, the City may issue a request for proposals from proponents for this service that could include offering it at additional facilities.

ENVIRONMENTAL MATTERS

11. There are no environmental matters related to the recommendation.

ALTERNATIVES

12. The following alternatives are available for consideration by General Committee:

Alternative #1 General Committee could recommend that the pilot project with GAMEONSTREAM not be undertaken.

This alternative is not recommended as these agreements would allow for the provision of an additional service to our patrons and is at no cost to the City.

FINANCIAL

13. The City will receive 5% of gross revenue, which is estimated to be \$3,000 per year without adding additional expense.

LINKAGE TO 2018–2022 STRATEGIC PLAN

14. The recommendation included in this Staff Report supports the following goals identified in the 2018-2022 Strategic Plan:
- ☒ Fostering a Safe and Healthy City by promoting recreation activities to a wider audience through the use of technology.
 - ☒ Offering Innovation and Citizen Driven Services by leveraging technology and allowing clients a different option to experience local organized sport

APPENDIX "A"

City of Barrie Agreement

FACILITY USE CONTRACT
BETWEEN:

THE CORPORATION OF THE CITY OF BARRIE
(the "City")

- and -

GAME-ON-STREAMING
(the "Licensee")

WHEREAS:
to

- A. The City is the owner of certain lands and premises in the City of Barrie commonly known as the **Holly Community Centre**, (the "Facility");
- B. The Licensee has requested the City to grant to the Licensee the right to occupy and use the premises subject to the terms hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and subject to the conditions hereinafter set out, the parties hereto agree as follows:

LICENSE

1. The City hereby grants to the Licensee a license and right to enter upon, occupy, and use that part of the Facility. The licensee will use the Facility subject to the terms set out in schedule 'A'.

The Term will be from September 1, 2019 to August 31, 2022 inclusive (the 'Term').

The Licensee shall be responsible for all installation and repair costs of the equipment and any damage to the facility as a result of installation or repairs.

FEES

2. For the right to occupy and use the premises for a live streaming, the Licensee will pay to the City rent in the amount of 5% of gross revenue plus HST plus any additional applicable taxes on July 3rd Within thirty (30) days of the end of each three month period following the Effective Date,

SAVE HARMLESS

3. The Licensee shall protect, defend, indemnify and save the City harmless from all claims, actions and proceedings including any costs and expenses incurred by the City hereby for loss, damage or injury, including death, to any person or persons and property based upon, occasioned by, or attributable to the execution of this agreement or the exercise in any manner of rights arising hereunder except claims for damage resulting from the negligence of the City or any of its officers, employees, servants or agents while acting within the scope of their duties or employment.

INSURANCE

4. The Licensee agrees to maintain Comprehensive General Liability Insurance in an amount of at least TWO MILLION DOLLARS (\$2,000,000.00) with nil deductible (or pay a deposit equal to the deductible) and adding the City's name as insured and to provide a certificate of such insurance at least one month prior to the start of the term of the contract. . The certificate must state the dates of and when the insurance policy(s) expire.

CLAIM

5. The Licensee shall not have any claim against the City or any of its officers, employees, servants or agents for accident, detriment, damage or injury to any person or persons or property based upon, occasioned by, or attributable to the execution of this Agreement or the exercise in any manner of rights arising hereunder unless such damage or injury is due to the negligence of any officer, employee, servant or agent of the City while acting within the scope of their duties or employment.

ALTERATIONS

6. The Licensee agrees that any alterations to the Facility area will be submitted to the City for approval. The City agrees to respond in a reasonable time frame with comment as to the approval or not of the requested alteration.

RULES AND REGULATIONS

7. The Licensee shall, in all respects, abide by and comply with all applicable laws, rules, regulations and by-laws of the Federal, Provincial or Municipal Government or any other governing body whatsoever and with all local police, health, or fire regulations or by-laws in any manner affecting the Facility and the operations of the Licensee hereunder. The Licensee agrees to the terms in schedule 'A'.

FORCE MAJEURE

8. Whenever and to the extent that the City shall be unable to fulfil or shall be delayed or restricted in fulfilling any obligation hereunder by any cause beyond its control, including acts of God, or of the public enemy, acts of the government in either its sovereign or contractual capacity, strikes, fires, or floods, the City shall be released from the fulfilment of such obligation during the period it shall be so unable to fulfil, delayed or restricted in fulfilling such obligations.

TERMINATION

9. Whenever the Licensee shall fail to observe or perform any of the covenants, agreements or obligations contained in this agreement, the City may terminate all rights of the Licensee under this License and all rights of the Licensee under this License shall be absolutely forfeited.

