

ProActive Software License and Service Agreement

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

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

LICENSEE'S OBLIGATION

In consideration for a license to use ProActive Software, Licensee agrees to the following:

1. Licensee agrees to pay Active's published product purchase price and pay a 1 year software subscription (software maintenance) service fee (annual maintenance is billed in advance).
2. Licensee agrees to include a URL address on each page of the Licensee's class and activity catalog and a one page description of the Internet registration services provided by Active.com,
3. Licensee agrees to provide a prominent URL link to the class and activity search and registration page at Active.com's Web site from Licensee's website, if and when such a Web site exists,
4. Licensee agrees to, at regular intervals as required by Active.com, upload updated activities and download updated registrations, and
5. Licensee will make best efforts to promote Internet registration through any means available including marketing materials, answering machine messages and other community outreach programs.

The annual subscription cost of this agreement is payable in advance. This agreement shall take effect at noon on the date it is accepted by Active.com 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.com shall invoice for the next year of coverage unless Purchaser cancels this agreement in writing prior to the annual renewal date.

LICENSE TO USE SOFTWARE

The Active Network, upon Licensee's acceptance of the following terms and conditions, grants to Licensee a non-exclusive, nontransferable license to use Active.com's ProActive Software programs and related documentation (hereafter referred to as "Software").

Each online registrant will pay the event registration fee charged by Licensee plus a processing fee equal to 6.5% of the registration fee plus \$0.50 with a minimum fee of \$2.00. Active.com will be responsible for collecting all fees and service charges. Fees collected from online registrants will be sent to Licensee on the first and third Friday of each month and service charges will be retained by Active.com.

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

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, any modifications or updates thereto, including the copy of the Software and the media upon which it is stored and the associated documentation, are retained by Active.com at all times.

SOFTWARE SUBSCRIPTION SERVICES PROVIDED BY The Active Network

The Active Network agrees to provide Purchaser with access to technical support personnel, telephone support assistance and other support services. Active.com shall set the hours when technical support is available, and may change such hours without notice.

The Active Network agrees to provide at no additional charge all upgrades, modifications and enhancements to the ProActive software that are released by The Active Network during the Subscription period. Software that is introduced or released as a separate product is not included in this service. The Active Network and Purchaser agree that all upgrades, modifications and enhancements provided will become a part of the ProActive Software and that all agreements, licenses and provisions related to title or use of that Software as set forth in this Agreement shall apply. Releases of revisions, upgrades or modifications are provided with written instructions for installation onto the system by trained users only.

LIMITED WARRANTY AND LIMITATIONS ON LIABILITY

The 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.com shall replace them at no additional charge. Licensee must notify The Active Network within 10 days of receipt if such a defective condition occurs, and return the defective items to The Active Network postage prepaid.

The Active Network warrants that if the Software fails to substantially conform to the specifications in the documentation and if the nonconformity is reported to The Active Network within 90 days from the date of shipment by The Active Network, then The 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 The 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 The Active Network.

Licensee agrees that the responsibility for operation, security, maintenance and service of their computer system, its hardware and Software remains with the Licensee and under no circumstances becomes the liability of The Active Network. The Active Network makes no warranty as to the compatibility with any brands or configurations of computer equipment or operating systems.

The Active Network makes no warranty, representation, or promise not expressly set forth in this agreement. The Active Network disclaims and excludes any and all implied warranties of merchantability and/or fitness for a particular purpose. The 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.

The 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 is limited to the amount paid by the Licensee for the Software. The Active Network shall not, in any case, be liable for any consequential, incidental, special, 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.

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 The 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.COM 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. The 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 The Active Network shall remain in effect.

AGREED AND ACCEPTED:

The Active Network

By: _____

Name: _____

Title: _____

**PURCHASER
City of Rapid City**

By _____
Jim Shaw, Mayor
Date _____

Attest _____
Finance Officer
Date _____

(SEAL)

Please enter **effective start date of the one year service subscription fee** Date: _____
(effective start date will be the shipping date of the product based on full payment of fee)