

This Agreement (the “**Agreement**”) is made between:

 AccountingWare.

Sentry Plaza II  
5225 S Loop 289, Suite 207  
Lubbock, TX 79424

**AND**

hereinafter “ACCOUNTINGWARE”

hereinafter “ActivPartner”

This Agreement is entered into as of \_\_\_\_\_ (the "Effective Date"), by and between ACCOUNTINGWARE, a company organized and existing under the laws of Texas and ActivPartner.

**WHEREAS**, ACCOUNTINGWARE has developed and desires to advertise, promote, market and distribute ActivReporter, an accounting software solution; and

**WHEREAS**, ActivPartner is engaged in the business of marketing and selling computer software solutions; and

**WHEREAS**, the parties desire that ActivPartner, on the terms and conditions set out herein, shall serve as a non-exclusive reseller of ActivReporter;

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

## Agreement

### 1. APPOINTMENT AS ActivPartner

- 1.1 Appointment. On the terms and subject to the conditions set forth herein, ACCOUNTINGWARE appoints ActivPartner as an independent, non-exclusive authorized reseller of ActivReporter in the ActivPartner Program, a reseller program established by ACCOUNTINGWARE, and ActivPartner hereby accepts such appointment. ActivPartner may advertise, promote and resell ActivReporter solely to third party Customers. For purposes of this Agreement, the term "Customer" means a person or entity that desires to use or acquire ActivReporter for its own use, rather than for resale or distribution. ActivPartner may not authorize or appoint any dealers, sub-resellers, agents, representatives, subcontractors, or other third parties to advertise, promote, resell, or distribute ActivReporter. All rights not specifically granted by ACCOUNTINGWARE hereunder are reserved by ACCOUNTINGWARE. Without limiting the generality of the foregoing, ACCOUNTINGWARE reserves the right to advertise, promote, market and distribute ActivReporter, and to appoint third parties to advertise, promote, market and distribute ActivReporter worldwide. Further, ACCOUNTINGWARE reserves the right, in its sole discretion, at any time and from time to time, to modify any or all of ActivReporter, or to discontinue the service, support of publication,

distribution, and sale or licensing of any or all of ActivReporter without liability of any kind.

- 1.2 License. In exchange for payment of consideration received, and subject to all the other terms and conditions of this Agreement, ACCOUNTINGWARE hereby grants to ActivPartner a non-exclusive and non-transferable right and license in ActivReporter during the term of this Agreement: (i) To market, promote, advertise, sell and distribute the Products directly to Customers; (ii) to market, promote, advertise, sell and perform support and maintenance services related to ActivReporter only under ActivPartner's own name and not as a subcontractor of ACCOUNTINGWARE; (iii) to use one license of ActivReporter to provide demonstrations to prospective Customers, so long as the license is at all times under the control of ActivPartner and not left or provided to the prospective Customer; and (iv) to use one license of ActivReporter to develop applications, connectors and other code compatible with ActivReporter under additional terms set forth in this Agreement. ActivPartner shall not (a) modify ActivReporter or create derivative works thereof; (b) merge ActivReporter with other software; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for ActivReporter; or (d) otherwise use, copy or distribute ActivReporter except as expressly allowed hereunder.
- 1.3 Trademark License. In connection with ActivPartner's activities authorized pursuant to this Agreement, ActivPartner is granted a non-transferable, non-exclusive right to use the Trademarks in accordance with instructions given from time to time by ACCOUNTINGWARE. "Trademarks" shall mean the trademarks, service marks, trade names and logotypes authorized from time to time by ACCOUNTINGWARE. ActivPartner shall not attach any additional trademarks, service marks or trade names to ActivReporter and shall not use ACCOUNTINGWARE's trademarks as part of ActivPartner's trademarks, service marks or trade names or in any other manner that would tend to imply that ActivPartner has an affiliation with ACCOUNTINGWARE's other than as set forth in this Agreement.
- 1.4 Title. ACCOUNTINGWARE retains the ownership of all right, title and interest in and to ActivReporter, Trademarks, and all patents, copyrights and other proprietary rights therein, and ActivPartner shall acquire no rights therein except as expressly set forth in this Agreement. ACCOUNTINGWARE shall own all rights, title and interest in all developments of and enhancements to ActivReporter software itself. ActivPartner shall take no action, which may adversely affect or impair ACCOUNTINGWARE's ownership of such materials and rights.