VALIDITY

10. This Agreement will cease to be valid if not fully executed by both parties on or before September 2, 2019.

BINDING EFFECT

11. This Licensing Agreement and everything herein contained shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.



ADVERTISING/PROMOTION

12. All Event advertising/promotion including television/radio and print, must include the full "Holly Community Centre" name, if the Facility's name is used in the advertising. The City of Barrie logo and references are restricted and therefore, the Licensee agrees to abide by the City of Barrie's Advertising policies which will be provided.

CONTACT:

GAMEONSTREAM
C/O Bob Wilkinson

Insert contact and address here

IN WITNESS WHEREOF the parties hereto have executed this agreement this _____ day of _____, 2019.

THE CORPORATION OF THE CITY OF BARRIE

Per: _____
Barb Roth, Director of Recreation Services

Per: _____
Rob Bell, Manager of Recreation Facilities

GAMEONSTREAM

Per: _____
GAMEONSTREAM (insert rep)

APPENDIX “B”

GAMEONSTREAM Agreement

AGREEMENT

THIS AGREEMENT (the “Agreement”) is made as of the ____ day of _____, 2019 (the “Effective Date”) by and between CITY OF BARRIE CITY (the “City”) a municipal corporation incorporated under the laws of the Province of Ontario, and GAMEONSTREAM INC. (“GOS”), a corporation incorporated under the laws of the Province of Ontario.

IN CONSIDERATION OF the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

- (a) “ABMS” means the GameOnStream Automated Broadcast Management System, being a technology solution that facilitates the automated video capture, encoding and internet streaming of live events and the viewing of archived recordings of live events, together with certain tools to ensure proper tracking and management of such content as well as all necessary access permissions and restrictions and includes, but is not limited to, the User Portal Interface and video player.
- (b) “Club” means any hockey team or club.
- (c) “Confidential Information” means all confidential and proprietary information of a party (the “Disclosing Party”) that could reasonably be understood to be confidential given the nature of the information and the circumstances of disclosure including, without limitation, all confidential information in the custody or control of a party regardless of whether it is identified as confidential or recorded, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the other party (the “Receiving Party”) and includes, but is not limited to, Personal Information, pricing and other financial information, software and hardware (in any stage of development), designs, specifications, object and source code, technical data, test data and results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, trademarks, trade names and trade secrets). Notwithstanding the foregoing, Confidential Information does not include information that: (a) is now or subsequently becomes generally available to the public through no fault or breach of any obligation owed to the Disclosing Party; (b) the Receiving Party can demonstrate was known to the Receiving Party prior to its disclosure; (c) is independently developed by the Receiving Party without the use of any Confidential Information of the Disclosing Party; or (d) is received from a third-party who has the right to transfer or disclose it, and shall remain the exclusive property of the Disclosing Party.
- (d) “Content” means all content derived (i.e., created, generated, developed and/or produced) directly from video captured at Events by or through the use of the ABMS, or otherwise broadcast through the ABMS, in connection with this Agreement.

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- (e) “Event” means any game, tournament, or other event or function held at a Venue that is a City Event or Third Party Event.
 - (f) “Intellectual Property Rights” includes any intellectual, industrial, or other proprietary rights of any type in any form protected or protectable under the laws of Canada or any foreign country, including any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity.
 - (g) “Local GOS Processor” means the secure server installed at a Venue that collects data from one or more Network Cameras, stores it and coordinates the broadcast to the User Portal Interface for re-broadcast to authorized users for live viewing and archiving of Content.
 - (h) “Network Camera” means an ABMS camera installed by GOS at a Venue pursuant to this Agreement.
 - (i) “City Event” means any game, tournament, other event or function organized and administered by or at the direction of the City and the rights to which are owned by the City at a Venue (for example, a recreational house league or tournament run by the City).
 - (j) “Personal Information” means information about an identifiable individual including, without limitation, information that relates to or concerns such individual and information which, alone or in combination with other information, could identify such individual.
 - (k) “Privacy Laws” means all federal, provincial, state, municipal or other applicable statutes, laws or regulations of any governmental authority in any jurisdiction governing the handling of information about an identifiable individual including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) and the *Municipal Freedom of Information and Protection of Privacy Act*.
 - (l) “Privacy Policy” means the City’s policy statement governing its Personal Information management practices, as same may be amended or restated from time to time to ensure compliance with applicable Privacy Laws. The Privacy Policy information can be found at www.barrie.ca.
 - (m) “Third Party Event” means any game, tournament, other event or function hosted by a third party (i.e., administered and the rights to which are owned by a third party, such as the Barrie Minor Hockey Association (“BMHA”) at a Venue.
 - (n) “User Portal Interface” means the internet portal interface through which an Event will be streamed live and on-demand. The User Portal Interface may vary depending on the entity hosting the Event. For clarity, and by way of example, an ETA game might be streamed through the ETA User Portal Interface while a Barrie Minor Hockey Club game might be streamed through that club’s User Portal Interface.
 - (o) “Venue” means the Holly Community Centre, an indoor facility owned and/or operated by the City which contains one or more ice hockey rink pads (each a “Rink”).

