

Purchase Agreement

RECITALS

- A. This Purchase Agreement ("Agreement") is between The Active Network, Inc. ("Active Network"), a Delaware corporation, and The City of Rapid City, SD ("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 I – 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.
- B. **Payment.** Active Network shall invoice upon product shipment, upon provision of services, or upon other dates that may be mutually agreed to. All Active Network invoices are due and payable no later than 30 days from the invoice date.
- 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 Purchaser's authorized use of the Licensed Program Materials.
- H. Access by Active Network. Purchaser grants Active Network an unrestricted 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 an unrestricted right to access any or all of Purchaser's data when 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.
- 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. All products shall be deemed to be fully accepted by Purchaser unless Purchaser notifies Active Network otherwise in writing within 30 days of shipment by Active Network.
- M. Damages or remedies. Purchaser agrees that, in no event, shall Active Network be liable for special, consequential, incidental, punitive, or liquidated damages. Active Network's 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 for Active Network-developed products delivered to the Purchaser.
- O. Unrestricted changes by Active Network. Active Network may make 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 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:

Duane Harlan, President of RecWare Division

Active Network

937 Enterprise Dr.

Sacramento, CA 95825

Purchaser:

The City of Rapid City

300 6th Street

Rapid City, SD 57701

- 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, at an additional fee.
- 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. If payment is not made when due, Purchaser agrees, 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 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 reasonable conformance with Active Network's printed documentation. After delivery, should any part of the Licensed Program Materials media prove to be defective, Active Network will provide a replacement Licensed Program Material media at no charge to Purchaser for a period of 30 days from the date of original shipment by Active Network. **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 California. Any action or court proceeding which may arise from this Agreement shall be heard in the Courts in the County of San Diego, CA.
- 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.

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 provided by Active Network are in reasonable conformance with Active Network's printed documentation, 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 shall reasonably 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 the Purchaser against any claim 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 fully 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 replace or to 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 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.

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants 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. Hold in confidence the design specifications and associated documentation of the Software and/or Software Product(s) 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 regular 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 representations and warranties 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. 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. 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 90 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 within 30 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, as of the date of termination.

ACCEPTED AND AGREED:

Active Network

Signature

Name

Title

Date

PURCHASER

City of Rapid City

By, _____
Jim Shaw, Mayor

Date _____

Attest _____
Finance Officer

Date _____

(SEAL)

Exhibit A

RecWare Safari Standard Edition pricing for: The City of Rapid City, SD Prepared by: Rich McGuire

<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Extension</u>	<u>Notes</u>
<u>Customer Information</u>				
Number of Geographic Sites/Locations	1	N/A	N/A	A
Number of Workstations	6	N/A	N/A	B
Max Workstations Needed for Simultaneous Use	50%	N/A	N/A	C
Anticipated Number of Concurrent User Licenses	3	N/A	N/A	D
<u>Safari Core System</u>				
Safari Central, <i>includes:</i>	1	\$7,495	\$7,495	E
<i>Fully Integrated Client/Server recreation software</i>		Incl.		
<i>Includes MSDE database</i>		Incl.		
<i>Integrated Customer Account Management</i>		Incl.		
<i>Integrated Financial Tracking System</i>		Incl.		
<i>Integrated Data Reporting Engine</i>		Incl.		
<i>Integrated "Standard" Point of Sale</i>		Incl.		
<i>Integrated .AVI Video Help/Video Training</i>		Incl.		
<i>Base/Included Concurrent User Licenses</i>	3	Incl.		
<i>(Items shown above represent a bundled discount)</i>	0			
Safari Core System Investment			\$7,495	
<u>Software Applications (Client/Server)</u>				
Activity Registration	1	Included	Included	F
Facility Reservation	1	\$1,995	\$1,995	G
Membership Management	1	\$3,995	\$3,995	H
League Scheduling	0	N/A		
Tournament Scheduling	0	N/A		
Point of Sale (premium upgrade)	0	N/A		
Inventory Control	0	N/A		
Financial Interface	0	N/A		
Crystal Reports (single user license)	0	N/A		
Entity Relationship Diagram/Encyclopedia	0	N/A		
Touch Tone Registration (English)	0	N/A		
Touch Tone Registration (Spanish)	0	N/A		
4-line Touch Tone expansion	0	N/A		
Software Applications Investment			\$5,990	
<u>Internet Registration</u>				
ProActive Internet Registration, <i>includes:</i>	1		\$0	S
<i>Web Hosting by The Active Network, Inc.</i>			Included	

