

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

TBA = To be assigned

Annual Subscription Fee Total: \$3,698

Purchaser / Organization Name 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

Primary software user: Duncan Olney

Starting Date of Coverage TBA

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 shall set the hours when technical support is available, and may change such hours without 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 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. 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.

Active Network agrees to make its best efforts under this Agreement but offers no guarantee as to the correctness, completeness or timeliness of any service provided under this Agreement.

TERM AND PRICE

The annual cost of this agreement is payable in advance. This agreement shall take effect at noon on the date it is accepted by Active Network 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. 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 a "primary software user." The primary software user 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 user is 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 under any circumstances.

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.

Active Network'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, Fraud and/or any other-is limited to the single annual fee paid by Purchaser for this Agreement.

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 any other costs resulting from this Agreement.

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 California. Any 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 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:

Active Network Signature and Date

PURCHASER

City of Rapid City

By

Jim Shaw, Mayor

Date _____

Attest

Finance Officer

Date _____

(SEAL)