

ACTIVTRAX TRIAL AGREEMENT

ActivTrax grants to the Customer a personal, non-transferable and non-exclusive trial license (the "License") to use ActivTrax's proprietary software and documentation (the "Licensed Program"). By using ActivTrax, the Customer acknowledges that it has read, reviewed, and agrees to the following License Agreement and agrees to abide by those terms and conditions.

1. Recitals

(a) ActivTrax has developed and owns proprietary software and documentation (the "Licensed Program"); and

(b) Customer desires, a limited license to utilize and implement the Licensed Program, all in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing premises, the mutual promises, covenants, and representations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

2. Grant of License; Term

(a) **License.** ActivTrax grants Customer a personal, non-transferable and non-exclusive license (the "License") to access and use the Licensed Program subject to and in accordance with the terms and conditions set forth herein. The License will entitle Customer to access and use the Licensed Program from the Customer's location(s) ("Locations"), set forth in the Certificate of License attached hereto and made a part hereof. The Customer will not promote, implement or utilize the Licensed Program at any Location unless and until ActivTrax approves such promotion, implementation or utilization of the Licensed Program at such Location. Customer and ActivTrax will mutually determine whether, when and under what circumstances the Licensed Program will be implemented at any additional Location(s).

(b) **Agreement Term.** The term of the License granted herein (the "Term") shall begin on the date of the club's first log in and shall continue for a period of 30-days. The Term may renew for a period of (30) days at ActivTrax's discretion.

3. License Terms

(a) **Proprietary Rights; Ownership.** Customer acknowledges that ActivTrax may disclose to Customer certain of ActivTrax's confidential, proprietary trade secret information. Customer further acknowledges that the Licensed Program, and any drawings, flow charts, schematics, logic diagrams, object code, source code, documentation and other materials related thereto, including, but not limited to, any and all marketing and promotional materials, training materials, information centers, documents, artwork, products, methodologies and processes related to the Licensed Program and all copies thereof (in any form), as well as any of ActivTrax's confidential, proprietary trade secret information, are proprietary to and the sole and exclusive property of ActivTrax. All right, title and interest in and to the Licensed Program, any improvements, changes, modifications or upgrades thereto, and any copyrights, trademarks, patents and trade secrets therein are and will be owned by ActivTrax, and the Customer will not acquire any ownership interest in any of the foregoing except the License expressly contemplated herein.

(b) **Use; Copies.** ActivTrax and the Customer, and each of its respective employees, and no other persons or entities, will have the right to use the Licensed Program or any portion thereof. Customer may access and utilize the Licensed Program solely at and for the Locations. No right to reprint or copy the Licensed Program, in electronic or other form, in whole or in part, is granted. Under no circumstances will Customer, directly or indirectly decompile, reverse engineer or otherwise attempt to break down the Licensed Program, or permit others to do so.

(c) **Non-Disclosure.** ActivTrax may be materially and irreparably harmed and impaired if Customer makes unauthorized use or disclosure of any of the terms of the License Agreement. Customer agrees to keep all terms of the License agreement confidential. In the event of any dispute relating to the unauthorized use or disclosure of any part of the License Agreement by Customer, Customer agrees that Customer shall have the burden of establishing that the information was not Confidential Information or that its disclosure was authorized. Furthermore, Customer will not sell, transfer, publish, disclose, display or otherwise make available the Licensed Program or any document or material related thereto or copies (in any form) thereof to any third parties without the prior written approval of ActivTrax. Customer agrees to secure and protect the Licensed Program and any document or material related thereto and copies (in any form) thereof in a manner consistent with the maintenance of ActivTrax's rights therein. The Customer will take appropriate action by instruction or agreement with employees who are permitted access to the Licensed Program or any document or material related thereto or to copies (in any form) thereof to satisfy Customer's obligations hereunder and to preserve ActivTrax's confidential information and trade secrets, but not less than those precautions employed by Customer to protect its own proprietary information. Customer personnel whom Customer deems appropriate to have access to the Licensed Program will before utilizing such access be informed by Customer of the confidential and proprietary nature of the Licensed Program, and will agree to maintain such confidentiality.

(d) **Notice.** In order to protect ActivTrax's trademark, trade secret, copyright and other proprietary rights in the Licensed Program, Customer agrees to reproduce and incorporate ActivTrax's copyright notice and all other proprietary legends thereon in any copies, including partial copies in any form. ActivTrax will provide such notices and legends to Customer, whereupon Customer will promptly take such steps as reasonably requested by ActivTrax in respect thereof.