Safari Standard Price Quote

<i>Internet Registration</i>			Included	
<i>Credit card processing</i>			Included	
Internet Registration Investment			\$0	
<u>User Licenses</u>				
Base Concurrent User Licenses (shown above)	3	N/C	N/C	
Recommended Concurrent User License Adjustment	0	N/A		
Other Concurrent User License Adjustment	0	N/A		
Total User Licenses & User License Investment	3		\$0	
<u>Implementation & Support Services</u>				
<i>Safari Std. Bundle- Trips to Customer Location*</i>	1	N/C	N/C	
<i>Safari Std. Bundle- Service Days, On-site</i>	3	N/C	N/C	
Trips to Customer Location (Additional)*	0	\$1,000	\$0	
Service days- On-Site (Additional)	4	\$1,250	\$5,000	W
Project Management Days (Active's offices)	0	\$1,000	\$0	
Services Investment			\$5,000	
(*Travel fees are all-inclusive)				
<u>Software Maintenance</u>				
Software Maintenance (annual)	1		\$3,698	Y
Software Maintenance Investment			\$3,698	
Total System Investment*			\$22,183	
(*Includes 1st Year Annual Maintenance)				
(* Quote is subject to "Notes" explanation which is attached)				
Payment Schedule				
Down Payment Due at Contract Signing		25%	\$5,546	
Payment Due Upon Shipment of Software		50%	\$11,092	
Payment Due At Rendering Initial Services		25%	\$5,546	
(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 other factors.
- D: This is the license-to-percentage of workstation ratio used for this quotation.
- E: Safari Central includes the Microsoft MSDE database, which is recommended for up to 5 concurrent users. Customer is responsible to provide the appropriate computing environment (as specified at www.recware.com). Please ask your salesperson for details.

Safari Standard Price Quote

F: Activity Registration offers capability such as enrollment, refund, wait list processing, and financial reporting.

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 to be supplied by the customer.

I: N/A.

J: N/A.

K: N/A.

L: N/A.

M: N/A.

N: N/A.

O: N/A.

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: N/A.

U: N/A.

V: N/A.

W: Examples of on-site services include installing/loading software onto servers or workstations, and staff training. Active personnel do not install or configure customer networks or workstations.

X: N/A.

Y: 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

NOTE! In order for the limited warranty to apply, this License Agreement and Registration Form must be completed immediately upon receipt of RecWare software and returned to Active Network within 10 days.

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	3.4.20	Multi-user
RecWare Safari Standard Point of Sale	TBA	3.4.20	Multi-user
RecWare Safari Activity Registration	TBA	3.4.20	Multi-user
RecWare Safari Facility Reservation	TBA	3.4.20	Multi-user
RecWare Safari Membership/Pass Management	TBA	3.4.20	Multi-user
RecWare Safari Hosted Internet Registration	TBA	3.4.20	Internet

TBA = To be assigned

Name of licensed user / organization City of Rapid City

Street address 300 6th Street

City, State/Province, Zip/Postal Code Rapid City, SD 57701

Telephone Number / FAX Number 605-484-0204

Contact Person / Installation Date Duncan Olney TBA

Number of file servers 1 video monitors 6 Concurrent User Licenses 3

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. 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.

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 reasonably conform to the specifications in the documentation 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 remedy the nonconformity or 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

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.

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, Fraud 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. 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 this agreement. 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 California. All disputes that may arise as a result of this agreement shall be settled in the Courts in the County of San Diego, California.

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 by notice to the licensee 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.

City of Rapid City

By

Jim Shaw, Mayor

Date _____

Attest

Finance Officer

Date _____

(SEAL)

EXHIBIT C

Obligations of Purchaser

Purchaser agrees 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 The Active Network;
- B. Provide, properly train, and maintain adequate personnel and staffing to properly operate and maintain equipment and products provided by The 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 The 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 invoices presented by The Active Network (within 30 days of invoice date); and,
- N. Not modify products and equipment provided by The Active Network. Should Purchaser make alterations or modifications, Active.com 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.