

# Purchase Agreement

## RECITALS

- A. This Purchase Agreement (“Agreement”) is between The Active Network, Inc. (“Active Network”), a Delaware corporation, and The City of College Station, TX (“Purchaser”).
- B. The parties hereto (the “Parties”) desire to enter into this Agreement in order to provide for the purchase and sale and to set forth certain representations, warranties, covenants, conditions, and agreements made in connection with and as an inducement to such a transaction.

## AGREEMENTS

In consideration of the mutual covenants, agreements, representations, warranties and conditions herein contained, the parties hereto agree as follows:

### ARTICLE 1 – SALE AND PURCHASE

Sale and Purchase. Active Network agrees to sell, and Purchaser agrees to purchase, licenses to operate certain software products, computer hardware, technical and other services, and other items as identified in Exhibit A, which is attached and is incorporated herein by reference. Active Network and Purchaser agree that any future purchases of licenses to operate certain software products, computer hardware, technical and other services will apply as add-ons to the existing Purchase Agreement, Software License Agreement, and Software Subscription Agreement.

- A. Taxes. Except for income taxes imposed on Active Network, all taxes arising out of this transaction are the sole obligation of Purchaser, and shall be promptly paid when due. Purchaser is a tax-exempt entity and will provide its tax exemption number to Active Network.
- B. Payment. Active Network shall invoice upon product shipment, upon provision of services, or upon other dates that may be mutually agreed to. Except for items that are disputed by Purchaser in writing regarding any invoice, and notwithstanding anything to the contrary in these agreements, all Active Network invoices are due and payable no later than 30 days from the invoice date. If Purchaser contests invoice, Purchaser shall provide written notice to Active Network with complete, detailed and accurate description of reason for contesting the invoice.
- C. Additional Agreements. Active Network and Purchaser agree that products provided by Active Network are subject to the provisions of the Active Network License Agreement, which is attached as Exhibit B and incorporated herein by reference. As a condition to the acceptance and performance of this Agreement, Active Network and Purchaser agree to enter into a separate Software Subscription Agreement which shall provide software maintenance services for software products furnished by Active Network. The separate Software Subscription Agreement shall be executed at the same time as the acceptance of this Agreement.
- D. Definitions. The terms "Software" or "Product" or "Software Product" shall mean non-exclusive and non-transferable Licensed Program Materials granted by Active Network for Purchaser to operate such products, as

- well as all related materials and documentation, either in machine readable or printed form.
- E. Property Rights of Active Network. All copies of the Licensed Program Materials provided by Active Network, including translations, compilations, partial copies within modifications, derivative works and updated works, are the property of Active Network and may not be distributed by the Purchaser to any other persons, including other licenses of the Licensed Program, without Active Network's prior written consent.
- F. Copyright Notices. Active Network shall have the unrestricted right to include copyright notices on all products provided by Active Network, in a form or manner as chosen solely by Active Network. This form or manner may include, but not limited to, a written or text message, viewable button, link, or other methods or combinations of these methods. Purchaser agrees to reproduce all copyright notices as provided by Active Network and agrees to not make any adjustment or alterations to such copyright notices.
- G. Restricted Access. The Purchaser shall not provide, or otherwise make available, Licensed Program Materials in any form without Active Network's prior written consent except to Purchaser employees, Active Network employees, or other persons during the period they are on Purchaser premises for purposes specifically related to the Purchasers authorized use of the Licensed Program Materials.
- H. Access by Active Network. Purchaser grants Active Network reasonable and necessary right to access any or all of Purchaser's data that Purchaser publishes or otherwise makes publicly available or accessible. Further, Purchaser grants Active Network reasonable and necessary access any or all of Purchaser's data when reasonably required for Active Network to perform its obligations to Purchaser.
- I. Shipment and Delivery. Active Network shall ship products to Purchaser on the dates shown in Exhibit A, or on other dates that may be mutually agreed to. Neither Active Network nor the Purchaser shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, work stoppages, or disasters. In such event, the contract term and warranty will be extended for the period of delay.
- J. Replacement of Lost Materials. If Licensed Program Materials are lost or damaged while in the possession of the Purchaser, Active Network shall replace them at a processing fee not to exceed \$150.00. Any expedited shipments requested by the Purchaser shall be at the Purchaser's expense.
- K. Purchaser's Right to Use. The Purchaser's rights in the computer Software developed by Active Network may be restricted by Active Network in accordance with this Agreement and in any duly executed Attachment, Order, or Schedule referencing this Agreement. However, the Purchaser shall have:
- (1) Use of such Software on computer processing units as defined in the attached Software License Agreement; and
  - (2) Use of such Software with a backup system, provided that the backup system is solely used for the purposes of an archival copy.
- L. Acceptance by Purchaser. Purchaser shall notify Active Network in writing of acceptance of all products within 60 days of loading of software on the purchaser's servers and workstations by Active Network, so long as all products conform to the testing and acceptance criteria as provided in Exhibit E. If the products are not in substantial conformance with the testing and acceptance criteria as provided in Exhibit E, purchaser shall immediately notify Active Network of any non-conformities in sufficient detail to allow Active Network to isolate and duplicate same. Active Network shall use all reasonable efforts to remedy all such non-conformities. Upon correction, Active Network shall demonstrate same to Purchaser, without requiring an additional 60 day testing and acceptance period, and the software module shall be accepted by Purchaser. If no notification of non-conformance is received by Active Network during the applicable 60 day testing and acceptance period, such products shall be deemed to meet the testing and acceptance criteria as provided in Exhibit E and shall be deemed accepted.
- M. Damages or remedies. In no event, shall either party be liable for special, consequential, or liquidated damages. The parties' respective maximum aggregate liability shall be the lower of a) the amount charged by Active Network for software licenses provided under this agreement, or b) the amount invoiced and received by Active Network if only a partial delivery or partial payment has been made.

