

# Active Endpoints, Inc.

## *Terms and Conditions*

**IMPORTANT: WE ARE PROVIDING THIS PRODUCT FOR YOUR USE SUBJECT TO YOUR AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH BELOW. IF THESE TERMS AND CONDITIONS ARE NOT ACCEPTABLE TO YOU, DO NOT DOWNLOAD OR INSTALL THE SOFTWARE.**

**BY DOWNLOADING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTOOD IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

### 1. DEFINITIONS.

**“Active Endpoints,” “we,” “us,” or “our”** means Active Endpoints, Inc.

**“Customer” or “You”** means the customer entity specified in the Order and such entity’s affiliated entities.

**“ActiveVOS Server Instance”** means a single and unique copy of the Server Software executing within a JVM.

**“Core”** means a single independent physical processing unit within a CPU.

**“CPU”** means a single physical single-core or multi-core chip acting as central processing unit within a computer.

**“Deployment Environment”** means the use of the Server Software in an application execution environment used to support the use of the application in Production, Staging or Failover / Hot-standby environments, or the use of the Server Software by a third-party to carry out the development, testing, or support functions of business process automation applications that are or will be delivered to another organization.

**“Documentation”** means the documentation relating to such Product, specifically identified or typically licensed or sublicensed by us for use in conjunction with the Product.

**“Environment”** means Internal Development Environment, Deployment Environment, Production, Staging or Failover / Hot-standby as appropriate.

**“Evaluation”** means the use of the Product for evaluation purposes as specified in Section 4.2 of this Agreement.

**“Evaluation Product”** means Product licensed for Evaluation only.

**“Failover / Hot-standby”** means deployment of an application on a host that is intended to carry out the resumption of activities related to actual / real data to be processed by the application in the event of a system failure of a production environment.

**“Fee”** means the applicable license or service fee payable to us for the Product license, Support, Training or Service.

**“Internal Development Environment”** means the use of the Server Software in an application execution

environment used solely to carry out the development, unit or application testing, or support functions of business process automation applications that are or will be deployed internally in conjunction with one or more Deployment Environment license purchased by the same organization.

**“JVM”** means Java Virtual Machine software that converts the Java™ intermediate language (bytecode) into machine language and executes it within a single Physical Machine or Virtualized Machine.

**“Major Release”** means a version of the Product that contains new or improved functionality. This is usually designated by a change in the number to the left of the decimal point (e.g., from Version 4.1 to 5.0).

**“Minor Release”** means a revision of the Product that contains defect corrections and/or minor enhancements or improvements of the software's functionality. This is usually designated by a change in the number to the right of the decimal point (e.g., from Release 5.0 to 5.5).

**“Order”** means the invoice or order confirmation you receive for the Product that identifies licensed Environment, license term, and the number of ActiveVOS Server Instances (as defined herein) that are permitted and the applicable fees. If the Order fails to identify the Environment, the Environment shall be deemed to be a Deployment Environment. If you are unsure as to what type of license you have been granted, please contact us and we will identify the license type for you. If the Order fails to identify the fee, the fee shall be the fee specified for the applicable Product on our website at the time of your order.

**“Physical Machine”** means a single machine that executes bytecode using one or more physical CPUs. In the event such a machine contains Server Blades, each Server Blade is a separate Physical Machine.

**“Product”** means the version of our commercially available software specified in your Order (or if a version is not specified, the current version of such software on the date of this agreement) and includes any maintenance or other releases of such software provided to you by us pursuant to this Agreement. The Product may include software installed on client computers (i.e. computers that

are not normally accessible over the network by other users) including, but not limited to the ActiveVOS Designer (“**Designer Software**”) and ActiveVOS Server software resident on Physical Machines or Virtual Machines (“**Server Software**”) when referenced collectively (“**Software**”). The Product is licensed in object code form only, not sold.

“**Production**” means use of an application on a host where data (other than test data) is processed by the application.

“**Services**” means those professional services specified in your Order which may include training.

“**Specifications**” means the functional Product specifications and technical requirements provided to you by us.

“**Staging**” means the use of an application in non-Internal Development Environments on a host where the application, its configuration, or new versions of the application and associated configuration are being verified as part of system testing activities for fitness and readiness prior to deployment into Production.

“**Support**” means the level of support and maintenance of the Product specified in your Order which shall be performed in accordance with the “**Support Schedule**” attached as Exhibit A.