(e) **Modification.** Customer will not make any modifications to the Licensed Program. If any modifications to the Licensed Program are made in violation of this Section, ActivTrax will not be responsible for any such modification or the compatibility of any equipment, software products, future software product releases, test diagnostics and verification routines or engineering change orders with regard to such modifications. Further, to the extent such modifications result in any liability or cost of any kind or nature (including reasonable attorneys' fees) to ActivTrax, Customer will indemnify ActivTrax to the full extent of such liability or cost (including reasonable attorneys' fees).

4. Obligations of the Parties

(a) **Computer System.** Customer is responsible for providing all computer and other equipment and facilities under this Agreement. Customer's computer equipment will meet the following minimum standards: running Windows 98 or higher; Internet Explorer 5.5 or higher; Adobe Acrobat 5.0 or higher; Pentium 100 mhz or higher; an appropriate amount of free space on hard drive; 64 mb of RAM; Internet access; and dedicated Hewlett-Packard LaserJet or compatible laser printer.

(b) **Errors, Problems and Support.** During the Term, Customer will promptly inform ActivTrax of all errors, difficulties or other problems with the Licensed Program. ActivTrax will make a reasonable effort to (i) fix reported errors and (ii) provide Customer with support and consultation concerning the Licensed Program. Notwithstanding the foregoing, ActivTrax will not be responsible for providing support regarding hardware problems. In the event that ActivTrax does not attempt to fix reported errors or cannot reasonably do so, ActivTrax will make a reasonable effort to develop "work arounds." The reasonable effort, support and consultation will be such reasonable effort, support and consultation as ActivTrax, in its sole discretion, will determine is necessary or appropriate. Subject only to the foregoing, ActivTrax is not obligated to create and/or implement any upgrades to the Licensed Program.

(c) Enrollment of Members

(i) Customer will be solely responsible for enrolling its members in the Licensed Program, and will have sole and absolute discretion in determining whether such members will be permitted to participate in the Licensed Program. In connection therewith, Customer will obtain from each new participant, prior to such person's participation in the Licensed Program, a completed and signed Membership Enrollment Form. The Customer will use the Membership Enrollment Form obtained from ActivTrax's web site (www.activtrax.com), unless such site is not publicly available. The enrollment by Customer of a new participant in the Licensed Program is conclusive evidence (to be relied upon solely by ActivTrax) of Customer's determination that (i) such new participant has (x) satisfactorily completed the Customer's health and medical screening process, and (y) completed and signed all documentation required for participation in the Licensed Program (including, but not limited to, the Membership Enrollment Form), and (ii) the new participant has no medical restrictions or other limitations of any kind that would or should prevent such person from participating fully in the Licensed Program.

(ii) Customer hereby agrees that each member (including new members) of an Active Location will be given a fitness evaluation by a fitness staff member affiliated with such Active Location. Customer further agrees that such fitness evaluation will be performed only by fitness staff affiliated with Customer who have satisfactorily completed the training requirements described in Section 6(b) hereof. The parties agree that ActivTrax's standard fitness evaluation form may change from time to time, and that Customer will use the most recent version available, as provided by ActivTrax.

(d) **Designated Contact Person.** The Fitness Director (or person holding the equivalent position) at each Location will be the contact person at each Location for ActivTrax. ActivTrax will be fully protected in relying on the instructions and requests of the Fitness Director (or person holding the equivalent position) without further authorization, and ActivTrax will not be liable for any actions taken or omissions made in reliance on such person's instructions and requests, absent ActivTrax's gross negligence.

5. Setup of Licensed Program; Marketing and Promotion; Privacy

(a) Customer will be responsible for all marketing and promotion of the Licensed Program, including any expense related thereto. Customer may include in its newsletter or other marketing materials an informational article about the Licensed Program, which article will be approved by ActivTrax before publication thereof. If Customer intends to initiate a significant promotional or marketing campaign in which the Licensed Program is described and/or named, Customer may do so only after receiving ActivTrax's prior approval of such campaign. In addition to the foregoing, ActivTrax will be entitled to market and promote the Licensed Program at its expense; provided, however, that no significant campaign will be initiated without Customer's prior approval, nor will ActivTrax use any of

Customer's confidential or proprietary information in any marketing or promotion (including, but not limited to, Customer's name and logo).

(b) ActivTrax acknowledges that it may obtain from Customer certain information related to the Customer's members, and that such information may be of a confidential nature. ActivTrax agrees that such information will be held in confidence per The Company's Privacy Statement located at www.activtrax.com. Notwithstanding the foregoing, ActivTrax may, in its discretion, contact Customer's members directly, via telephone, electronic mail, printed notices, or surveys, for the purposes of evaluating the members' satisfaction with the Licensed Program, or promoting the Licensed Program. Additionally, ActivTrax may print, from time to time, a small advertisement or coupon on the members' workout form. Customer agrees to include on its enrollment materials and agreements a notice to its members of ActivTrax's Privacy Statement and right to contact them as set forth herein.