2. Installation, Delivery and Launch of the ABMS

GOS Obligations

- (a) GOS shall, at its expense, install and maintain all hardware, software and internet required for the operation and maintenance of the ABMS at the Venues. GOS shall install the ABMS at the initial Venues selected by the parties for installation (the “Initial Venues”) on or before September 15, 2019. The parties intend that Holly Community Centre shall be the Initial Venue. Installation at the Initial Venues and all other Venues shall include the following:
 - (i) Content Acquisition Hardware and Software: Includes up to six (6) Network Cameras per Rink with mounts (GOS reserves the right to determine the location of cameras, with the approval of the City, acting reasonably, subject to compliance with applicable Privacy Laws and the Privacy Policy); at least one (1) Local GOS Processor; one (1) modem; one (1) router; POE cables to the Network Cameras and a dedicated internet line to the Local GOS Processor;
 - (ii) User Portal Interface and Video Player: Includes User Portal Interface featuring web-based multi-function video player including multiple camera views on live and archived Events (if requested by the City, a User Portal Interface for City Events will be developed for the City at GOS’s expense);
 - (iii) Complete Mobile App Accessibility: Full access to ABMS and Content via mobile devices that support modern web-browsing software;
 - (iv) GOS, at its discretion and its cost, may (but is not obligated to) install closed-circuit monitors in the lobby or common area near the entrance of any Venue to promote the ABMS and stream live and archived Content;
 - (v) GOS shall ensure that it performs its obligations hereunder in accordance with all applicable policies and protocols of the City and all Events rights holders.
 - (vi) GOS shall comply with all applicable laws in performing its obligations under this Agreement, including, without limitation, all Privacy Laws and the Privacy Policy;
 - (vii) GOS shall implement and maintain adequate safeguards and security measures to safeguard the Personal Information captured by the ABMS;
 - (viii) GOS shall implement appropriate technical and organizational measures to protect any Personal Information captured by the ABMS against unauthorized or accidental loss, damage or disclosure; and
 - (ix) GOS shall promptly and fully notify the City in writing of any notices in connection with the processing of any Personal Information captured by the ABMS, including subject access requests, and provide such information and assistance as the City may reasonably require with respect to such notices.

Notwithstanding anything in this Agreement to the contrary, all equipment to be installed at a Venue shall be subject to the approval of the City prior to installation. The City reserves the right, at no cost to the City, to refuse GOS permission to install, or require GOS to remove, any equipment that the City in its reasonable opinion deems unsuitable for the purposes described herein. GOS shall utilize only certified tradespeople to install its equipment at the Venues.

City Obligations

- (b) The City shall be responsible for the following at each Venue:
- (i) providing a secure location for each Local GOS Processor not more than 200 feet from the most distant camera, having at least three (3) 110V outlets capable of drawing up to 10A, permitting access to the Venue to facilitate installation of the ABMS, including cameras and cabling, at such times and in such a manner as agreed by the parties (the City acknowledges that access to the ice will be required occasionally to utilize an overhead lift for installation of equipment in the ceiling of the Venue should GOS and the City mutually agree to include additional overhead Network Cameras);
 - (ii) Permitting installation of mounts and brackets for ABMS equipment (including Network Cameras) and cabling for internet connections and facilitate the installation thereof, on a mutually agreed schedule;
 - (iii) Providing serviced electrical power to the agreed Venues;
 - (iv) Complying with any reasonable directions or requests of GOS for information and documentation with the City's control and which the City has the right to provide including, but not limited to, Club information, lists of authorized users and Event schedules, if applicable, and meeting requests to enable GOS to meet installation and other deadlines and maintain an up-to-date schedule of Events;
 - (v) At its sole option and discretion, promoting, advertising and supporting, on and across applicable City communication, media and marketing platforms, access to and use by the City and authorized users of the ABMS, including, at the City's sole option and discretion, by: (1) posting or permitting GOS to post throughout the Venues signage/notices advising Clubs, Event participants and other Venue patrons to the effect that the City/GOS has installed cameras and other equipment in each Rink pad to facilitate live and on-demand video streaming of Events; (2) permitting GOS reasonable access to the Venues during Events and at other reasonable times for the purpose of promoting GOS's live and on-demand streaming of Events; (3) providing links from the City's website; and, (4) permitting GOS to install monitors in the lobbies of Venues to show live and on demand video;
 - (vi) Notifying GOS promptly of any equipment issues requiring service/replacement;
 - (vii) Providing custodial services for the areas in and around Venues in which GOS's equipment is installed;
 - (viii) Communicating to GOS the City's projections in respect of activities at Venues (regarding public use of the Venues, special events, etc.);
 - (ix) Direct customer inquiries/complaints to GOS regarding the functionality of the ABMS;