“**Virtual Machine**” is a software implementation of a Physical Machine that executes bytecode using one or more virtual CPUs allocated to the Virtual Machine.

“**Virtualization**” means the abstraction of computer resources for the purpose of hiding the physical characteristics of computing resources from their users, be they applications, or end users.

## 2. OBLIGATIONS

**2.1 Support.** In exchange for payment of the Fee specified in your Order, we will provide Support as specified in your Order and as described in the Support Schedule. Support Terms and Conditions are specified in Exhibit A of this Agreement. Support applies to the entire set of Product licenses purchased from us except that Support is not available for Evaluation Product.

**2.2 Services.** In exchange for payment of the Fee specified in your Order, we will provide the Services specified in your Order. The Services offered for purchase are specified on our web site.

**2.4 Educational Content.** We will provide access to educational content based on maintaining a Support Agreement with us.

**2.4 Technical Representative.** If you purchased Support or Services you agree to appoint the number of appropriately qualified technical representatives reasonably requested by us in furtherance of the provision

of the Services to be performed hereunder. You also agree to provide suitable work space, computers, equipment, and all technical or other information required by us, or by our consultants, to perform the Services.

## 3. FEES AND PAYMENTS

**3.1 Fee.** The Fee for the Products, Services and Support will be as specified in your Order.

**3.2 Payment.** You agree to pay the applicable Fee, any applicable transportation charges and any applicable value-added taxes or other applicable taxes (including those required in the country where you acquired the Product) within thirty (30) days of the date of invoice.

## 4. LICENSE AND FEES

**4.1 License Grant for Fee-based Products.** In consideration of your payment of the applicable license Fee, you are granted a non-exclusive license, without right to sublicense, to use in accordance with the Specifications, solely for your internal business purposes in the Environment specified in your Order, (i) an ActiveVOS Server Instance executing within a single JVM on a Physical Machine using no more than four (4) Cores, or a Virtual Machine allocated no more than four (4) Cores, (ii) an unlimited number of instances of the Designer Software solely in connection with your authorized use of the Server Software, and (iii) the Documentation in support of your use of the Product, for the term specified in your Order.

**4.2 License Grant for Product Evaluation.** For thirty (30) days from the date an Evaluation was requested by you, you may use Evaluation Product solely for evaluation of the Product and not in conjunction with the development or deployment of software applications in a Deployment Environment. NOTWITHSTANDING THE PROVISIONS OF SECTIONS 5 AND 6 OF THE AGREEMENT, YOU UNDERSTAND AND ACKNOWLEDGE THAT (i) THE EVALUATION PRODUCT IS PROVIDED “AS-IS” WITHOUT WARRANTY OR INDEMNIFICATION OF ANY KIND, WHETHER EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR NONINFRINGEMENT AND (ii) THE EVALUATION PRODUCT WILL AUTOMATICALLY BE DISABLED AT THE END OF THE EVALUATION PERIOD. You acknowledge and agree that the evaluation period may not be extended by re-installing the Product by downloading a new Evaluation copy of the Product or license keys to obtain new Evaluation license keys or by any other means other than with Active Endpoint’s written consent.

**4.3 License Restrictions.** On behalf of our suppliers and ourselves, we reserve all rights to the Products and Documentation not specifically licensed in this Agreement. Certain components of our Products may be licensed from third parties and are subject to the same requirements and restrictions specified in this Agreement. You may not sell, transfer, rent, copy, reverse engineer, reverse compile, modify or create derivative works of, tamper with or grant any rights in Products and Documentation without our prior written consent. If you do any of the foregoing all of your rights under this license shall immediately terminate. You agree to protect the Products and Documentation and the intellectual property rights embodied therein, including the display of our copyright and trademark notices. You agree not to use the Product in any application that involves risks of death, personal injury, severe property damage or critical environmental damage or in any life support applications, devices or systems except as explicitly approved in writing by our Chief Executive Officer.

## **5. REPRESENTATIONS AND WARRANTIES.**

**5.1 Software.** We warrant, for your benefit only, that for the period of your subscription for Support, that the current major release of the Software shall conform in all material respects to the applicable Specifications.

**5.2 Services.** We warrant, for your benefit only, that the Services will be performed in a professional and workmanlike manner.