- N. Product documentation. Active Network shall provide product documentation with the Active Network-developed products delivered to the Purchaser.
- O. Unrestricted changes by Active Network. Active Network may make reasonable and necessary changes as it deems fit to operating procedures, programming languages, general purpose library programs, timing accessibility techniques, types of hardware supportability, product functionality, and other related areas.
- P. Services Outside of this Agreement. In the event the Purchaser requests any services other than that included under this Agreement, and depending upon the availability of its personnel, Active Network shall use its best efforts to promptly furnish such support in accordance with their current published billing rates.
- Q. Severability. Each provision of this Agreement is severable from all other provisions of this Agreement and, if one or more of the provisions of this Agreement shall be declared invalid, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.
- R. Currency. All amounts referred to herein or otherwise payable pursuant to any term of this Agreement shall be United States of America Dollars.
- S. Prior Agreements. This Agreement represents the entirety of agreements between Purchaser and Active Network and supersedes all prior agreements and understandings between Active Network and the Purchaser relative to Software and Software Support for the Software and/or Software Product(s), with the exception of the separate Software Subscription Agreement (per Article 1, Section C). No change or attempted waiver of any provision of this Agreement shall be binding unless expressed in writing and signed by the party against whom the same is sought to be enforced.
- T. Term. This Agreement is effective from the date on which both parties execute this Agreement as set forth on the signature page hereto and shall remain in effect until all provisions have been satisfied. The provisions of Software Licenses and other restrictions for Licensed Program Materials shall survive indefinitely and past the termination of all other provisions of this Agreement.
- U. Amendments. No amendment to this Agreement shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless waiver or consent to breach is in writing. For purposes of the Agreement, the only authorized representatives shall be:

Active Network:

Purchaser:

Active Network  
 937 Enterprise Dr.  
 Sacramento, CA 95825

The City of College Station  
 1101 Texas Avenue South  
 College Station, TX 77840

- V. Source Code and Escrow of Software. Purchaser will not be provided with Active Network's source code. Purchaser and Active Network may choose to enter into a separate agreement for the escrow of Active Network's source code, labeled "Software Escrow Agreement."
- W. Title and Ownership. Purchaser's right of use shall remain subject to Active Network's approval until all sums due under this contract are paid. Except for amounts disputed by Purchaser in writing, and notwithstanding anything to the contrary in these agreements, if Purchaser contests invoice, Purchaser shall provide written notice to Active Network with complete, detailed and accurate description of reason for contesting, if payment is not made when due, Purchaser agrees after written notice from Active Network and an opportunity to remedy any unpaid amounts, upon request of Active Network, to cease use of products which have not been paid for until full

payment has been made to Active Network.

- X. **Provision of Services.** Purchaser agrees that Active Network's sole obligation for on-site services and on-site training is to supply a qualified installer or instructor for the designated number of service or training hours. Active Network will maintain a trained staff capable of rendering the performance under this Agreement. Active Network neither warrants nor represents that after such training time any specific individual or individuals designated by Purchaser will be able to properly use and operate the Products.
- Y. Warranty of Products Manufactured by Active Network. Active Network warrants that upon delivery, Active Network developed Products shall be in substantial conformance with Active Network's printed documentation and specifications, and specifications as modified per Exhibit D, which is attached and is incorporated herein by reference). After delivery, should any part of the Licensed Program Materials media prove to be defective, Active Network will promptly provide a replacement Licensed Program Material media at no charge to Purchaser for a period of 120 days from the date of initiation of on-site training services. THIS IS THE ONLY WARRANTY MADE AS TO THE PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ACTIVE NETWORK OR ITS EMPLOYEES BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE OR OTHER INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
- Z. Warranty of Products Not Manufactured by Active Network. Should Active Network provide products manufactured by others ("Third Party Products"), Purchaser shall seek and obtain warranty service for such products directly from the product manufacturer or authorized service center. With respect to Third Party Products, Active Network makes no warranties, whether express or implied, including without limitation warranties of merchantability or fitness for particular purpose.
- AA. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas. Any action or court proceeding which may arise from this Agreement shall be heard in the Courts in the County of Brazos, TX.
- BB. Assignment. This Agreement may be assigned if Active Network participates in any merger or similar transaction in which a majority of Active Network's stock is transferred, provided that the assignee or successor assumes all rights and obligations under this Agreement.
- CC. No Hire Clause. Active Network agrees that it will not actively recruit or employ any current employee of Purchaser's Parks and Recreation department or from the Purchaser's Office of Information Technology for employment by Active Network for the time period of one year after the project go-live date.

## ARTICLE 2 – OBLIGATIONS OF ACTIVE NETWORK

Active Network agrees to:

- A. Maintain sales prices as described in the attached Exhibit A until the time of product shipment, unless otherwise specified; and
- B. Ensure that software products as modified (per Exhibit D) and provided by Active Network are in substantial conformance with Active Network's printed documentation and specifications, and specifications as modified per Exhibit D, as long as they are operated on the recommended Active Network hardware, network, or other recommended platform.