- (x) Ensuring that access to the Local GOS Processors and Network Cameras shall be restricted only to GOS and authorized City personnel approved by GOS acting reasonably;
- (xi) Designating one or more contacts at the City who shall be trained on the ABMS in regard to simple system maintenance and basic troubleshooting (such as internet connectivity and power issues) and minor equipment maintenance at GOS's sole cost. Such contact(s) must be available for all Events at which Content is to be captured and be prepared to address any such issues as they arise (e.g., to reboot the system if internet service is down temporarily); and,
- (xii) Notifying GOS of commencement and shut down dates for each operating season.

3. Support and Maintenance

GOS shall be solely responsible for the support and maintenance of the ABMS. GOS's service commitments are set forth in the attached Schedule A.

4. Content Creation, Broadcast, Archival and Related Services

- (a) GOS shall activate the ABMS for use by authorized users during City Events and Third Party Events, the schedule thereof to be determined by the parties based on the available schedule of Events.
- (b) GOS represents and warrants to the City that each third party league or Third Party Event organizer is solely responsible for obtaining and will obtain all authorizations, consents, permissions, waivers and releases in respect of recording Content required under applicable laws (including Privacy Laws) from any and all persons (or their legal guardians as the case may be) whose identifiable images and other Personal Information have been or will be recorded during Third Party Event as contemplated in this Agreement, and that GOS shall verify and confirm compliance with such responsibility prior to permitting any Third Party Event to be recorded and/or streamed.
- (c) GOS represents and warrants to the City that the performance by GOS of its obligations under this Agreement do not and will not violate any obligations of GOS to any third parties.
- (d) GOS may provide during the term of this Agreement related products and services that utilize Content from City Events for purchase and use by authorized users, including, but not limited to, coaching software tools, including analytics and statistics, highlights and promotional and recruiting packages, City Event downloads and City Event Content clips. The City acknowledges that use of Content from all other Events shall be governed by GOS's agreements with the hosts/owners of such other Events.

5. Ownership & Licenses

- (a) As between the City and GOS, GOS is the owner of all Intellectual Property Rights in the ABMS, User Portal Interface (excepting the City's logos and other of the City's intellectual property that may be integrated thereon), all hardware, software, proprietary documentation, Confidential Information of GOS, and, subject to (c) below, all other intellectual property supplied or created by GOS in the performance of its obligations under this Agreement and provision of the User Portal Interface and the ABMS (collectively, "GOS IP").

- (b) As between the City and GOS, GOS exclusively owns all GOS IP, including any GOS IP embedded in Content, and subject to (c) below, all Content captured during Events. Notwithstanding GOS's exclusive rights as set forth in Section 7, below, the City shall be permitted to use video and still images, including Content captured by the ABMS at City Events for non-commercial purposes, including to promote the City, Venues and City Events and to provide to media distribution outlets "video clips" of no more than thirty (30) seconds duration for purposes of news broadcasts.

6. Access to and Permitted Uses of User Portal Interface

- (a) All third party individuals seeking to access the Content must first become authorized users by registering through the User Portal Interface. GOS shall establish registration criteria for all authorized users and may approve and register or approve for registration an unlimited number of authorized users. Registration criteria and terms and conditions of use ("Terms of Use") shall be posted on the User Portal Interface and authorized users shall be required to acknowledge and agree to such Terms of Use.
- (b) Subject to any restrictions or limitations in an authorized user's subscription to the User Portal Interface, authorized users shall have the right to access and utilize the User Portal Interface during the term of this Agreement: (i) on an unlimited basis in respect of Events; and (ii) to download video clips of Content; and, (iii) and to purchase coaching tools and additional GOS services and products.
- (c) Neither party shall have the right to use, distribute, re-use, re-distribute and/or otherwise exploit Content obtained from City Events except as expressly provided in this Agreement. In connection with City Events, GOS may track, collect and report aggregate data regarding authorized user activity and other User Portal Interface and/or ABMS usage (via analytics software or otherwise) solely to the extent that such aggregated data does not constitute Personal Information and may use such aggregated data, solely to the extent that such aggregated data does not constitute Personal Information, for commercial purposes, but shall not share any Personal Information except where individual(s) with respect to which such Personal Information relates has (have) expressly consented to such sharing in the User Portal Interface Terms of Use. The City acknowledges that GOS's use of Content obtained in connection with Events other than City Events shall be governed by GOS's agreements with the hosts/owners of such other Events. Notwithstanding the foregoing, GOS represents that its use of Content (including Personal Information) obtained in connection with Events other than City Events shall comply with all applicable Privacy Laws and other laws.