**5.3 Remedies.** If the Software does not meet the applicable warranty during the applicable warranty period, we will, as your sole and exclusive remedy, (a) repair, replace or modify the Software in accordance with the Support schedule so that it complies with the applicable warranty, or (b) refund the license Fee of the Product, as we elect. If the Services do not meet the applicable warranty, we will, as your sole and exclusive remedy, re-perform the Services.

**5.4 Customer Representations and Covenants.** You hereby represent, warrant and covenant as of the Effective Date: (a) you have full right, power and authority to enter into and perform this Agreement and all of the transactions contemplated by this Agreement; (b) you will comply with all applicable laws; (c) no consent, approval, permit or order of any governmental authority or other entity is required in connection with the execution, delivery and performance of this Agreement; (d) all information supplied by you is accurate in all material respects as of the date provided and if there is any material change in such information prior to any delivery date, you will advise us of such change in writing; (f) you will only use the keys to the Products provided to you in furtherance of your licensed use of the Products; and (g) you agree and acknowledge that

violating the license restrictions of Section 4.3 will result in immediate termination of this license.

**5.5 Limitation on Warranty.** Our warranties are void and we have no liability if: (a) the Product is integrated or assembled by you with other products, unless integrated or assembled in accordance with applicable Specifications; (b) the Product is repaired or altered by anyone other than us or our authorized representative, unless expressly authorized in writing by us and in strict accordance with the applicable Specifications; (c) to the extent applicable you fail to install new versions of the Software such that you are at all times no more than one major release behind the then current version; (d) the Product is used in violation of the applicable Specifications or our instructions or subjected to misuse, neglect, accident or abuse; (e) to the extent you do not provide the access or technical representatives reasonably required to enable us to perform the services; or (f) you are using an Evaluation Product.

**5.6 EXCLUSION OF CERTAIN WARRANTIES.** WARRANTIES EXPLICITLY MADE BY US HEREIN ARE IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR FREE OPERATION OR NON-INTRUSION DUE TO HACKING OR OTHER SIMILAR MEANS OF UNAUTHORIZED ACCESS.

## **6. INDEMNIFICATION**

**6.1 Indemnification.** For Products (other than the Evaluation Product), you have purchased from us, we will indemnify and hold you harmless from liabilities resulting from third party claims that the Product(s) infringe another party's U.S. patent or registered U.S. trademark rights ("**Claims**") provided that you promptly notify us in writing of the Claims, allow us to control the defense or any related settlement negotiations and cooperate with the defense of such Claims. Notwithstanding the foregoing, we will not be liable for and you shall indemnify and hold us harmless from any and all liabilities resulting from: (i) third party claims for personal injury, death or tangible property damage arising out of the operation of your business, including use of the Products, removal of safety labels, or installation of the Products by a party authorized by us; (ii) any taxes for which you are responsible, and (iii) loss relating to the misappropriation or misuse of your key to the Product caused by your action or inaction..

**6.2 Procedure.** The indemnified Party shall, after receiving notice thereof, promptly advise the indemnifying Party of any such claim and cooperate with the indemnifying Party in the defense at the indemnifying

Party's expense. In the event we believe that any Claims may be made or Claims are made, we may, at our option and at no additional cost to you, either: (a) procure for you the right to continue using the Product(s) subject to such Claims; or (b) replace or modify the Product(s) so that they are no longer subject to any such Claims. If we cannot, after exercising commercially reasonable efforts, perform under subsection (a) or (b) of the previous sentence, you must return the Product(s) that are the subject of such Claims to us and we will, at our option, provide you with a replacement product of equal or greater functionality as the returned Product or refund to you the license Fee for the Product subject to the Claim.

**6.3 Indemnity Exclusions.** Our obligations hereunder with respect to any Claim shall not apply to infringement claims arising from use by you of a Product not in accordance with this Agreement or the applicable Specification(s); any modified version of the Product (including but not limited to, combination with other products not approved by us); of a release of the Software that is more than one major release prior to the then current version (if use of the current version would not have caused the infringement); or of the use of the Evaluation Product.

**6.4 EXCLUSIVE REMEDIES.** THE REMEDIES SET FORTH IN THIS SECTION 6 ESTABLISH OUR ENTIRE OBLIGATION IN REGARD TO CLAIMS, INCLUDING BUT NOT LIMITED TO CLAIMS DIRECTED TO THE INFRINGEMENT OR MISAPPROPRIATION OF PATENTS, COPYRIGHTS, TRADE SECRETS AND OTHER PROPRIETARY RIGHTS FOR PRODUCTS AND/OR SERVICES PURCHASED UNDER THIS AGREEMENT.