## ARTICLE 3 – OBLIGATIONS OF PURCHASER

Purchaser acknowledges that Purchaser's successful use of the software product and services purchased from Active Network are dependent upon the Purchaser's own efforts in making the software product work for the Purchaser. Active Network can only provide software and technical support and it can not be responsible for the Purchaser's practices and the proper or improper use of the software. The Purchaser agrees to implement and perform reasonable practices and procedures to ensure the successful use of the software product. A sample of such practices is attached as Exhibit C.

#### ARTICLE 4 – REPRESENTATIONS AND WARRANTIES OF ACTIVE NETWORK

- A. Active Network represents and warrants that, in addition to Article 1, Section Y:
- (1) Active Network has not employed or retained any person or persons not generally associated with Active Network, except Active Network's representatives or regular employees, for the purpose of soliciting or securing this Agreement. Active Network further warrants that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the award or making of this Agreement;
  - (2) Active Network shall maintain, during the equipment delivery and installation process, insurance coverage's in the amount of \$1 million General Commercial Liability, and workmen's compensation insurance;
  - (3) Each of the Licensed Program materials as modified by Active Network per printed documentation and specifications, and specifications as modified per Exhibit D, which is attached and is incorporated herein by reference shall substantially conform to any product documentation provided by Active Network, including, but not limited to, operating performance, timing characteristics, and compatibility; and,
  - (4) **ACTIVE NETWORK SHALL DEFEND AND INDEMNIFY AND HOLD THE PURCHASER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES OR CAUSES OF ACTION, INCLUDING ATTORNEY FEES, COSTS, EXPERT FEES AND OTHER RELATED EXPENSES THAT LICENSED PROGRAM MATERIALS SUPPLIED HEREUNDER INFRINGE A TRADE SECRET OR A PATENT OR COPYRIGHT ENFORCEABLE IN THE UNITED STATES. To be eligible for Active Network's defense, Purchaser must:**
    - a) Give Active Network prompt written notice of any such claim;
    - b) Allow Active Network to control and reasonably cooperate with Active Network in the defense and settlement negotiations;
    - c) Allow Active Network, at Active Network's option and expense, if such claim has occurred or in Active Network's judgment is likely to occur, to procure the right for the Purchaser to continue using the Licensed Program Materials or to promptly replace or to promptly modify them so that they become non-infringing; and, if neither of the foregoing alternatives is available on terms which are reasonable in Active Network's judgment, upon written request, the Purchaser shall return the Licensed Program Materials to Active Network and Active Network shall promptly refund the total amount the Purchaser paid Active Network; and,
    - d) Active Network shall have no obligation with respect to any such claim based upon the Purchaser's modification of the Licensed Program Materials or their combination, operation or use with data or programs not furnished by Active Network or in other than the Specified Operating Environment.

- (5) Active Network warrants that Active Network owns the software, including all associated intellectual property rights, or otherwise has the right to grant Purchaser the right and license provided in this Agreement, and that as of the date of this Agreement, to the best of Licensor's knowledge, neither the software nor the end-user materials infringe any valid patents, copyrights, trademarks, or other proprietary rights of any third parties.

#### ARTICLE 5

Purchaser agrees that it will:

- A. Not at any time sell, assign, or otherwise transfer Active Network's Software and/or Software Product(s), parts of the Software and/or Software Product(s), or updates, changes, improvements or enhancements to the Software and/or Software Product(s), or parts thereof, or provide to any third party any support described in this Agreement for the Software and/or Software Product(s);
- B. Treat the design specifications and associated documentation of the Software and/or Software Product(s) with the same confidentiality that it treats its own confidential materials and shall disclose the Software and/or Software Product(s) in confidence only to, and shall authorize the use of the Software and/or Software Product(s) in confidence only by, its employees. The Purchaser acknowledges that Active Network has expended substantial sums in creating its Software and Software Products, incurs substantial additional expense in maintaining them, and as a result, has and will continue to have substantial proprietary interest and valuable trade secrets in them. These agreements of the Purchaser remain in full force and effect even if the Purchaser or Active Network elects to terminate this Agreement, per Article 6; and,
- C. Use its best efforts to protect from disclosure to any third party all data structures, data layouts, table and fields names, and other similar information which are delivered to Purchaser or are utilized by Active Network provided products. Except as required by law or court order, Purchaser agrees that these shall not be published, communicated, transmitted, or revealed in any way to any third party without the written consent of Active Network.

#### Article 6 – TERMINATION AND CANCELLATION

##### TERMINATION AND CANCELLATION

- A. Purchaser shall have the right to terminate this Agreement for Default, in the event that any one or more of the following events of default occur or continue during the term of this Agreement:
- (1) Active Network shall fail to deliver the Software or services required by this Agreement, after having been notified in writing by Purchaser of its failure and having been given a 60 day cure and correction period for Active Network to achieve conformance.
- B. Active Network shall have the right to terminate this Agreement for Default, in the event that any one or more of the following events of default occur or continue during the term of this Agreement:
- (1) Purchaser shall fail to conform to the requirements of this Agreement, after having been notified in writing by Active Network of its failure and having been given a 90 day cure and correction period for Purchaser to achieve conformance; and
  - (2) Purchaser's failure to pay Active Network's invoices for undisputed amounts within 90 days of the date of Active Network's invoice.

- C. If Active Network terminates this Agreement for default by Purchaser, Purchaser shall pay Active Network, on a pro-rated basis, for any products shipped by Active Network, and any services provided by Active Network, up to the date of termination.