## **2. ORDERS AND DELIVERABLES**

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- 2.1 Pricing. ActivReporter and ActivPartner Program pricing is set forth in Addenda A to this Agreement. ActivReporter pricing can be modified at any time with a 30 day notice to the Reseller. All Licensing Fees under this Agreement are charged automatically to a credit card. There is not a periodic invoicing option.
- 2.2 Services and Support. ActivPartner may charge Customers a reasonable fee for services and support regarding ActivReporter. ACCOUNTINGWARE shall provide

ActivPartner with appropriate training and support to address Customer's problems, but if the problem becomes substantial and ActivPartner cannot offer adequate support to address the issue, the ActivPartner will be able to contact ACCOUNTINGWARE directly and request ACCOUNTINGWARE to engage directly with the Customer at which point ACCOUNTINGWARE may charge the Customer a reasonable fee.

- 2.3 Payment to ACCOUNTINGWARE. ActivPartner acknowledges that ACCOUNTINGWARE has the right, at any time, to modify any or all of ActivReporter and ActivPartner Program Prices. ActivPartner shall pay for ActivReporter in U.S. dollars in immediately available funds. Orders shall be downloaded from ACCOUNTINGWARE's reseller website. Except as otherwise mutually agreed in writing, ActivPartner shall be responsible for all costs associated with its performance of this Agreement. All insurance, duty and taxes applicable to ActivPartner's purchase and sale of ActivReporter shall be paid by ActivPartner. ActivPartner will indemnify and hold ACCOUNTINGWARE harmless from any obligation to pay any governmental entity any employer statutory taxes, withholding taxes, social security taxes or other taxes, levies or duties in connection with ActivPartner's performance under this Agreement, and from any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs of litigation) arising out of or resulting therefrom. Late payments shall accrue interest at the rate of 12% annually, and ActivPartner shall reimburse ACCOUNTINGWARE for all costs of collection incurred.
- 2.4 "Nonstandard Installations". An additional fee may be added which will depend upon the degree of customization requested by ActivPartner and/or Customer. Nonstandard Installations shall be defined as those that: (a) consist of an installation of Microsoft Dynamics GP that deviates from the typical installation, or (b) consist of a Microsoft SQL Server that requires special setup or uses "clusters" or "farms" of data storage, or (c) consist of database server machines on which the ActivReporter System Server executables cannot be installed and run, or (d) have pre-existing custom modifications to Microsoft Dynamics GP or its supporting database(s), whether provided by a third party or by the Customer, or (e) require custom code and/or configuration in order to install and/or execute the ActivReporter product.

### **3. MARKETING AND PROMOTION OF ACTIVREPORTER**

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- 3.1 Promotion. ActivPartner shall use its best and prudent efforts to market and promote ActivReporter to Customers, including by: (a) attendance by ActivPartner at trade shows at which ActivPartner promotes ActivReporter, (b) listing ActivReporter in ActivPartner's product lists and ActivPartner's other marketing materials, (c) advertising ActivReporter in trade journals, magazines, and other appropriate publications, and (d) at ACCOUNTINGWARE's request, translating and distributing ACCOUNTINGWARE's press releases and other publicity and sales materials.
- 3.2 Marketing Practices. ActivPartner will at all times perform hereunder in an ethical and professional manner and in accordance with this Agreement and any

guidelines issued by ACCOUNTINGWARE. ActivPartner will: (a) conduct business in a manner that reflects favorably and/or honestly at all times on ActivReporter and the good name, goodwill and reputation of ACCOUNTINGWARE; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to ACCOUNTINGWARE, ActivReporter or the public, including but not limited to disparagement of ACCOUNTINGWARE or ActivReporter; (c) make no false or misleading representation with respect to ACCOUNTINGWARE or ActivReporter; and (d) make no representations with respect to ACCOUNTINGWARE or ActivReporter that are inconsistent with this Agreement, promotional materials and other literature distributed by ACCOUNTINGWARE, including all liability limitations and disclaimers contained in such materials.