## 7. LIMITATIONS OF LIABILITY

**7.1 NO CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL WE, OR OUR SUPPLIERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SHAREHOLDERS OR CONTRACTORS (“**RELATED PARTIES**”), BE LIABLE TO YOU FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST REVENUES, PROFITS OR DATA OR OTHER ECONOMIC LOSS) ARISING FROM ANY CAUSE INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY, FAILURE OF ESSENTIAL PURPOSE OR ANY OTHER ECONOMIC LOSSES.

**7.2 LIMIT ON LIABILITY.** THE MAXIMUM LIABILITY OF US, AND OUR RELATED PARTIES,

TAKEN AS A WHOLE, FOR ANY AND ALL CLAIMS IN CONNECTION WITH THIS AGREEMENT AND THE PRODUCTS, SERVICE OR SUPPORT INCLUDING BUT NOT LIMITED TO CLAIMS FOR BREACH OF WARRANTY, BREACH OF CONTRACT, INFRINGEMENT INDEMNITY TORT, STRICT LIABILITY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, SHALL IN NO CIRCUMSTANCE EXCEED THE FEE OF SUCH PRODUCT, SERVICE OR SUPPORT.

## 8. TERM AND TERMINATION.

**8.1 Term.** The term of this Agreement will be as specified in your Order.

**8.2 Termination by You.** You may, at your discretion, terminate this Agreement if at any time we fail to cure a material breach of this Agreement within thirty (30) calendar days after our receipt of written notice regarding such breach. Upon such termination you may continue to use the Product in accordance with the license granted hereunder, but all of our obligations hereunder shall immediately cease.

**8.3 Termination by Active Endpoints.** In addition, and without limiting any other rights available under the law, we may immediately terminate this Agreement if you: (a) fail to cure a material breach of this Agreement (other than a breach of Sections 4 or 9) within thirty (30) calendar days after your receipt of written notice regarding such breach; (b) breach Sections 4 or 9; (c) become insolvent or commit an affirmative act of insolvency; (d) make an assignment for the benefit of creditors or take similar action; (e) file a voluntary bankruptcy or similar petition; (f) acquiesce to any involuntary bankruptcy or similar petition; (g) are adjudicated bankrupt or to similar effect; (h) are subject to any other proceeding or event similar to those noted at items (e), (f) and (g) or (i) are using an Evaluation Product at any time. In the event of such termination, we will have no liability to you in connection herewith. Upon such termination all of your rights hereunder shall immediately terminate.

## 9. OWNERSHIP AND CONFIDENTIALITY.

**9.1 Ownership.** We retain all right, title and interest in the Products and Documentation and any of our intellectual property, proprietary materials and information relating to the Products or the Services, except as for the rights explicitly licensed to you herein.

**9.2 Confidentiality.** The Products and the keys to the Products are protected by the intellectual property laws of United States and other countries and embody our valuable confidential and trade secret information, the development of which required the expenditure of considerable time and money by us. You agree to hold in

strict confidence any such information, together with any other confidential information made available to you by us, and agree not to use, copy, or disclose, nor permit any of your personnel to use, copy, or disclose the same for any purpose that is not specifically authorized herein. You agree to display our copyright and trademark notices as reasonably requested. You agree to promptly notify us of any circumstances that you become aware of that may interfere with our enjoyment of our intellectual property rights.

**9.3 Work Product.** Unless otherwise agreed in writing we shall retain all right, title and interest in and to all works created in connection with the Services.

## 10. MISCELLANEOUS.

**10.1 Force Majeure.** If the performance by a party of any of its obligations under this Agreement (other than payment obligations) shall be interfered with by reason of any circumstances beyond the reasonable control of that party, including without limitation, fire, explosion, acts of God, war, revolution, terrorism, civil commotion, unavailability of supplies, or sources of energy or telecommunications, power failure, breakdown of machinery, labor strikes, slowdowns, picketing or boycotts, or governmental/administrative restrictions on the importation or exportation of Products, then that party shall be excused from such performance while such circumstances exist and such additional period as may be reasonably necessary to allow that Party to resume its performance.