ACCEPTED AND AGREED:

Active Network

*[Handwritten Signature]*

Signature

*Suzanne A Harkin*

Name

*President - ReclWave Div.*

Title

*12-17-03*

Date

PURCHASER

\_\_\_\_\_

Signature

*Ron Silvia*

Name

*Mayor*

Title

\_\_\_\_\_

Date

ATTEST:

\_\_\_\_\_  
Connie Hooks, City Secretary  
Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Thomas E. Brymer, City Manager  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

\_\_\_\_\_  
Charles Cryan, Director of Fiscal Services  
Date: \_\_\_\_\_

CRC 7/13/00

Contract No. **Error! Reference source not found.**

12/19/03

**Exhibit A**  
**RecWare Safari Pricing for The City of College Station, TX**  
 Prepared by Rich McGuire

<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Extension</u>	<u>Notes</u>
<b><u>Customer Information</u></b>				
Number of Geographic Sites/Locations	13	N/A	N/A	A
Number of Workstations	30	N/A	N/A	B
Max Workstations Needed for Simultaneous Use	82%	N/A	N/A	C
Anticipated Number of Concurrent User Licenses	25	N/A	N/A	D
<b><u>Safari Core System</u></b>				
Safari Central, includes:	1	\$9,995	\$9,995	E
Fully Integrated Client/Server recreation software		N/A		
Compatible with Microsoft SQL Server or Oracle		N/A		
Integrated Customer Account Management		N/A		
Integrated Financial Tracking System		N/A		
Integrated Data Reporting Engine		N/A		
Integrated "Standard" Point of Sale		N/A		
Integrated .AVI Video Help/Video Training		N/A		
Base/Included Concurrent User Licenses	5	Incl.		
<b>Safari Core System Investment</b>			<b>\$9,995</b>	
<b><u>Software Applications (Client/Server)</u></b>				
Activity Registration	1	\$3,995	\$3,995	F
Facility Reservation	1	\$3,995	\$3,995	G
Membership Management	1	\$3,995	\$3,995	H
League Scheduling	1	\$3,995	\$3,995	I
Tournament Scheduling	0	N/A		
Point of Sale (premium upgrade)	0	N/A		
Inventory Control	1	\$3,995	\$3,995	L
Financial Interface	1	\$1,000	\$1,000	M
Crystal Reports (single user license)	1	\$395	\$395	N
Entity Relationship Diagram/Encyclopedia	1	\$1,000	\$1,000	O
Touch Tone Registration (English)	0	N/A		
Touch Tone Registration (Spanish)	0	N/A		
4-line Touch Tone expansion	0	N/A		
<b>Software Applications Investment</b>			<b>\$22,370</b>	
<b><u>Internet Registration</u></b>				
ProActive Internet Registration, includes:	1		\$0	S
Web Hosting by The Active Network, Inc.			No charge	
Internet Registration			No charge	
Credit card processing			No charge	
<b>Internet Registration Investment</b>			<b>\$0</b>	
<b><u>User Licenses</u></b>				
Base Concurrent User Licenses (shown above)	5	N/C	N/C	

Recommended Concurrent User License Adjustment	20	\$1,000	\$20,000	T
Other Concurrent User License Adjustment	0	N/A		
<b>Total User Licenses &amp; User License Investment</b>	<b>25</b>		<b>\$20,000</b>	

**Implementation & Support Services**

Trips to Customer Location*	1	\$1,000	\$1,000	V
Service days- On-Site at Customer Location	18	\$1,250	\$22,500	W
Project Management Days (Active's offices)	1	\$1,000	\$1,000	X
<b>Services Investment</b>			<b>\$24,500</b>	

(\*Travel fees are all-inclusive)

**Software Maintenance**

Software Escrow Agreement (annual)	1	\$150	\$150	Y
Software Maintenance (annual)	1		\$11,168	Z
<b>Software Maintenance Investment</b>			<b>\$11,318</b>	

**Total System Investment\***

**\$88,183**

**Grand Total for Products, Maintenance, Services**

**\$88,183**

(\*Includes 1st Year Annual Maintenance)

(\* Quote is subject to "Notes" explanation which is attached)

**Payment Schedule**

Down Payment Due at Contract Signing	25%	\$22,046
Payment Due Upon Shipment of Software	50%	\$44,092
Payment Due At Rendering Initial Services	20%	\$17,637
Payment Due At acceptance of software per Exhibit D	5%	\$4,408

(Note: Contract total to be invoiced within 120 days of order acceptance.)