- 3.3 Promotional Materials. ActivPartner consents to the listing of its business name, address, phone number and web site addresses in such ACCOUNTINGWARE advertising and promotional materials as ACCOUNTINGWARE may determine in its sole discretion, including product literature and ACCOUNTINGWARE's web sites with prior agreement (written or electronic) between ACCOUNTINGWARE and ActivPartner. During the term of this Agreement, ACCOUNTINGWARE may provide to ActivPartner promotional materials with respect to ActivReporter. ActivPartner may not use the promotional materials for any purpose other than advertising and promoting ActivReporter to Customers.

Notwithstanding anything to the contrary herein, ActivPartner may not distribute any ActivPartner-created promotional materials with respect to ACCOUNTINGWARE or ActivReporter without ACCOUNTINGWARE's prior written approval of such materials.

## **4. COMPLIANCE WITH LAWS**

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- 4.1 Permits, Licenses and Compliance with Laws. ActivPartner will, at its sole cost and expense, obtain all permits and licenses necessary in connection with its performance of this Agreement, and will comply with all applicable laws, rules and regulations in the performance of this Agreement. Without limiting the generality of the foregoing, ActivPartner will comply with all applicable export laws. Without limiting the foregoing, ActivPartner agrees that it will not knowingly export or re-export any ActivReporter work product or ActivReporter to any country unless prior written consent is given.
- 4.2 Privacy/Data Collection. ActivPartner will at all times during the term of this Agreement maintain appropriate technical and organizational measures to protect any Customer data that it collects, accesses or processes in connection with this Agreement against unauthorized or unlawful use, disclosure, processing or alteration. ActivPartner will act only on ACCOUNTINGWARE's instructions in relation to the collection, use, disclosure and processing of any such Customer data, but in all instances in accordance with all applicable laws, rules and regulations.

## 5. OTHER OBLIGATIONS

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- 5.1. Services and Support. ActivPartner provides services directly to Customers. Implementation of Customer requests shall be documented and explained by ActivPartner directly to ACCOUNTINGWARE. Any requests from Customers that cannot be addressed by the ActivPartner must be promptly communicated to ACCOUNTINGWARE through an authorized means of communication. ACCOUNTINGWARE is not responsible for interaction with Customers unless specifically requested by ActivPartner. Notwithstanding the foregoing, as between ACCOUNTINGWARE and ActivPartner, ActivPartner shall be solely responsible for providing support to Customers. ActivPartner will notify ACCOUNTINGWARE immediately in the event that it is unable to respond effectively to any Customer request.

## 6. CONFIDENTIAL INFORMATION

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- 6.1 Confidential Information. "Confidential Information" includes: (a) ActivReporter; (b) any personally identifiable data or information regarding any Customer; (c) any and all information disclosed by ACCOUNTINGWARE to ActivPartner, in whatever format, that is either identified as or would reasonably be understood to be confidential and/or proprietary; (d) any notes, extracts, analyses or materials prepared by ActivPartner which are copies of or derivative works of Confidential Information or from which Confidential Information can be inferred or otherwise understood; and (e) the terms and conditions of this Agreement. "Confidential Information" does not include information received from ACCOUNTINGWARE that ActivPartner can clearly establish by written evidence: (a) is or becomes known to ActivPartner from a third party without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public through no act or omission of ActivPartner; or (c) is independently developed by ActivPartner without the use of Confidential Information.
- 6.2 Obligations. ActivPartner will make no use of Confidential Information for any purpose except as expressly authorized by this Agreement. Except as expressly provided in this Agreement, ActivPartner will not disclose Confidential Information to any third party and will protect and treat all Confidential Information with the same degree of care as it uses to protect its own confidential information of like importance, but in no event with less than reasonable care. Except as expressly provided in this Agreement, ActivPartner will not use, make or have made any copies of Confidential Information, in whole or in part, without the prior written authorization of ACCOUNTINGWARE. In the event that ActivPartner is required to disclose Confidential Information pursuant to law, ActivPartner will notify ACCOUNTINGWARE of the required disclosure with sufficient time for ACCOUNTINGWARE to seek relief, will cooperate with ACCOUNTINGWARE in taking appropriate protective measures, and will make such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure. Likewise, ACCOUNTINGWARE will restrict the use of said confidential information obtained from ActivPartner.