**10.2 Notices.** Except as otherwise set forth herein, all notices shall be in writing and deemed given (i) upon receipt or the delivery of an acknowledgment of receipt if delivered electronically (e.g., fax or e-mail), (ii) five (5) business days after mailing if sent registered mail, return receipt requested, (iii) the next business day after sending, if sent by commercial overnight courier (unless returned undelivered or the courier reports a later delivery); or (iv) upon delivery, if delivered in person or by prepaid telegraph. Notices shall be addressed to the address specified in your Order and the address posted on our website from time to time, or such other address as the recipient may have specified by notice to the sender.

**10.3 Assignment; Successors.** You may not assign any of your rights or delegate any of your obligations under this Agreement without our prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

**10.4 Independent Contractors.** The parties shall at all times be independent contractors with respect to each other in carrying out this Agreement and neither party shall purport to bind the other.

**10.5 Amendment, Waivers.** No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each party.

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

**10.6 Survival upon Termination or Expiration.** Unless otherwise expressly provided in this Agreement, any termination or expiration hereunder shall not be deemed a cancellation of any orders submitted before the effective date of such termination. Notwithstanding any termination of this Agreement, Section 8 shall survive and remain in effect in accordance with its terms. Any termination of this Agreement shall be without prejudice to any other rights or remedies available under this Agreement or at law.

**10.7 Severability; Cumulative Remedies.** Any provision of this Agreement that is unenforceable shall not cause any other remaining provision to be ineffective or invalid. Except as expressly set forth herein, the rights and remedies of the Parties will not be exclusive and are in addition to any other rights or remedies of the Parties existing in law or in equity.

**10.8 Export Control.** You acknowledge that any Products and the related intellectual property provided under this Agreement are subject to U.S. export laws and regulations, and any use or transfer of such Products or the related intellectual property must be authorized under those regulations. You agree that you will not use, distribute, transfer, or transmit the Products or the related intellectual property in violation of U.S. export regulations. If requested by us, you also agree to sign written assurances and other export-related documents as may be required for us to comply with U.S. export regulations.

**10.9 U.S. Government Restricted Rights.** Products and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer for such purpose is Active Endpoints.

**10.10 Governing Law/Venue/Arbitration.** The validity, construction and performance of this Agreement shall be governed by and interpreted in accordance with the domestic laws of the Commonwealth of Massachusetts, without giving effect to the principles of conflict of laws thereof. Accordingly, the provisions of the United Nations Convention on Contracts for the International Sale of Goods, if applicable, shall not apply to this Agreement. The Parties agree to the exclusive jurisdiction and venue of the State and Federal courts in

Massachusetts. The Parties agree that service of process may be made by mail in accordance with the provisions set forth in Section 10.2 above in addition to any other methods permitted by law. Any dispute that cannot be settled amicably by conciliation (other than disputes relating to our intellectual property or confidential information) shall be submitted to final binding arbitration in accordance with the then-existing Commercial Rules of the American Arbitration Association, before a single arbitrator selected by the parties. All arbitration proceedings shall be held in the Commonwealth of Massachusetts and shall apply the laws of the Commonwealth of Massachusetts.

**10.11 Injunctive Relief.** The parties acknowledge that any breach of Section 9 may cause immediate and irreparable injury and that monetary damages may be inadequate to compensate us for such breach. Having acknowledged the foregoing, you agree that, in the event of such breach, we shall be entitled to injunctive relief, in

addition to all other remedies available to us at law or in equity.

**10.12 Entire Agreement; English Language Controls.** This Agreement, together with the attached Exhibit(s) comprise all the terms, conditions and agreements of the Parties hereto with respect to the subject matter hereof and supersede all previous negotiations, proposals, or agreements relating to your license of the products. This Agreement and all documents, notices, evidence, reports, opinions and other documents given or to be given under this Agreement (collectively with this Agreement, "Documents") are and will be written in the English language only. In the event of any inconsistency between any Document in the English language and any translation of it into another language, the English-language Document will control.

-- END OF TERMS AND CONDITIONS --

Active Endpoints – T&C – # 1538809 v20

**Active Endpoints, Inc.**  
**Exhibit A – Support Terms and Conditions**

**This Schedule is provided only in conjunction with the Active Endpoints Terms and Conditions which is incorporated herein by reference.**

**1. General.**

*"Enhancement"* means any modification or addition that, when made or added to the Product(s), materially changes its or their utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. We, in our sole discretion, may designate Enhancements as minor or major, depending on our assessment of their value and of the function added to the Product(s). Major Enhancements may be offered for an additional charge, at our discretion.