7. Exclusive Rights

- (a) Subject to subsection (b), below, during the term of this Agreement, GOS: (i) shall be the exclusive distributor of (1) Content by broadcast through the ABMS and (2) video recordings captured by all other means, including manned and temporary un-manned devices, to be distributed for commercial purposes; (ii) shall have exclusive rights (1) to affix video capturing equipment to each Venue by non-temporary means and (2) to utilize temporary un-manned means of video capture to use video recordings captured thereby for commercial purposes; (iii) shall have the right to utilize a mobile unit to record and stream Events if the internet or other technical or other issues may make the ABMS inoperative or otherwise unavailable; and, (iv) may engage a third party to record Events and stream recordings of Events through the ABMS provided, however, that GOS shall remain liable for the performance of its obligations under this Agreement and for such third party's

compliance with GOS's obligations under this Agreement, including, without limitation, GOS's obligation to comply with the Privacy Policy and applicable Privacy Laws.

- (b) Subsection (a) above (other than (a)(ii)) shall not prevent the City from: (i) permitting third parties to capture video at Third Party Events hosted or sponsored by such third parties for distribution by any means of content derived (i.e., created, generated, developed and/or produced) from such video by utilizing their own video and networking contractors, provided that in such circumstances the City shall advise such third parties of the option of recording and streaming content from such Third Party Events through the ABMS and encourage such use of the ABMS (if any such third party expresses a desire to utilize the ABMS for a Third Party Event, the City shall further advise such third party to contact GOS to arrange for such utilization); (ii) allowing patrons at Events to utilize their personal devices to capture video for personal, non-commercial use and distribution (e.g., to share with friends and family); (iii) allowing teams participating in Events to capture video for team-related, non-commercial use and distribution (e.g., for coaching and instructional purposes or to create game highlight packages for scouting/recruiting purposes or mementos); or (iv) permitting any third party to film television commercials, movies and education, training or promotional videos, or the like, at the Venues for distribution by any means.
- (c) Prior to execution of this Agreement, the City, unless prohibited by the terms of any agreement with any third party, shall disclose to GOS all third parties that currently hold any broadcast rights with respect to City Events and Third Party Events and the specific Events to which such rights are attached. For clarity, nothing shall limit GOS's exclusive rights under subsection (a), above, with respect to City Events, including tournaments and recreation league regular season and playoff games hosted by the City at any and all Venues, unless the internet broadcast rights for any such City Events were granted to a third party prior to the Effective Date.
- (d) GOS shall advise the City promptly when it executes an agreement with a third party in connection with ABMS broadcast rights of a Third Party Event(s) at a Venue(s).

8. Fees or other Amounts Payable

- (a) All amounts payable to the City hereunder are set forth in Schedule B. Neither party is permitted to charge or collect any fee or other amount in respect of City Event Content except as set forth herein and during the term of this Agreement. The City further is not permitted to charge or collect any fee or other amount in respect of the User Portal Interface, Content or services provided by GOS in connection with Events other than City Events.
- (b) GOS covenants that subscription prices, viewing credit package prices and pay-per-view prices will remain firm for a minimum of one (1) year. Any proposed price increases shall be determined by GOS in consultation with Events rights holders.
- (c) Within thirty (30) days of the end of each three month period following the Effective Date, GOS shall pay to the City all amounts payable pursuant to Schedule B in respect of such period and provide the City with an electronic report detailing all such amounts (each, a "Quarterly Revenue Report") together with supporting documentation in regards thereto.
- (d) During the term of this Agreement and one year thereafter, the City, or an auditor selected by the City, will have the right, once per year upon reasonable prior notice (except in the event of investigations, based on reasonable suspicion, of possible instances of misappropriation, fraud or

business irregularities of a potentially criminal nature, which may be conducted at any time as required and without satisfying the notice requirement), to audit and inspect all data, records, reports, documentation and other information of GOS relating to the Quarterly Revenue Reports and amounts payable to the City pursuant to Schedule B and interview GOS's personnel, in order to verify the determination of such amounts and remittance of same and all supporting documentation, calculations and methodologies related thereto. GOS will co-operate with and provide to the City and its audit representatives such reasonable assistance as they require in order to exercise the rights set out in this Section 8. If any audit conducted under this Agreement reveals an error in the calculations under a Quarterly Revenue Report or of amounts payable to the City pursuant to Schedule B, such that an overpayment or underpayment of the aggregate amount actually paid by GOS to the City occurred during the period covered by such audit, GOS (in the case of an underpayment by GOS) will immediately pay the City for such discrepancy, or the City (in the case of an overpayment by GOS) will immediately reimburse GOS for such discrepancy.