6. Training; Personnel Support

(a) ActivTrax University is a one-day training session at which ActivTrax will provide to the Customer's Employees detailed information regarding the Licensed Program, including, but not limited to, the manner in which it may be implemented, integrated into the existing services offered by the Selected Location, and promoted to existing and future members of the Selected Location as well as the incorporation of ActivTrax's standard fitness evaluation and enrollment process. Customer may send employees to attend and complete (to the extent space is available for such additional employees) ActivTrax University at ActivTrax's location at no charge.

(b) All fitness staff that perform fitness evaluations at Selected Locations will be required to become ActivTrax certified. The parties expressly acknowledge and agree that certification of fitness staff is not an indication of ActivTrax's recommendation of such staff member, and that, as described in Section 4(c)(i), Customer will be solely responsible for enrolling its members in the Licensed Program, and will have sole and absolute discretion in determining whether such members will be permitted to participate in the Licensed Program. To become ActivTrax certified, Customer's fitness staff must satisfactorily complete ActivTrax's self study book and on-line training materials. In addition, the fitness staff will complete an on-site practicum, during which the fitness staff member will be observed by an employee of the Customer who will finally determine whether such fitness staff member may perform ActivTrax fitness evaluations at a Selected Location.

(c) ActivTrax will, during the Term, be available Monday – Friday, between the hours of 8:30 a.m. and 6:00 p.m., EST time, to provide technical assistance regarding the Licensed Program. The Customer will be solely responsible, and will indemnify and hold harmless ActivTrax and its employees and agents regarding the same, for the actions taken by its employees and agents (excluding ActivTrax) in respect of statements made or actions taken by such employees or agents not in accordance with the training and information provided by ActivTrax. Customer will provide to ActivTrax's employees access to the Locations to enable ActivTrax's employees to assist in the training and marketing efforts described above. Further, Customer will provide sufficient and appropriate space within the Locations for ActivTrax's employees to display conspicuously and appropriately advertising and promotional material relating to the Licensed Program.

7. Termination/Suspension.

(a) The License will terminate in accordance with Section 2. Notwithstanding the foregoing, if Customer fails to comply with any of its obligations hereunder, ActivTrax has the right, after giving written notice to Customer of such failure and providing Customer with not less than 5 days to cure such failure, to terminate or suspend the License and access to the Licensed Program. Termination or suspension of access to the Licensed Program does not relieve Client from its obligation to pay any and all accrued fees, charges and costs due to the Company. ActivTrax may resume suspended service upon Customer's compliance with its outstanding obligations. Customer will, within 5 days after termination of the License granted hereunder and without further notice or request, return to ActivTrax any and all materials, documents, artwork, training materials, promotional materials (including, but not limited to, the initial setup materials referred to in this Agreement), and any other information and all copies thereof (in any form) at Location related to the Licensed Program. Customer further agrees to reimburse the Company for costs including, but not limited to, shipping and travel that may be associated with the return of such materials. Customer is responsible for any damages to materials beyond "normal" wear and agrees to pay ActivTrax for such damages.

8. **Warranty.** ACTIVTRAX WARRANTS TO CUSTOMER THAT THE LICENSED PROGRAM WILL OPERATE SUBSTANTIALLY IN CONFORMANCE WITH SPECIFICATIONS CONTAINED IN THE USER AND TECHNICAL DOCUMENTATION SUPPLIED WITH THE LICENSED PROGRAM (IN THE EVENT OF A DISCREPANCY, THE TECHNICAL DOCUMENTATION WILL GOVERN). CUSTOMER UNDERSTANDS THAT CERTAIN CONDITIONS MAY EXIST OR DEVELOP WHICH LEAD TO ERRORS IN THE LICENSED PROGRAM. IF DOCUMENTED ERRORS IN THE LICENSED PROGRAM OCCUR, ACTIVTRAX'S OBLIGATION UNDER THIS WARRANTY WILL BE TO USE ITS REASONABLE EFFORTS TO CORRECT SUCH DOCUMENTED ERRORS OR DEVELOP "WORK AROUNDS." ACTIVTRAX MAY, AT ITS OWN DISCRETION, TEMPORARILY SUSPEND ALL SERVICE FOR THE PURPOSE OF REPAIR,