## Quotation Notes

- A: Each separate community center or separate location is defined as a unique site.
- B: This is the total number of workstations that could potentially be using the software (regardless of whether they would use the system daily or just occasionally.)
- C: Normal usage shows that a percentage of workstations are typically idle at any given time, or users at these stations may be using software applications other than RecWare. A 50% license-to-station ratio is common; however, the percentage you need may vary based on your business practices, season, or
- D: This is the license-to-percentage of workstation ratio used for this quotation.
- E: Safari Central requires an appropriate computing environment and a database such as Microsoft SQL server or Oracle. These items are supplied, installed, and configured by the customer.
- F: Activity Registration offers capability such as enrollment, refund, wait list processing, and financial
- G: Facility Reservation offers capability such as scheduling facilities, producing permit contracts, invoicing, accounts receivable, and financial reporting.
- H: Membership Management hardware peripherals such as cameras, scanners, photo ID printers, etc. must be Active-approved models and are supplied by the customer.
- I: League Scheduling offers capability such as Round Robin Scheduling, automatic reservation of sport facilities, and production of balanced team schedules.
- J: N/A.
- K: N/A.
- L: Inventory Control tracks inventory items, receipt and sale of new goods. Any necessary peripherals are customer-supplied.
- M: Financial Interface creates an ASCII export file using an Active-specified format. Customizations to this format, if necessary, are chargeable separately and billed on an hourly basis.
- N: Crystal Reports is a 3rd party reporting tool. Active does not supply training or technical support for this product. Purchase of the ERD diagram is strongly recommended with Crystal Reports.
- O: The ERD diagram is useful for advanced users that wish to use Crystal Reports to produce their own reports. The ERD diagram is a 'road map' to the RecWare database.
- P: N/A.
- Q: N/A.
- R: N/A.
- S: ProActive allows activities to be automatically posted and become available for online registration at Active.com. Active provides hosting, processing, and credit card verification services. Requires customer-supplied dial up Internet account.
- T: This is the number of additional user licenses recommended, based upon total workstations, % of use, and factoring in base licenses already included. This recommendation is an approximation only.
- U: N/A.
- V: This is a fixed 'per trip' charge that covers the cost of airfare, hotel, and rental car.
- W: Examples of on-site services include staff training and loading software onto servers or workstations. Active personnel do not install hardware nor configure network systems or databases.
- X: Project management days are normally conducted at Active's offices and may include implementation planning and other preparatory work.
- Y: Software escrow cost is \$150 annually, and requires acceptance of a separate software escrow
- Z: Software Maintenance is billed annually, and examples of services rendered include toll-free telephone technical support and regular software updates.

## Exhibit B

# RecWare Software License Agreement and Registration Form

This agreement is between The Active Network, Inc., with its office at 937 Enterprise Drive, Sacramento, CA 95825, (hereafter called "Active Network"), and the below named Purchaser of RecWare software, hereafter called "Licensee".

<u>Product Name(s)</u>	<u>Serial #</u>	<u>Version #</u>	<u>Product Type (single, multi user, etc.)</u>
RecWare Safari Central	TBA	3.3.63	Multi-user
RecWare Safari Standard Point of Sale	TBA	3.3.63	Multi-user
RecWare Safari Activity Registration	TBA	3.3.63	Multi-user
RecWare Safari Facility Reservation	TBA	3.3.63	Multi-user
RecWare Safari Inventory Control	TBA	3.3.63	Multi-user
RecWare Safari Membership / Pass Management	TBA	3.3.63	Multi-user
RecWare Safari League Scheduling	TBA	3.3.63	Multi-user
TBA = To be assigned			

Name of licensed user / organization    The City of College Station

Street address                                1101 Texas Avenue South

City, State/Province, Zip/Postal Code    College Station, TX 77840

Telephone Number / FAX Number        (979) 764-3731

Contact Person / Installation Date      Peter Lamont                    \_\_ TBA \_\_ / \_\_ / \_\_

Number of file servers / video monitors    1                                /                                \_\_                                Approximately

READ THE FOLLOWING TERMS CAREFULLY BEFORE OPENING THE SOFTWARE DISKETTE PACKAGE. OPENING THE PACKAGE CONTAINING THE SOFTWARE DISKETTES INDICATES YOUR COMPLETE AND UNCONDITIONAL ACCEPTANCE OF THE BELOW TERMS AND CONDITIONS.

### LICENSE

Active Network (hereafter called "Active Network") and any applicable sublicensors, upon licensee's acceptance of the following terms and conditions, grants to licensee a non-exclusive, nontransferable license to use the software programs and related documentation in the package(s) named above (hereafter referred to as the "software"). Software designated "network version" shall be used on a single file server only unless a "multi-site" network version has been purchased. Network and multi-site network versions shall be loaded and/or operated simultaneously on no more than the number of video monitors specified above. Software designated single user shall be installed and operational only on a single computer system with a single video monitor. Licensee agrees to pay for additional licenses if the software is used beyond the scope of this license in any way.

Licensee shall make no attempt to sublicense, assign, rent, sell, loan or transfer in any other manner the software or the rights or obligations of this agreement without the prior written consent of Active Network. Licensee's privileges under this agreement shall automatically terminate, without notice to the licensee, for failure to comply with its terms.

The software is copyrighted, and licensee agrees to take all reasonable steps to protect the software, documentation, and related materials from unauthorized copying or use in the same manner that it protects its own confidential materials. Licensee may make copies of the software for installation, backup, or archival purposes only. Licensee agrees to retain possession of the original and all copies of the software, and all software updates that may be received after the initial purchase. Unauthorized copying, reverse engineering, de-compiling, disassembling and/or creating derivative works based upon the software is prohibited. Ownership and title to the software, including the copy of the software and the media upon which it is stored and the associated documentation, are retained by Active Network. These obligations shall not apply to any information generally available to the public; ascertainable based on the operation of the Object Code version of the Computer Program or use of operator training information or End-user Materials; independently developed or obtained without reliance on Active Network's information; or approved for release by Active Network without restriction.

## **LIMITED WARRANTY AND LIMITATIONS ON LIABILITY**

Active Network warrants that if the enclosed magnetic diskettes or documentation are visibly damaged or in a defective condition at the time that they are received, Active Network shall replace them at no additional charge. Licensee must notify Active Network within 10 days of receipt if such a defective condition occurs, and return the defective items to Active Network postage prepaid.