## 7. WARRANTY AND INDEMNIFICATION

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- 7.1 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES HEREIN, ACCOUNTINGWARE MAKES NO OTHER WARRANTIES RELATING TO ACTIVREPORTER, EXPRESS OR IMPLIED. ACCOUNTINGWARE DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE AND NON-INFRINGEMENT. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING ACTIVREPORTER OR ACCOUNTINGWARE. ActivPartner WILL MAKE NO WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF ACCOUNTINGWARE PERTAINING TO ACTIVREPORTER OR ACCOUNTINGWARE.
- 7.2 Limited Warranty. ACCOUNTINGWARE warrants that it is the owner or licensee of all intellectual property rights in and to ActivReporter and there is no pending litigation against ACCOUNTINGWARE which could materially impact upon its ability to perform its obligations under this Agreement. ACCOUNTINGWARE will make no use of Confidential Information for any purpose except as expressly authorized by this Agreement.
- 7.3 Indemnification by ActivPartner. ActivPartner will indemnify, defend and hold ACCOUNTINGWARE harmless from and against any and all claims, damages and expenses (including reasonable attorneys' fees and costs of litigation) by any third party resulting from any acts or omissions of ActivPartner relating to its activities in connection with this Agreement, ActivPartner's breach of this Agreement, or ActivPartner's misrepresentations relating to ACCOUNTINGWARE, ActivReporter, or this Agreement, regardless of the form of action. ActivPartner will be solely responsible for any claims, warranties or representations made by ActivPartner or ActivPartner's representatives or agents which differ from the warranties provided by ACCOUNTINGWARE in this Agreement.

## 8. LIMITATION OF LIABILITY

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- 8.1 ACCOUNTINGWARE'S AGGREGATE LIABILITY TO ActivPartner UNDER THIS AGREEMENT, WHETHER FOR BREACH IN CONTRACT OR IN TORT, IS LIMITED TO THE PRICE PAID (SECTION 2.1) BY ActivPartner FOR ACTIVREPORTER WHICH GIVES RISE TO THE CLAIM. IN NO EVENT WILL ACCOUNTINGWARE BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ACCOUNTINGWARE HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9. TERM AND TERMINATION

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- 9.1 Term. This Agreement shall be effective for a term of one (1) year from the Effective Date. It shall be automatically extended for further one-year terms unless either party gives written notice to the other at least 30 days before the expiration of the initial or any renewal term of the party's intent not to renew.
- 9.2 Termination. Notwithstanding anything in this Agreement that may be interpreted to the contrary, either party may terminate this Agreement without cause and without liability upon 30 days prior written notice. Either party may terminate this Agreement for any material breach of the Agreement that is not cured to the non-breaching party's satisfaction within 10 days of written notice that specifies the breach.
- 9.3 Effect of Termination. Upon termination of this Agreement, ActivPartner will cease all advertising, marketing and resale of ActivReporter. Termination of this Agreement will not affect either party's rights or obligations with respect to ActivReporter distributed by ActivPartner prior to the effective date of the termination and shall not release ActivPartner from the obligation to make payment of all amount then or thereafter due and payable.
- 9.4 No Liability for Termination. Neither party will be liable for any damages arising out of the termination of this Agreement in accordance with this Section. ActivPartner acknowledges and agrees that ACCOUNTINGWARE is not responsible for ActivPartner's dependence on revenues hereunder, and ActivPartner agrees to release, hold harmless and indemnify ACCOUNTINGWARE from any and all claims and liabilities relating to ActivPartner's revenues, financial forecasts or economic value that may result from any termination by ACCOUNTINGWARE of this Agreement as permitted hereunder.
- 9.5 Survival. Expiration or termination of this Agreement will not relieve either party from its obligations arising hereunder prior to such expiration or termination. Rights and obligations which by their nature should survive will remain in effect after termination or expiration of this Agreement.

## 10. GOVERNING LAW

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This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, U.S.A. The parties agree that any legal action or proceeding with respect to this Agreement may be initiated only in the federal or state courts located in the State of Texas, County of Lubbock. By execution and delivery of this Agreement, the parties submit to and accept with regard to any such action or proceeding the exclusive jurisdiction of such courts. If any legal action or proceeding is initiated, the prevailing party shall be entitled to all attorney fees, court costs, and expenses in addition to any other relief to which such prevailing party may be entitled.