9. Taxes

Each party is solely responsible for any taxes, levies, duties or other similar amounts that may be or become payable by it in conjunction with this Agreement, with the exception of any tax payable with respect to the other party's income and employer contributions. For clarity, GOS will assume total responsibility for the collection and remission of all HST and any other taxes payable, including property taxes, if applicable, in relation to GOS's operations.

10. No Warranties

Except as expressly set forth herein, there are no other warranties or conditions, express or implied, including any warranty or condition of merchantability or fitness for a particular purpose, in respect of the ABMS or the User Portal Interface.

11. GOS Indemnity

Subject to the limitation of liability set out in Section 12, GOS shall indemnify, defend (at its expense) and hold the City harmless in respect of any action, claim, demand, cost, charge, losses, and expenses (including legal costs on a substantial indemnity basis) ("Losses") brought against or suffered by the City arising out of or related to:

- (a) any claim by any third party for bodily injury, including, without limitation, death, arising from or in connection with the provision of the ABMS by GOS and the performance of its obligations under this Agreement;
- (b) any breach or alleged breach (where there are reasonable grounds for such allegation) by GOS of any of its warranties or representations in this Agreement;
- (c) any breach or alleged breach (where there are reasonable grounds for such allegation) by GOS of any of its obligations, warranties or representations in any agreement with any authorized user;
- (d) any claim that the ABMS infringes any third party's Intellectual Property Rights; and
- (e) any failure by GOS to obtain necessary authorizations, consents, permissions, waivers and releases from any and all persons (or their legal guardians as the case may be) whose Personal Information may be recorded by the ABMS.

12. Limitation of Liability

- (a) Subject to Section 12(d) below, in the event a party is liable to the other in respect of any claim whether based in contract, tort (including negligence), or otherwise, including breach by such party of any of its obligations under this Agreement (regardless of whether it is a fundamental breach), the aggregate amount of damages payable by such party to the other will be limited to a maximum of \$50,000.
- (b) Subject to Section 12(d) below, neither party shall be liable to the other for any special, indirect, incidental or consequential damages arising in connection with this Agreement, even if advised of the possibility thereof, including, but not limited to, lost profits, lost business revenue, failure to realize expected savings, and other commercial or economic losses of any kind.
- (c) The parents, affiliates, subsidiaries, directors, officers, employees, agents, representatives, subcontractors and suppliers of a party shall be deemed to be included as part of such party for purposes of this Section 12.
- (d) Sections 12(a) and 12(b) will not apply in respect of (i) any gross negligence or wilful misconduct; (ii) any intentional breach of this Agreement; and (iii) damages arising from a breach of confidentiality or privacy obligations under this Agreement or any applicable Privacy Laws.

13. Term

- (a) This Agreement shall be effective on the Effective Date and will expire three (3) years thereafter unless terminated earlier in accordance with the provisions hereof (the "Initial Term").

14. Termination by Either Party

Either party may terminate this Agreement immediately:

- (a) where such other party neglects or fails to perform or observe any material term or obligation of this Agreement and such failure has not been cured within thirty (30) days of written notice;
- (b) where such other party breaches in any material respect any of its obligations or covenants hereunder with respect to Confidential Information, data protection and/or privacy; or,
- (c) where the other party: (1) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (2) has a receiver and/or manager appointed over its assets or makes an application to do so; (3) becomes bankrupt or insolvent or commits an act of bankruptcy or takes or attempts to take advantage of any law or statute for the relief of bankrupt or insolvent debtors; (4) has a resolution or a petition filed or an order made for its winding up; or (5) ceases to carry on business.

15. Obligations upon Termination for any Reason

- (a) Upon termination or expiry of the applicable term of this Agreement for any reason:
 - (i) Each party shall, at the request of the other, forthwith return to the other party all information and materials provided to it by the other party and all Confidential Information of the other party;
 - (ii) Each party shall reconcile all amounts due to the other party and pay all amounts due to the other party within thirty (30) days of termination and simultaneously provide the other party a final reconciliation report; and,
 - (iii) GOS shall (1) remove all GOS equipment installed at the Venues using certified trades people, (2) repair any damage caused by GOS's installation and operation of its equipment at the Venues and (3) restore the Venues to the condition they were in immediately prior to GOS's installation of its equipment (subject to reasonable wear and tear), to the satisfaction of the City, acting reasonably.
- (b) Any termination of this Agreement shall not in any respect limit any of either party's rights or remedies either in law or in equity or relieve either party of any obligation incurred prior to the effective date of such termination.
- (c) In addition to any other provision dealing with the survival of obligations hereunder, all of the obligations regarding confidentiality, privacy, Intellectual Property Rights, indemnifications, disclaimers and limitations on liability set out in this Agreement shall survive the expiry or termination of this Agreement, as shall all any other provisions which, by their nature, ought reasonably to survive expiry or termination.

