



**ProActive Webs**  
Your world, Your web

## ***Terms of Service Agreement***

This Agreement is by and between ProActive Webs a California LLC and You or your successors, your agent or their successors, and is made effective as of the date (1) of your signature on this agreement, and/or (2) your e-mail acceptance of this agreement, whichever happens first. The Agreement sets forth the terms and conditions of Your use of ProActive Webs services and software and explains ProActive Webs obligations to You and Your obligations to ProActive Webs in relation to the Services and Software You will use.

This Agreement as well as any additional ProActive Webs policies, together with all modifications thereto, constitute the complete and exclusive agreement between You and ProActive Webs concerning Your use of ProActive Webs's Services and Software, and supersede and govern all prior proposals, agreements, or other communications. All ProActive Webs policies and agreements specific to particular Service or Software are incorporated herein and made part of this Agreement by reference, including the dispute policy ("UDRP"). By purchasing ProActive Webs Services or Software, You acknowledge that You have read, understood, and agree to be bound by all terms and conditions of this Agreement and any other policies or agreements made part of this Agreement by reference, as well as any new different or additional terms, conditions or policies which ProActive Webs may establish from time to time, and any agreements that ProActive Webs is currently bound by or will be bound by in the future. You may view the latest generic version of this Agreement online ([www.ProActiveWebs.com/TOS](http://www.ProActiveWebs.com/TOS)). If you wish a copy of your specific agreement, signed, contact us at [customercare@proactivewebs.com](mailto:customercare@proactivewebs.com).

In addition to transactions entered into by You on Your behalf, You also agree to be bound by the terms of this Agreement for transactions entered into on Your behalf by anyone acting as Your Agent, and transactions entered into by anyone who uses the account You've established with ProActive Webs, whether or not the transactions were in Your behalf.

**Site Use: Limitation of Liability:** Customer agrees not to use the Site in any way that violates any applicable laws. ProActive Webs does not warrant that the Site will operate uninterrupted or error-free, and ProActive Webs is not responsible for losses due to nationwide or regional network downtime, server maintenance and downtime consistent with commercial Web Hosting environments. In no event is ProActive Webs or any of its Agents liable to Customer or any third party for lost profits, lost savings, or any other incidental, indirect, consequential, or special damages arising out of the operation of or inability to operate the Site, even if advised of the possibility of such damages. In any event, ProActive Webs is not liable for any damage exceeding the fees for the then-current Term. ProActive Webs makes no warranties other than those set forth in this agreement. Both parties agree to keep confidential any confidential information or trade secrets shared between them. The ProActive Webs™ Web Creator and Management modules are a trade secret, and Customer agrees, without limitation, not to share this information with competitors of ProActive Webs. Neither party is responsible for any failure to perform its obligations under this Agreement due to causes beyond its



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reasonable control, including without limitation acts of God, war, terrorism, riot, embargoes, and acts of civil, military, or regulatory authorities, fire, floods, accidents, and commercial impracticality.

### **1. Content**

- 1.1. ProActive Webs reserves the right to access and review its user's content, files, or web pages for any reason at its sole discretion.
- 1.2. Where ProActive Webs does not preview the content of its users and therefore all user content is provided "AS IS" and without warranty of any kind by ProActive Webs.
- 1.3. ProActive Webs does not endorse any content contained within its user's pages.
- 1.4. ProActive Webs will cooperate with all law enforcement efforts pertaining or involving the use of ProActive Webs's user's web space, e-mail, and content. This may result in ProActive Webs disclosing all information given to ProActive Webs including but not limited to information contained in ProActive Webs's customer database records and servers.
- 1.5. You affirmatively represent, agree and warrant that you have and at all times shall have all necessary intellectual property rights, including, but not limited to, all copyrights, trademark and service mark rights and rights of publicity, both in the United States and throughout the world, to reproduce and disseminate, via the Internet, all data which you store in Web Site Space or which you otherwise promote, advertise, disseminate and/or distribute to anyone by your direct or indirect use of the ProActive Webs Services or ProActive Webs's Hosting Service, including, without limitation, all advertising and promotional materials, prior to and at all times during the time such materials are promoted, advertised, disseminated or distributed through any direct or indirect use of the ProActive Webs Services or Hosted Services.
- 1.6. You shall at all times use your Web Site exclusively as a conventional Web Site. All use of ProActive Webs's Services and Hosting Service shall at all times be in a manner consistent with this Agreement and shall not in any way impair the functioning or operation of ProActive Webs's Hosting Service or network. Should your use of the ProActive Webs Services result in an overly high load on the ProActive Webs Hosting Service, in ProActive Webs's sole discretion, ProActive Webs may suspend your account until the cause of any such overload is determined and resolved.