Active Network warrants that if the software fails to substantially conform to the specifications as modified by Active Network to the software per printed documentation and specifications, and specifications as modified per Exhibit D, which is attached and is incorporated herein by reference and if the nonconformity is reported to Active Network within 90 days from the date of shipment by Active Network, then Active Network shall at its option either promptly remedy the nonconformity or promptly refund the License Fee to the Licensee upon return of the original and all copies of the software and documentation to Active Network. Freight and/or installation/training charges shall not be refunded. In the event of a refund, this license shall terminate automatically. This limited warranty shall expire 90 days after the date of shipment by Active Network.

## **LIMITATIONS**

- (a) Active Network and any other third party vendors make no warranty, representation, or promise not expressly set forth in this agreement. Active Network disclaims and excludes any and all implied warranties of merchantability and/or fitness for a particular purpose. Active Network, expressly, does not warrant that the software or documentation are without defect or error or that the software will be uninterrupted or error free in its operation or that the software will satisfy licensee's requirements. However, Active Network does warrant that it will promptly, but not later than 60 days after receiving written notice, correct verifiable and reproducible Errors when reported to Active Network in accordance with Active Network's standard reporting procedures.

Active Network's aggregate liability arising from or relating to this agreement or the software or documentation, regardless of the source or the form of action or claim-E.G. Warranty, Contract, Tort, Computer Malpractice, and/or any other- is limited to the amount paid by the Licensee for the software, and in no case shall it exceed the Active Network suggested retail price of the software on the Active Network price list in effect at the time of the purchase of the software license, whichever is less.

Active Network makes no warranty as to the compatibility with any brands or configurations of computer equipment or operating systems.

Active Network shall not, in any case, be liable for any consequential, incidental, special, liquidated, indirect or punitive damages in any form or from any cause, including, but not limited to, loss of revenue, profits, data, costs incurred in recovering data, claims by third parties, security of data or other costs resulting from this License Agreement. Except as provided in the license agreement or maintenance agreement, the entire risk as to the quality and performance of the software is with the Licensee. Licensee's sole and exclusive remedy is set forth in these agreements. This agreement defines a mutually agreed upon allocation of risk and Active Network's process and fees reflect such allocation of risk.

## **GENERAL CONDITIONS**

This agreement shall be governed by the laws of the State of Texas. All disputes that may arise as a result of this agreement shall be settled in the Courts in the County of Brazos, Texas.

This agreement sets forth the entire understanding and agreement between Active Network and Licensee and may be amended only in writing that is signed by an authorized officer or representative of both parties.

**NO THIRD PARTY VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED BY ACTIVE NETWORK TO MODIFY THIS AGREEMENT OR MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THE WARRANTIES, REPRESENTATIONS OR PROMISES OF THIS AGREEMENT.**

This license is effective for the useful life of the software. Active Network may terminate this license at any time after written notice to the licensee and a reasonable opportunity to cure any such default, should licensee breach the terms of this agreement. Licensee agrees to return the original and all copies of the licensed software and documentation within 30 days of the termination of this agreement.

If any provision of this agreement is held invalid or not enforceable, that provision or action shall be limited to that specific provision and action and all other provisions of this agreement which protect Active Network shall remain in effect.

Licensee hereby warrants and certifies that no software shall be made available for export from the United States and/or Canada.

BY SIGNING OF THIS AGREEMENT OR OPENING THE DISKETTE PACKAGE LICENSEE ACKNOWLEDGES TO HAVE READ AND UNDERSTOOD THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. This agreement must be signed and returned to Active Network for the limited warranty to be in effect.

The undersigned warrants that he/she has the authority to bind the party he/she represents to this agreement.

By (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Ron Silvia

ATTEST:

\_\_\_\_\_  
Connie Hooks, City Secretary

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

APPROVED:

\_\_\_\_\_  
Thomas E. Brymer, City Manager

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

  
\_\_\_\_\_  
Roxanne Heneich  
City Attorney

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

\_\_\_\_\_  
Charles Cryan, Director of Fiscal Services

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

## EXHIBIT C

### Obligations of Purchaser

Purchaser agrees to use reasonable efforts to:

- A. Provide, properly maintain, and enhance as needed a stable source of electrical power and a computing, network, and telecommunications platform, equipment, and/or structure that is appropriate to operate products and equipment provided by Active Network;
- B. Provide, properly train, and maintain adequate personnel and staffing to properly operate and maintain equipment and products provided by Active Network;
- C. Create or form a committee of staff to function as a "core group" that will provide first level support for questions or issues that arise;
- D. Create a method or committee to evaluate and resolve internal differences and make decisions that encourage continuity and a standardized method of operation;
- E. Develop appropriate system and software security and data backup strategies and ensure that the software and data is fully secure and protected and that the backup procedures are fully and properly executed at all times. Purchaser agrees that Purchaser is solely responsible for the software and data security, integrity and accessibility of Purchaser's data. Furthermore, Purchaser agrees that they understand the need to back up regularly and protect their software and data and that Active Network shall not be held liable for security or loss of any data under any circumstances;
- F. Provide a training facility, color overhead LCD projector, and workstations for staff to be trained;
- G. Conduct advance scheduling of training rooms and staff schedules of all personnel who will receive training;
- H. Conduct initial software setup functions and all data entry;
- I. Conduct initial parallel operation and continuing verification and manipulation of transaction and financial data to the Purchaser's satisfaction before any products are used in a "live" environment;
- J. Provide "System Administrator" staff at the beginning of the project, and make appropriate adjustments to work responsibilities so that they may devote time as needed for the initial training, initial work on the project, and for recurrent training and recurrent work on the project;
- K. Provide direction to recreation staff and managers so that they allocate time and resources necessary to learn the new system and implement it;
- L. Monitor the progress as the project begins, and respond effectively if the Center or staff begins falling behind;
- M. Promptly pay all undisputed invoices presented by Active Network (within 30 days of invoice date); and,
- N. Not modify products and equipment provided by Active Network. Should Purchaser make alterations or modifications, Active Network shall have the right to charge for any additional effort or services that are required or results from providing program services of an altered Licensed Program or for a release that is not current.