16. Insurance

- (a) GOS shall, during the Initial Term and any Renewal Term, keep in full force and effect a policy of insurance with respect to GOS's operations at Venues and the performance of GOS's obligations under this Agreement, in which the limit of comprehensive general liability insurance shall not be less than five million dollars (\$5,000,000.00) per occurrence and an annual aggregate limit of not less than five million dollars (\$5,000,000.00) for products and completed operations. The required insurance limit may be composed of any combination of primary and excess (umbrella) insurance policies. Each such policy shall name the City as an additional insured with respect to liability arising in the course of performance of GOS's obligations under, or otherwise in connection with, this Agreement. On the Effective Date and upon the placement, renewal, amendment, or extension of any part of the insurance, at the City's request, GOS shall provide the City with a certificate of insurance evidencing the required insurance coverage and that the City is named as an additional insured which certificate shall be certified by an authorized representative of the applicable insurer.
- (b) The City agrees to carry, with financially sound and reputable insurers, insurance coverage with respect to the conduct of its activities and its obligations under this Agreement in such amounts as is customary for well insured municipalities engaged in similar activities.

17. Confidentiality

Neither party shall: disclose any Confidential Information of the other party to any third party except as may be required to perform its obligations or exercise its rights under this Agreement; or use any Confidential Information of the other party for any purpose other than to perform its obligations or exercise its rights under this Agreement. Each party shall protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information provided, however, that GOS may only access and use Personal Information comprising the Confidential Information of the City in accordance with the Privacy Policy.

Notwithstanding the above, the parties acknowledge and agree that City is subject to the requirements of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O 1990 c.M.56 (MFIPPA), and that the City shall not be liable for the disclosure of any Confidential Information required by MFIPPA or as may be compelled by any court, tribunal, or other administrative or judicial body.

18. Force Majeure

Neither party shall be liable for any delay or failure in performance if such delay or failure results from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, the affected party shall promptly notify the other party of any conditions which may result or have resulted in such delay or failure and must act diligently to remedy the cause thereof.

19. Entire Agreement/No Amendments or Waivers

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether written or oral and whether between GOS and the City. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties. A waiver of any provision must be in writing and signed by both parties to be effective. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.

20. Time of Essence

Time shall be of the essence of this Agreement.

21. Assignment

- (a) The City may assign this Agreement to any other person without prior notice to, or consent from, GOS, provided that such assignee agrees in writing to assume all of the City's obligations under this Agreement.
- (b) GOS may assign this Agreement to any other person with whom GOS merges, consolidates, amalgamates or is reconstituted or reorganized, or who purchases all or substantially all of GOS's assets or a controlling interest in GOS, provided that such assignee agrees in writing to assume all of GOS's obligations under this Agreement

22. Remedies Cumulative

The rights and remedies of the parties under this Agreement are cumulative, and are in addition to and not in substitution for any other rights or remedies provided in this Agreement, by law or in equity. Any single or partial exercise by a party of any right under this Agreement, or any failure to exercise or delay in exercising any such right, shall not be or be deemed to be a waiver of or to prejudice any other rights or remedies to which such party may be entitled.

23. Independent Parties

The parties are independent contractors. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of the other party, or authorize any party to make or enter into any commitments for or on behalf of the other party.

24. Governing Laws

This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Province of Ontario, except that such Province's conflict of laws rules shall not apply. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Province of Ontario located in Toronto.

25. Notice

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing by e-mail as set out below.

If to the City of Barrie:

Attention:

Email:

If to GOS:

GAMEONSTREAM Inc.

161 Ranleigh Avenue

Toronto, ON M4N 1X2

Attention: Bob Wilkinson

Email: bob@gameonstream.com

Any demand, notice or other communication given by e-mail shall be conclusively deemed to have been given on the business day following the date when the communication is sent (provided that no automated or other response is received by the sender indicating non-delivery). Any party may change its address for service from time to time by providing notice in accordance with the foregoing, provided that any subsequent notice must be sent to such party at its changed address.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF the undersigned have executed this Agreement as of the date first written above.