### **2. Inappropriate Content**

- 2.1. Transmission, distribution, sale or storage of any material in violation of any applicable law, regulation, ordinances, or these guidelines is prohibited. ProActive Webs reserves the rights to restrict or prohibit any and all uses of the services or content on your web site(s) and to remove such material from its servers that ProActive Webs determines in its sole discretion is harmful to its servers, systems, network, reputations, good will, other ProActive Webs Customers, or any third party.
- 2.2. The following non-exhaustive list details the kinds of illegal or harmful or misappropriate conduct that is prohibited under this agreement: (a) nudity, pornography, anything of a sexual, lewd, indecent or of obscene nature. (b) violations of any copyright or any other right of any third party, including, without limitation, material protected copyright, trademark, patent, trade secret, or other intellectual property right used without proper authorization. (c) threatening, abusive, harassing, harmful, defamatory, invasive of privacy or publicity rights, abusive, inflammatory or otherwise objectionable. (d) promotion of illegal activities (info on hacking, cracking, making illegal devices, etc). (e) information, instructions, or software containing or about any kind of virus. (f) hate speech or hate propaganda. (g) content that links to content that violates ProActive Webs's Terms of Service in any way. (h)



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misrepresentation of user's identity, or the impersonation of anyone, including ProActive Webs personnel. (i) collection of personal information for illegal purposes. (j) content that is deemed by ProActive Webs, in its sole discretion, to be harmful to ProActive Webs, another company or organization, or individual. (k) solicitation or sale of any products or services that are harmful, illegal, dangerous, pornographic, or indecent. (l) use of ProActive Webs servers or a link to ProActive Webs servers for spamming, bulk mail, web bombing, etc.

2.3. You agree that in the event that ProActive Webs is informed by any party that your domain name or any material on your Web Site or put on our servers infringes the copyright of any party, or violates the right of publicity or privacy of any party, or consists of any other claim or violation of intellectual property rights of any kind, then ProActive Webs may, without prior notice to you and in ProActive Webs's sole and exclusive discretion, either remove the material from your Web Site or ProActive Webs Server, and/or disable public access to your domain name or the material on your Web Site or ProActive Webs Server and/or terminate this Agreement, without any liability of any kind to ProActive Webs from either you or any third party. In concordance with section 18, you waive any and all claims you may have, now and forever, against ProActive Webs relating to any action taken in response to the claim that you have infringed the intellectual property rights of a third party, and agree to indemnify and hold harmless ProActive Webs from and against any such claims

### **3. Export Violations and CISG**

3.1. ProActive Webs does not permit the posting or sending of software or technical information in violation of U.S. export laws, including, without limitation, the Export Administration Act and the Export Administration Regulations maintained by the Department of Commerce.

3.2. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to this agreement.

3.3. You agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data exported, the United States or the country in which you reside.

### **4. Harmful Content**

4.1. Disseminating or hosting harmful content including, without limitation, viruses, trojan horses, worms, time bombs, cancelbots or any other computer programming routines that may damage, interfere with, surreptitiously intercept or expropriate any system, program, data or personal information.

### **5. Fraudulent Conduct**

5.1. Offering or disseminating fraudulent goods, services, schemes, or promotions (i.e., make money fast schemes, chain letters, pyramid schemes), or furnishing false data on any signup form, contract or online application or registration, or the fraudulent use of any information obtained through the use of the services, including without limitation use of credit card numbers.

5.2. You agree not to make or attempt any unauthorized access to any ProActive Webs website or the website of any ProActive Webs customer.