## **EXHIBIT D**

### **Custom programming to be provided to The City of College Station by Active Network**

Active Network agrees to provide the following enhancements:

- A. Add the ability to enroll teams into activities in RecWare Safari, which will require the following changes:
- Modification of enrollment process to allow entry of team name and contact info (coach) instead of a customer name
  - Modification of rosters to show team names instead of individuals
  - Modification of receipt to show team names instead of individuals
  - Modification of team management to allow entry of players

Timeframe: RecWare Safari Spring Release 2004.

- B. Add custom questions to the RecWare Safari enrollment process, this will require the following changes:
- Modification of question setup process to allow easier question configuration
  - Modification of enrollment screen to allow asking of question and input collection

Timeframe: RecWare Safari Spring Release 2004.

- C. Provide functionality for RecWare Safari facility reservation to interface with automatic lighting control hardware/software, i.e. Sky Logix
- Allow configuration of multiple lighting units associated with each facility.
  - Based on scheduled usage of facilities within Safari, turn lights for those facilities on and off at appropriate times.

Timeframe: To be determined -- Dependent upon the City of College Station's timeframe and process for choosing a ball field lighting control vendor.

- D. Provide support for Teleworks interface with RecWare Safari Software for telephone registration.

- RecWare will provide API's, technical support and documentation to TeleWorks required to provide basic activity registration functionality through touchtone. Functionality will be similar to RecWare's Touchtone.

Timeframe: Active Network and TeleWorks have initiated the process to develop in partnership the before mentioned interface. Since Active Network is reliant on TeleWorks for this development, Active Network cannot guarantee any specific development time frame. However, Active Network is committed to work in a commercially reasonable manner on this development. Active Network anticipates that the development timeframe will occur over the course of the next six months.

- E. Add the ability to do equipment reservations and to track check-in/check-out of equipment.
- Provide the ability for the user to include equipment on the reservation.
  - Provide an equipment check-out/check-in component that will allow reading of reservations and check-in and check-out tracking.
    - Provide the ability to do ad hoc rental when checking out a piece of equipment.
    - Some equipment (basketballs, etc.) will be checked-in/checked-out on a strictly ad hoc basis.
    - Provide ability to track status of checked equipment.
    - Provide the ability to place a deposit on equipment and hold the reservation, and later pay the balance to complete the reservation.
  - Modify all calendar and column reports to include facilities, equipment or both and modify all reports to clearly show equipment vs. facilities.

Timeframe: RecWare Safari Fall Release 2003.

Penalty: Active Network agrees that the City of College Station reserve five percent (5%) of the value of the quoted products, as a hold back until the City of College Station provides acceptance of RecWare Safari and the noted customizations.

[Any software customization programming must be preceded by mutually agreed upon written customization specifications, which have been finalized by both parties.]

# Exhibit E

## Testing and Acceptance Criteria

The City of College Station, TX will provide The Active Network, Inc. with a written acceptance on the completion of each area of functionality below within the timeframe outlined in the Purchase Agreement.

Verification of the bulleted functionality listed in Exhibit E will be deemed tested and accepted by Purchaser upon completion of the corresponding functional procedure within the RecWare Safari software. This acceptance will be noted by checking the empty box preceding each functional procedure below:

- The software allows the System Administrator to create user “profiles” that allows granting security rights to various functions of the system. Each user may be given read/write or read only access where applicable. Each user may be attached to a specific group, which gives them all of the rights to a particular group. The System Manager is able to change the specific rights for any individual user.  
  
Add Profile option.
- The Software has a customer master file. This one file contains all pertinent customer information. It includes but is not limited to, name, address, phone number, e-mail, legal guardian information and date of birth. This customer master file is used for all modules and may be updated at any time.  
  
Add Customer to system
- The Software allows staff to access all functional areas of the software from one screen.  
  
Click on the major Headings in the Task Manager
- The Software allows unlimited combinations of transactions from multiple functional areas onto a single receipt and without having to close and launch separate modules.  
  
Enroll into Activity and sell a POS item
- Required Participant/Payee/Customer information is the same in all functional areas.  
  
The system requires the following fields: First Name, Last Name, Address1, Home (or Work) Phone
- The ability to refund and Void are password protected or otherwise limited in access only to specific individuals authorized by the System Manager.  
  
This is a Profile option in the Profiles.
- Software produces financial reports including Daily, Monthly an Yearly Closes based on Date or receipt as well as Income, Expense and Net Revenue Reports that can be sorted by account number project code or cost center, and can include all functional areas.  
  