MAINTENANCE OR IMPROVEMENT. THIS WARRANTY WILL REMAIN IN EFFECT AS LONG AS THE LICENSE FEES DUE HEREUNDER WILL HAVE BEEN PAID ON A CURRENT BASIS; PROVIDED, HOWEVER, THAT THIS WARRANTY WILL TERMINATE UPON TERMINATION OR SUSPENSION OF THIS AGREEMENT. ACTIVTRAX MAKES NO WARRANTY THAT THE USE OF THE LICENSED PROGRAM OR ANY INFORMATION RELATING THERETO OR CONTAINED THEREIN WILL NOT INFRINGE ANY COPYRIGHT OR TRADEMARK OF ANY THIRD PERSON. IN NO EVENT WILL ACTIVTRAX BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, ARISING UNDER OR RELATED TO THIS AGREEMENT. The Customer will not have any claim against ActivTrax for damages, lost data, re-run time, inaccurate input, work delays or lost profits resulting from the use of the Licensed Program including, but not limited to, any damage occurring as a result of any unauthorized entry or damage to ActivTrax's web site.

THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, ORAL OR IN WRITING, IN FACT OR ARISING BY OPERATION OF LAW OR OTHERWISE, EXCEPT AS EXPRESSLY STATED HEREIN. MOREOVER, THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES.

9. Liability. ActivTrax is not liable for any loss or damage in connection with, or arising out of, the interruption or loss of use of the Licensed Program or the furnishing, functioning or use of the Licensed Program or any item or service provided in connection therewith. The aggregate liability of ActivTrax for any and all losses incurred hereunder will not, in any event, exceed the amount of the License Fees paid to ActivTrax for the Licensed Program. Under no circumstances will ActivTrax be liable for any special or exemplary damages or for incidental or consequential damages, including, but not limited to, loss of anticipated profits or economic loss, even if ActivTrax has been advised of the possibility of such loss or damages.

ActivTrax will indemnify and hold harmless Customer, Customer's employees, and agents from and against any loss or damage (including reasonable attorneys' fees) arising from personal injury or property damage attributable to the negligence of ActivTrax's employees or agents while on Customer's premises pursuant to the terms hereof, or the breach of any of its obligations hereunder.

Customer will indemnify and hold harmless ActivTrax, ActivTrax's employees, and agents from and against any loss or damage (including reasonable attorneys' fees) arising from any damages attributable to any loss arising from Customer's breach of any of its obligations hereunder, including, but not limited to, statements made or actions taken by such employees or agents not in accordance with the training and information provided by ActivTrax.

10. General

(a) Injunctive Relief. Customer acknowledges that any breach of its obligations under this Agreement with respect to the proprietary rights or confidential information of Company will cause Company irreparable injury for which there are inadequate remedies at law, and, therefore, Company will be entitled to equitable relief in addition to all other remedies provided by this Agreement or available at law or in equity.

(b) Attorneys' Fees. In addition to any other relief awarded, the prevailing party in any action arising out of this Agreement will be entitled to have its attorneys' fees and costs paid for by the non-prevailing party.

(c) Notices. Any notice required or permitted to be given by either party under this Agreement will be in writing and will be personally delivered or sent by a reputable overnight mail service, or by first-class mail (certified or registered), or by facsimile confirmed by first-class mail (registered or certified). Notices will be deemed effective:

- (i) three (3) working days after deposit in the mail, postage prepaid, if mailed;
- (ii) the next day if sent by overnight mail, or
- (iii) the same day if sent by facsimile and confirmed as set forth above.

If to ActivTrax:

ActivTrax, LLC
849-J Quince Orchard Blvd
Gaithersburg, Maryland 20878
Attention: Gary S. Albert, President
Facsimile: 301.840.0041

If to the Customer:

Address provided by customer when registering for ActivTrax Trial.

(d) Assignment. The Customer may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of ActivTrax. Any attempted assignment or delegation without Company's written consent will be void *ab initio*. Subject to the foregoing, the rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

(e) Waiver and Modification. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties.

(f) Survival; Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

(g) Controlling Law and Jurisdiction. This Agreement and any action related thereto will be governed, controlled, interpreted and defined by and under the laws of the State of Maryland, without regard to the conflicts of laws provisions thereof. Unless waived by ActivTrax (which it may do in its sole discretion) the exclusive jurisdiction and venue of any action with respect to the subject matter of this Agreement will be the State and Federal courts of the State of Maryland., and each of the parties hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action. Service of process in any such action may be effected in the manner provided in Section 10(c) for delivery of notices.

(h) Headings. Headings used in this Agreement are for ease of reference only and will not be used to interpret any aspect of this Agreement.

(i) Entire Agreement. This Agreement, including all exhibits which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral regarding such subject matter.

(j) Counterparts. This Agreement may be executed in two counterparts, each of which will be an original and together which will constitute one and the same instrument.