### **6. Security Violations**

6.1. Violations of ProActive Webs's or any third party's server, system or network security through the use of the services are prohibited, and may result in criminal and civil liability. ProActive Webs may investigate incidents involving such violations. ProActive Webs may involve and cooperate with law enforcement if a criminal violation is suspected. Any violation by Customer of ProActive Webs security will be considered grounds for cancellation under



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section 5.00. Examples of server, system or network security violations include, without limitation, the following: Example 1: Hacking. Unauthorized access to or use of data, systems, server or networks, including any attempt to probe, scan or test the vulnerability of a system, server or network or to breach security or authentication measures without express authorization of the owner of the system, server or network. Example 2: Interception. Unauthorized monitoring of data or traffic on any network, server, or system without express authorization of the owner of the system, server, or network. Example 3: Intentional Interference. Interference with service to any user, host or network including, without limitation, mail bombing, news bombing, other flooding techniques, deliberate attempts to overload a system, broadcast attacks and any activity resulting in the crash of a host. Intentional interference also means the use of any kind of program/script/command, or send messages of any kind, designed to interfere with a user's terminal session, via any means, locally or by the Internet. Example 4: Falsification of Origin. Forging of any TCP-IP packet header, e-mail header or any part of a message header. Example 5: Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on the services such as timing out. Example 6: Failure to Safeguard Accounts. Customer fails to prevent access to the accounts, including any account passwords.

6.2. You are responsible for maintaining the confidentiality of both your password and your account and are fully responsible for all activities that occur under your password and your account. You agree to immediately notify ProActive Webs of any unauthorized uses of the account or any other breaches of security. ProActive Webs cannot and will not be liable for any loss or damage from your failure to comply with this security obligation. You acknowledge and agree that under no circumstances will ProActive Webs be liable, in any way, for any acts or omissions by you, including any damages of any kind incurred as a result of such acts or omissions

### 7. User Name Restrictions

7.1. ProActive Webs user name restrictions are as follows: (a) No vulgar or offensive language. (b) No assumption of another person's identity. (c) No use of a name that is an organization or entity other than your own. (d) No use of a name that is trademarked, copyrighted, service marked, or violates the rights of another individual or organization.

### 8. Account Usage

8.1.

8.2. To protect the legitimate Internet use of our Customers across our system, ProActive Webs may immediately suspend service, without notice to any web site or Customer, for the following uses: Customers may not, (a) Use the web site to store web pages, files or data for other IP addresses or Domain Names, or as a repository for files, data or "warez group" download transfer, or (b) Offer adult content.

8.3. You agree and warrant that all data, visual materials, advertising and other matter you store on or allow to be transmitted by Proactive Web's Hosting Service shall not violate any state or federal laws concerning obscenity and shall not contain any depictions of bestiality, incest, rape, sexual assault, actual physical violence, torture or disfigurement, or other content deemed objectionable by ProActive Webs, in its sole discretion.