*"Error"* means any failure of the Product(s) to conform in any material respect to its published specifications.

*"Error Correction"* means either a modification or addition that, when made or added to the Product(s), brings the Product(s) into material conformity with its published specifications, or a procedure or routine that, when observed in the regular operation of the Product(s), avoids the practical adverse effect of such nonconformity.

*"Incident"* means a real time interaction with a support representative.

*"Releases"* means new versions of the Product(s), which may include Error Corrections and/or Enhancements.

**2. Scope of Support.**

Important Note: Support applies to the entire set of Product licenses purchased from us. In addition, you are not permitted to selectively purchase Support for a specific Product license. As such, to be eligible for Support you must purchase support encompassing the entirety of the Product licenses you have purchased from us.

2.1. *Support.* We offer a Support via an annual subscription for five named customer contacts:

*Error Correction.* We will be responsible for using commercially reasonable diligence to correct verifiable and reproducible Errors when reported to us in accordance with our standard reporting procedures. The Error Correction, when completed, may be provided in the form of a "temporary fix," consisting of sufficient programming and operating instructions to implement the Error Correction.

*Telephone Hot-Line.* We will maintain a telephone hot-line between the hours of 8 a.m. and 8 p.m. EST Monday through Friday (excluding holidays) that permits you to report problems and seek assistance in the use of the Product(s). Telephone calls will be handled in the order received.

*E-mail Support.* We will maintain an e-mail response system that permits you to report problems and seek assistance in use of the Product(s) via e-mail. Email support is currently only available to named contacts who wish to open an Incident via support@activevos.com. Questions posted on the Web-based forum or email relating to a break/fix issue, or installation/configuration do not count as incidents. These questions will be responded to on a commercially reasonable efforts basis by our support representatives.

*Web-based Support Forum and Educational Content.* The Web-based Support forum will be the primary support mechanism. We will maintain a support forum and knowledge base accessible via the worldwide web that contains information regarding the Product(s). The knowledge base includes access to: support via posting of a request for assistance, educational content including self-pace training programs, and online samples.

*New Releases.* We may, from time to time, issue new Releases of the Product(s), containing Error Corrections and/or Enhancements, to customers who generally have applicable support agreements. We will provide reasonable documentation to assist your installation and operation of each new Release. Because Releases may be cumulative, a Release may only be useful if you have obtained and installed all prior applicable Releases.

*Limitations.* Most types of questions qualify as an incident. For example, assistance with debugging of a project is considered an incident. However, there are limitations to what we can offer, such as generating documentation or samples, or assisting you with third party configuration issues. These types of issues need to be handled through a professional service engagement.

2.2. *On Demand Support.* We offer On Demand Support, a program that builds upon Support, via an annual subscription for five named customer contacts that includes the following support for unlimited Incidents:

*Telephone Hot-Line.* We will maintain a telephone hot-line 24 hours a day, 7 days a week that permits you to report problems and seek assistance in the use of the Product(s). Telephone calls will be handled in the order received.

*Web-based Support Forum and Educational Content .* We will maintain a support forum and knowledge base accessible via the worldwide web that contains information regarding the Product(s). The knowledge base includes access to: support via posting of a request for assistance, educational content including self-pace training programs, and online samples. The On Demand knowledge base may also include access to: business templates and advanced samples.

The On Demand forum is monitored by Active Endpoints Technical Support personnel. Responses on the On Demand forum will be prioritized above all other forums. For time sensitive issues that impact our ability to meet our Service Level Agreement, contact Technical Support directly by telephone.

*Service Level Agreements.* We will enforce a system of response-time standards based on severity of Incident as follows:

- Severity levels
  - Priority 1 (Critical)
    - Production is down or there is a critical impact to our customer's business operation. We will commit required resources around the clock to resolve the problem.
  - Priority 2 (Serious)
    - Production is severely degraded or significant aspects of customer's business operation are being negatively impacted.
  - Priority 3 (Low Impact)
    - Software problem or functional loss resulting in minor impact to customers operation.
  - Priority 4 (Information)
    - No software problem. Customer requires assistance on Active Endpoints technology, product capabilities, installation and configuration.
- Service Level Goals
  - We are committed to working in partnership with our On Demand Support customers to assure successful deployment and production use of our products. In order to assure expectations are met, the following represents our service level goals:
  - Priority 1
    - Response Time: Within one hours (reported by phone).
    - Resolution Goal: 7 working days\* Note: Development resources are committed immediately upon receipt of a reproducible scenario, and a fix is provided ASAP.
  - Priority 2
    - Response Time: Within four hours
    - Resolution Goal: 30 working days\*
  - Priority 3
    - Response Time: Within two business days.
    - Resolution Goal: Next release or documented restriction
  - Priority 4
    - Response Time: Not applicable
    - Resolution Goal: Not applicable