## 11. MISCELLANEOUS

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- 11.1 Relationship of Parties. This Agreement does not constitute either party the agent of the other, or create a partnership, joint venture or similar relationship between the parties, and neither party will have the power to obligate the other in any manner whatsoever. ActivPartner acknowledges and agrees that its relationship with ACCOUNTINGWARE is that of an independent contractor, and ActivPartner will not act in a manner that expresses or implies a relationship other than that of an independent contractor. ACCOUNTINGWARE and ActivPartner acknowledge and agree that: (a) ActivPartner is permitted to promote and sell ActivReporter and services of companies other than ACCOUNTINGWARE; (b) ActivPartner is not required to promote ACCOUNTINGWARE ActivReporter or services exclusively; and (c) ActivPartner's decision to devote all or some of its business efforts to ActivReporter or services of any particular company is solely in the discretion of ActivPartner.
- 11.2 Assignment. Neither this Agreement nor any rights or obligations of ActivPartner hereunder shall be assignable or transferable by ActivPartner, in whole or in part, by operation of law or otherwise, without the prior written consent of ACCOUNTINGWARE. Any attempted assignment, subcontract or other transfer of this Agreement or any of ActivPartner's rights or obligations hereunder will be void ab initio and will be considered a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- 11.3 Notices. Any notices or other communications required or permitted hereunder shall be in writing and personally delivered at the principal business addresses designated at the beginning of this Agreement, or mailed by registered or certified mail, return receipt requested, postage prepaid, at the address set forth above, or to such other address or addresses as may be hereafter furnished by one party to the other party in compliance with the terms hereof.
- 11.4 Force Majeure. Either party shall not be liable for failure or delay in performance of any of its obligations hereunder if such delay or failure to perform is caused by circumstances beyond its control.
- 11.5 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous agreements by and between the parties as well as all proposals, oral or written and all negotiations, conversations or discussions heretofore had between the parties related to the subject matter of this agreement. The parties acknowledge that they have not been induced to enter into this agreement by any representations or statements, oral or written, not expressly contained herein.
- 11.6 Amendment. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived, in whole or in part, except by written amendment signed by the parties hereto.



- 11.7 Severability. In the event that any of the terms of this Agreement are in conflict with any applicable rule of law or statutory provision or otherwise unenforceable under applicable laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement and this Agreement shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

# Acceptance of Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

**ActivPartner**

**ACCOUNTINGWARE**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signer's Printed Name and Title

\_\_\_\_\_  
Authorized Signer's Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Addenda A (Pricing)

ActivReporter license pricing is comprised of an Initial Setup Fee and a monthly recurring subscription fee. The minimum subscription term is one year. The fees are based on a License Unit.

Each License Unit will allow up to 10 Dynamics GP company databases and unlimited users. The 10 Dynamics GP company databases must reside on the same SQL Server machine and be under common ownership. License Units cannot be used for providing “service bureau” type services to multiple unrelated entities.

The fee for each License Unit is as follows:

License Unit	Fee	Notes
Initial Setup Fee	\$1,000.00	Includes installation assistance and 4 hours of online training
Monthly recurring charge	\$70.00	Minimum term: One year Billing is in advance of license provided. Options are available for paying monthly, quarterly or annually. Billing will recur unless terminated with a 30-day written notice to ACCOUNTINGWARE.

If there are more than 10 Dynamics GP company databases, then the number of License Units required is adjusted “step wise” in units of 10. For example, 12 company databases require two License Units, 55 company databases require six License Units. Training hours are increased by two for the second License Unit purchased, and by one for each additional License Unit purchased to a maximum of 10 hours regardless of the number of License Units purchased.

Support is provided via email. The support ticketing system is accessed through the ActivReporter website at <https://accountingware.com/activreporter/support>.

## ActivPartner Program

The ActivPartner Program cost is zero dollars at this time.

For each License Unit purchased through the ActivPartner Program, the Reseller is paid a \$500.00 commission upon the successful installation of ActivReporter at the end user site.

## ACCOUNTINGWARE Support Fees

ACCOUNTINGWARE Support can be employed for additional services. The service can be directed to the Reseller or the end user. Typical items for which additional assistance is often necessary are training, advanced Excel, security related setup, and automation (Bots).

Service Level	Fee/Hour	Notes
Program Errors/Faults	\$0.00	Assistance related to program issues
Training, First Level Support	\$175.00	Training, Excel, upgrade assistance
Security Implementation	\$200.00	Security related setup and implementation of Security Views
Automation Programs (Bots)	\$225.00	Programmable features of the ActivReporter product