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- 8.4. You agree that you shall install and maintain appropriate and effective screening devices and/or procedures on Your Web Site to avoid access to, or communication of, any harmful matter or indecent communications to minors.
  - 8.5. You agree that if, in ProActive Webs's sole and exclusive judgment, ProActive Webs concludes that Your Web Site displays, contains or links to any harmful matter or indecent materials or communications which are available to, or accessible by, minors, or displays or contains any material that consists of child pornography or which could otherwise result in harm to minors; then ProActive Webs may, without prior notice to you and in ProActive Webs's sole and exclusive discretion, either remove and erase the material from Your Web Site, and/or disable public access to the material on Your Web Site, and/or cease hosting Your Web Site, without any liability of any kind to ProActive Webs from either you or any third party.
  - 8.6. ProActive Webs may immediately suspend service, without notice to any web site or Customer, any web site that in any manner adversely affects the operations or performance of other ProActive Webs customers. In the event of any dispute regarding the aforementioned rules, ProActive Webs may determine violations of these rules in its sole discretion.
  - 8.7.
  - 8.8. Customer agrees to not collect or attempt to collect personally identifiable information of any person or entity without their express written consent and you shall maintain records of any such written consent throughout the terms of this agreement and for three years thereafter.
9. **SPAM/Bulk Mail Policy**
- 9.1. ProActive Webs users agree not to distribute, publish, or send any of the following types of e-mail: (a) Unsolicited promotions, advertising or solicitations (commonly referred to as "spam"), including, without limitation, commercial advertising and informational announcements, except to those who have explicitly requested such e-mails. (b) Harassing e-mail, whether through language, frequency, or size of messages. (c) Chain letters. (d) UCE (Unsolicited Commercial E-mail), Bulk E-mail, advertising or solicitations (commonly referred to as "spam"). ProActive Webs reserves the right to decide what it considers "spam", "UCE", "mail bombing", or "bulk e-mail", and to determine from all of the evidence whether or not the e-mail recipients were from an "opt-in" e-mail list. Furthermore, you agree to indemnify and hold us harmless from any claim resulting from your use or distribution of electronic mail services through the service provided under this Agreement. Anyone using our services for spamming will be immediately subject to a \$300 cleanup/network administration fee per message. (e) Unsolicited postings to newsgroups advertising any URL (Domain) hosted by ProActive Webs. (f) Promoting any software program, product, or service that facilitates the use of spam/bulk mail. (g) E-mails containing forged or falsified information in the header (including sender name and routing information), or any other forged or falsified information.
  - 9.2. Malicious e-mail, including without limitation "mail-bombing" (flooding a user or web site with very large or numerous pieces of mail) or "trolling" (posting outrageous messages to generate numerous responses).
  - 9.3. In addition, you may not use ProActive Webs's mail server or another Web site's mail server to relay mail without the express permission of the account holder or the Web site. Posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting) also is explicitly prohibited.
10. **Termination of Service**
- 10.1. A partial list of the actions that may cause termination of account: (a) Purposely circumventing the receiving of emails. (b) Posting or providing links to content that violates



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these Terms of Service. (c) Using an account that is not yours or is inactive. (d) Sending unsolicited (bulk, spam) email from or referencing your space. (e) Reproduction or use of another user's content without permission. (f) Reproduction of any ProActive Webs.com content (CodeBank, Forum Messages, Articles). (g) Invalid e-mail address for correspondence with ProActive Webs.

10.2. INDIRECT OR ATTEMPTED VIOLATIONS OF THESE TERMS, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON YOUR BEHALF, WILL BE CONSIDERED VIOLATIONS OF THE TERMS OF SERVICE BY YOU.

**Miscellaneous:** This Agreement is governed by California law, and the Hosting and Web site design services are performed in California. Any dispute under this Agreement shall be resolved by binding arbitration in San Francisco, California under the commercial rules of the American Arbitration Association by a single arbitrator familiar with Web Hosting and Web Design agreements chosen in accordance with those rules. Notwithstanding the foregoing, either party may bring a suit in the small claims courts of California for an amount within those courts jurisdictional limit, and may bring suit in the courts of the City and County of San Francisco, California or the federal courts for the Northern District of California either (A) to obtain injunctive relief (including a temporary restraining order or preliminary injunction), or (B) to obtain prejudgment remedies, like attachment. In any dispute, the prevailing party shall recover its reasonable fees and costs from the non-prevailing party, including, without limitation, reasonable attorneys fees, filing fees, witness fees, and the cost of any arbitration. This agreement is assignable by either party to any successor by merger, successor in interest, purchaser of substantially all its assets, or purchaser of (in Customers case) the applicable property or (in ProActive Webs case) its Web Hosting and Web Site Design business.

### **Acceptance:**

I have read and agree to the ProActive Webs Term of Service agreement .

Signature: \_\_\_\_\_

Date:\_\_\_\_\_

Print Name:\_\_\_\_\_

Email:\_\_\_\_\_

Title:\_\_\_\_\_

Phone:\_\_\_\_\_

Fax: \_\_\_\_\_

### **Site Project Manager Contact Information:**

Name of Site:



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*Address:* \_\_\_\_\_ *City:* \_\_\_\_\_ *State:* \_\_\_\_\_

*Zip:* \_\_\_\_\_

*Site Dev Contact:* \_\_\_\_\_

*Contact Title:* \_\_\_\_\_

*Contact Phone number:* \_\_\_\_\_

*Contact Email:* \_\_\_\_\_

*Contact Alt Phone number:* \_\_\_\_\_

*Contact Fax number:*

\_\_\_\_\_