Daily Close Reports  
Run Cash Receipts report  
Run Cash Distribution Report  
Financial Reports  
Run Net revenue report by GL Account

Run Net revenue report by Site  
Run Net revenue report by Facility

- Software allows G/L accounts to be set up in the same manner as the current City financial system (HTE) with alphanumeric project codes and can export all financial data to the City's accounting system.  
  
Add GL Account
- Software will allow the enrollment of a participant into several activities in the same transaction or allow several participants into the same activity in the same transaction.  
  
Multi-enroller option for one person into many classes  
Use Same Activity check box for many people into one class
- Software allows the capture of both basic participant information, such as Name, address, contact information, e-mail birthdate and gender, as well as notes specific to either the activity, the participant or both.  
  
Add Customer
- Software can accept new enrollments, withdrawals, transfers waiting lists and voids.  
  
Enroll into Activity  
Transfer into a second Activity  
Withdraw from second Activity
- Software notifies the operator if they attempt to enroll a participant into an activity in which the participant is already enrolled, too old, too young, have not had prerequisite classes, the program is full or the registration time period has either not started or is expired.  
  
Enroll into an activity with a participant that is 101 years old  
Enroll into full class
- Software produces rosters for activities, which can show basic information such as name and contact information.  
  
Registration Reports  
Roster, Brief
- All modules have the capability to operate independently or simultaneously with other modules.  
  
Open Enrollment Screen  
Open Reservation Screen  
Open POS Items  
Reserve facility and print receipt  
Enroll into Activity and sell POS Item print receipt  
Close all screens
- When operated together Facility Reservation, Registration and League Scheduling shall have the ability to set up programs, schedule facilities and schedule leagues if necessary without having to duplicate data entry.  
  
Create Facilities

Create Activity  
Add Teams to Activity  
Create League  
Link Activity to League  
Create Schedule

- Software does not allow double booking of facilities and will recognize overlap conflicts.  
  - Create 3 Facilities
  - Using Facility overlap create and overlap scenario
  - Reserve main facility
  - Check the sub facilities for overlapping reservations
- Software will produce league schedules based on either round robin play or based on number of weeks of play, and all schedule are customizable after they are created.  
  - Create facilities
  - Create a league
  - Add Teams
  - Create a schedule with round robin
  - Create a schedule without round robin
  - Customize schedule
- Software is capable of basic demographic analysis to determine such items as number of registrations, number of individual participants and their residency.  
  - Run Marketing Reports
- Software can produce, issue and recognize a variety of membership passes.  
  - Add Pass Layout
- City has the option to use barcode or magnetic strip passes.  
  - Add Pass Layout
- Software has the ability to use and track UPC codes for Point of sale.  
  - Add POS Product/Enter UPC code
- Software allows multiple persons or companies to pay for transactions  
  - Payment Screen/Multiple payers
- Receipts, Vouchers, and Permits may be reprinted individually or in batches  
  - Billing/Invoicing Reports
  - Receipt Reports
- All reports may be viewed on screen prior to printing  
  - Preview Reports

- Software allows an activity, group of activities or season to be designated closed and will not allow registration into those programs.  
  
 Activity status - Mass open/close
- Software allows multiple fees and G/L accounts to be assigned to activities and facilities.  
  
 Charges/GL Account
- Software will pre-fill fees for pre-designated conditions, such as non-resident  
  
 Charges/Pre-fill Condition
- Software allows default charges for facility rentals based on a combination of facility type and customer type.  
  
 Add Charges to Charge Matrix
- Software allows multi-day and 24 hour facility rentals, even if multi day rental is not on consecutive or like days.  
  
 Pending reservations
- Software allows the attachment of pre written disclaimers to be attached to rental permits.  
  
 Add Disclaimers
- Software allows searching for a rental facility by name, type, or location.  
  
 Permit search screen  
 Reservation Grid
- Software allows tracking of event names and attendance  
  
 Reservation Confirmation Screen  
 Edit Reservation
- Standard setup instructions are allowed and assignable to facilities based on facility, facility type, or event type.  
  
 Prep Codes – Event Setup Notes
- System tracks use of equipment for facility rental makes the equipment unavailable for use elsewhere.  
  
 Equipment Rental
- System allows tracking of cancellations and reasons for cancellations  
  
 Add Reasons
- System generates a facility setup report with a listing of all rentals for a given period,, hour, day, month etc. with specific setup instructions.  
  
 Event setup report

- System automatically designates minimum time between rentals of the same facility.  
  
Attribute on Facility screen
- System allows transfer of rentals from one facility to another.  
  
Move Reservation
- System allows for e-mailing of rainout notification to renters  
  
Marketing reports
- Software tracks customer status with regards to insufficient fund checks and notifies operator of same.  
  
Special Handling in Customer screen
- System allows user defined text for activities, including text for export to publishing software, notes for a participant receipt or on screen notes for staff use during registration.  
  
Text button on activities screen
- Software has a scheduling calendar that allows for searching for facilities that can show multiple facilities, multiple days and can allow point and click selection of the desired facility and time.  
  
Scheduling Calendar Tab in reservation screen
- Individual users may set their own password without the system manger having access to it. System manger may force changes to passwords.  
  
System User attribute/Allow password change
- System will calculate prorated fees for activities in which classes have already taken place if desired.  
  
Activity Generation/Charges

The City of College Station, TX has the right to reasonably refuse (should reasonable grounds exist) to accept any particular area, however, once the City provides written acceptance, that acceptance cannot be withdrawn or rescinded thereafter.