\* We will require assistance from the On Demand in making sure that all necessary information is provided to assist in a speedy resolution to any reported questions or problems; request for this information will form part of the action plan for any open issues which cannot be resolved on the first phone contact. Any problem must be reproducible in our facilities using commercially available hardware, software (operating system, database, network, etc.) and this environment must be on the list of our supported environments. The time clock for Service Level goals starts upon the problem being reproduced in our facility.

- Escalation Policy
  - Priority 1
    - 1 hour: Tech Support Manager
    - 4 hours: Tech Services Director
    - 8 hours: VP
    - 24 hours: CEO
  - Priority 2
    - 4 hours: Tech Support Manager
    - 8 hours: Tech Services Director
    - 24 hours: VP
    - 72 hours: CEO
  - Priority 3
    - 48 hours: Tech Support Manager
    - 72 hours: Tech Services Director
  - Priority 4
    - Not applicable

2.3. *Site Support.* We offer Site Support on a negotiated basis for the Enterprise Edition for five named customer contacts or the number of contacts specified in your Order.

### **3. Exceptions.**

The following matters are not covered by support and maintenance:

- 3.1. Any problem resulting from the misuse, improper use, alteration, or damage of the Product(s);
- 3.2. Any problem caused by modifications in any version of the Product(s) not made or authorized by us;
- 3.3. Any problem resulting from programming other than the Product(s);
- 3.4. Any problem resulting from the combination of the Product(s) with such other programming or equipment to the extent such combination has not been approved by us; or
- 3.5. Errors in any version of the Product(s) other than the most recent Release, provided that we will continue to support the immediately superseded Release as provided in Section 7.

### **4. Staff.**

We will maintain a trained staff capable of rendering the services set forth in this Agreement.

### **5. Support of Previous Version.**

We support the current Major Release and the most recent prior Major Release and their associated Minor Releases.

### **6. Your Cooperation.**

You agree to notify us promptly following the discovery of any Error. Further, upon discovery of an Error, you agree, if requested by us, to submit to us a listing of output and any other data that we may require to reproduce the Error and the operating conditions under which the Error occurred or was discovered. In addition, you are responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Product(s) and to obtain maintenance and support services from us. We will not be responsible for delays caused by events or circumstances beyond our reasonable control.

### **7. Term of Maintenance.**

The initial term of your maintenance begins on the date of the delivery of the key to the Product and continues until the date indicated in the applicable Product Description. Upon expiration of the initial term, each maintenance term shall automatically renew for successive one year periods subject to our then current policies and rates unless you notify us in writing that you desire not to renew maintenance at least 60 days prior to the end of the then current term. We will invoice you for such maintenance fees prior to the expiration of the term.

## **8. Support Discontinuance and Re-Instatement.**

In the event of a lapse in annual maintenance you may obtain Annual Maintenance by paying the Annual Maintenance fee for the new maintenance period plus a re-instatement fee based on a period of time since the lapse in maintenance as specified here.

8.1 If it has been 3 months or less since the expiration of your Annual Maintenance: a re-instatement fee equal to the then current Annual Maintenance fee for the applicable copy of the Software, prorated for the period extending back to the date of expiration of Annual Maintenance, plus 10% of the then current Annual Maintenance fee to bring the Software up to date with any new Error Corrections and/or Enhancement thereto provided to Annual Maintenance customers, plus 12 months forward for Annual Maintenance; or

8.2 If it has been more than 3 months since Annual Maintenance expiration: a re-instatement fee equal to the then current Annual Maintenance fee for the applicable copy of the Software, prorated for the period extending back to the date of expiration of Annual Maintenance, plus 20% of the then current Annual Maintenance fee to bring the Software up to date with any new Error Corrections and or Enhancements thereto provided to Annual Maintenance customers, plus 12 months forward for Annual Maintenance.