

RecWare Software Subscription Agreement

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

<u>Product Name(s)</u>	<u>Serial #</u>	<u>Type (single, multi user, etc.)</u>	<u>Annual Subscription Fee</u>
RecWare Safari Central	TBA	Multi-user	See Below
RecWare Safari Standard Point of Sale	TBA	Multi-user	See Below
RecWare Safari Activity Registration	TBA	Multi-user	See Below
RecWare Safari Facility Reservation	TBA	Multi-user	See Below
RecWare Safari Inventory Control	TBA	Multi-user	See Below
RecWare Safari Membership / Pass Management	TBA	Multi-user	See Below
RecWare Safari League Scheduling	TBA	Multi-user	See Below

TBA = To be assigned

Annual Subscription Fee Total: \$11,168

Purchaser / Organization Name 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 () _____
Primary software user: Peter Lamont

SERVICES TO BE PROVIDED BY ACTIVE NETWORK

Active Network agrees to provide Purchaser with access to its technical support personnel assigned to provide telephone support assistance and other services. Active Network's hours when technical support is available are: 6:00 am – 5:00 pm PST, and may change such hours upon 30 days written notice.

Active Network's technical support personnel shall receive telephoned requests for assistance from Purchaser, and shall use their best efforts to assist Purchaser with answers to their technical questions, and optionally, to provide suggestions regarding the use of RecWare software in an effort to enhance the Purchaser's use of RecWare software.

Active Network agrees to perform research service for Purchaser that directly involves the use, coding or documentation of RecWare software. Services that involve resolving problems, answering questions or research on issues or products beyond the scope of the RecWare software products are not included in this agreement.

Active Network agrees to promptly provide at no additional charge all updates, modifications and enhancements to the RecWare software modules listed above that are released by Active Network during the Subscription period. Active Network will provide reasonable telephone based assistance to help Purchaser to install and operate each new Release. Software that is introduced or released as a separate product is not included in this service. Active Network and Purchaser agree that all updates, modifications and enhancements provided will become a part of the RecWare software identified by serial number above and that all agreements, licenses and provisions related to title or use of that software shall apply. Releases of revisions, updates or modifications are provided with written instructions for installation onto the system by trained users only.

Error Correction – Active Network shall be responsible for using all reasonable diligence to correct verifiable and reproducible Errors when reported to Active Network in accordance with its standard reporting procedures. The Error Correction when completed may be provided in the form of a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction.

Error means any failure of the Program to conform in any substantial respect to its or their published specifications.

Error Correction means either a modification or addition that, when made or added to the Program, brings the Program into substantial conformity with its or their published specifications, or a procedure or routine that when observed in the regular operation of the Program, avoids the practical adverse effect of such nonconformity.

TERM AND PRICE

The annual cost of this agreement is payable in advance. This agreement shall take effect at noon on the first business day after last day of training of initial visit and shall remain in effect for a minimum period of one year from that date. At the conclusion of the initial one year period, the agreement will automatically renew and Active Network shall invoice for the next year of coverage unless Purchaser cancels this agreement in writing prior to the annual renewal date. Active Network may terminate this agreement in writing at any time, with six (6) months notice and return to Purchaser a pro-rated portion of paid annual maintenance. This agreement may be amended in writing at any time upon the approval and execution by both parties.

PURCHASER RESPONSIBILITIES

Purchaser agrees that the responsibility for operation, security, maintenance and service of their computer system, its hardware and software remains with Purchaser, and Active Network under no circumstances becomes liable to operate, maintain or otherwise control or be responsible for the use, security or functionality of Purchasers equipment, software or data.

Purchaser acknowledges that the purpose of this agreement is to maintain the RecWare software licensed for Purchaser's use and to provide Purchaser with a resource for assistance in the use of RecWare software. No guarantee regarding the quality or accuracy of directions, answers, results (or lack of) are included in the Agreement.

Because of the technical nature of the RecWare product, Purchaser agrees to designate "primary software users." [3 individuals] These primary software users shall be authorized to contact Active Network for assistance under this agreement. Other, non-primary software users shall contact the primary software user at the site in order to obtain answers to their questions or other support. The primary software users are to be named at the beginning of this agreement, and may be changed by Purchaser at any time. Active Network, at its option, may charge additional fees to provide service and support to users that have not been named in this Agreement.

Purchaser agrees that they understand the need to regularly backup and protect their software and data and that Active Network shall not be held liable for breaches of security or loss of any data as a result of negligence on the part of the purchaser.

LIMITATIONS OF LIABILITY

The limitations of liability contained in the RecWare Software License Agreement and Registration form are fully applicable to all updates, modifications, enhancements, advice, technical service or any other product or service provided under this agreement.

Active Network and any other third party vendors make no warranty, representation or promise not expressly set forth in this agreement. Active Network, expressly, does not warrant that any software, service or documentation are without defect or error or that the software will be uninterrupted or error free in its operation or that the software or service will satisfy Purchaser's requirements.

Either party's aggregate liability arising from or relating to this agreement or Active Network's 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 single annual fee paid by Purchaser for this Agreement.

Neither party shall, 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 any other costs resulting from this Agreement.

Except as provided otherwise in this Agreement or any other related Agreements between Purchaser and Active Network, the entire risk as to the quality and performance of any software or service provided under this agreement is with the Purchaser. Purchaser's sole and exclusive remedy is set forth in this Agreement. This Agreement defines a mutually agreed upon allocation of risk and Active Network's process and fees reflect such an allocation of risk.

GENERAL CONDITIONS

This agreement shall be governed by the laws of the State of Texas. Any 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 Purchaser 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.

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.

ACCEPTED:

Customer Signature and Date
Ron Silvia

[Handwritten Signature] 12-17-03

Active Network Signature and Date

ATTEST:

Connie Hooks, City Secretary

Date: _____

APPROVED:

Thomas E. Brymer, City Manager

Date: _____

[Handwritten Signature]

City Attorney

Date: _____

Charles Cryan, Director of Fiscal Services

Date: _____