THE CORPORATION OF THE CITY OF
BARRIE

GAMEONSTREAM INC.

Per: _____
(Authorized Signature)

Per: _____
(Authorized Signature)

Name:
Title:

Name: Bob Wilkinson
Title: President

I have the authority to bind the corporation.

I have the authority to bind the corporation.

Per: _____
(Authorized Signature)

Name:
Title:

I have the authority to bind the corporation.

SCHEDULE "A"

Support and Maintenance

System Monitoring

GOS shall monitor each system remotely and complete system checks before each Event and also perform regular system checks during Events. GOS has the capability to resolve, through its remote access, 95% of issues that may arise at a Venue. The most common issues that arise are:

- Power failures
- Interrupted or unavailable internet service
- Device and/or network failure

GOS shall monitor its equipment using automated tools that will detect failures based on the device and/or the network. As soon as an issue has been detected, a ticket is automatically generated in the GOS ticketing system and the appropriate resources are notified and activated.

If an on-site visit is required to resolve an issue, GOS will use commercial best efforts to dispatch a member of its staff or a qualified contractor within 24 hours. (In some such cases, if a simple check of the power connection or a reboot of the internet modem is required, the on-site person designated by the City at the Venue shall provide such service.)

System Service Levels

All local (i.e., designated for use at a Venue) equipment supplied by GOS is hardened and designed to meet the rigors of the environment in which it is installed, although failures may occur from time to time.

GOS commits to an uptime for its online video streaming services (i.e., for a broadcast stream to a user interface) of 98% annually. (Scheduled downtime for system maintenance is not included in the uptime calculation.)

Maintenance Commitment

GOS will use commercial best efforts to provide repair/maintenance/replacement to damaged equipment, including damage as a result of vandalism, within 24 hours of being notified by the City, at no additional cost to the City. The City shall not be responsible for any damage to the equipment, howsoever caused, save and except any intentional damage inflicted by City personnel (including contractors engaged by the City).

GOS shall ensure that all equipment is in proper working order, with equipment checks made at minimum on a weekly basis.

Customer Service Commitments

GOS has a comprehensive customer service program which provides support for inquiries, complaints and refund requests. Customers can contact the GOS Help Desk by e-mailing the Help Desk directly through GOS's website or calling GOS's customer service number regarding issues that they are having with logging in, viewing Content or utilizing features of the ABMS.

GOS's commitment to User Support is to answer 80% of calls or emails within 30 minutes (during regular business hours (i.e., 9am-5pm)) and to attempt to resolve 90% of the issues within 60 minutes of opening a ticket.

In the event of a catastrophic failure affecting all or a significant majority of ABMS users in connection with an Event, resulting in a heavy volume of user calls; GOS will use its commercial best efforts to answer all support requests within 2 hours.

Approved refunds will be provided within 48 hours.

SCHEDULE "B"

Fees/Revenue Share

1. Subscription Revenue: the City shall receive five (5) percent of all Gross Subscription Revenue generated from Events. For purposes of this Schedule B, "Gross Subscription Revenue" means all revenue generated directly through subscription fees paid by authorized users to view Events on a live-streamed and/or recorded basis through utilization of the ABMS, less third party transaction costs to GOS in respect of such Events (such as credit card fees and charge-backs).
2. Notwithstanding the foregoing, if an Event is held at a Venue and also at one or more other venues (e.g., a tournament or league operated across several rinks) and users subscribe to view over the ABMS Content streamed from the Venue and from one or more of such other venues in connection with such Event, the City shall receive a proportion of 5% of the Gross Subscription Revenue generated by such subscriptions. Such proportion shall be calculated by dividing the total number of games streamed by GOS from the Venue and all other venues in connection with such Event by the number of games streamed from the Venue in connection with such Event.

For clarity, and by way of example, if teams in a league play 400 games in a season (i.e., the "Event"), and 100 of such games are played at the Venue, and all 400 games are streamed by GOS, the City's revenue share in connection with such Event would be calculated as follows:

City Revenue Share =

$$\frac{(5\% \text{ of Gross Subscription Revenue for Event}) \times \text{No. of Games at Venue(s)}}{\text{Total No. of Games}}$$

=

$$\frac{(5\% \text{ of Gross Subscription Revenue for Event}) \times 100}{400}$$

3. GOS shall pay the City the above revenue share as set forth in Section 8 of the Agreement.
4. Pricing: Subscription pricing for the 2019-20 season will vary depending on the Event and the participating leagues. Event/Tournament pricing shall be \$7.99 pay-per-view/game or \$23.99/Tournament pass; monthly subscriptions start from \$9.99/month, or \$12.99/month with monthly package upgrade options.