

# ActiveXperts Network Monitor Maintenance Agreement

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THIS MAINTENANCE AGREEMENT SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH ACTIVEXPERTS SOFTWARE B.V. WILL PROVIDE MAINTENANCE AND SUPPORT (COLLECTIVELY, "MAINTENANCE") TO LICENSEE. ALL TERMS NOT OTHERWISE DEFINED HAVE THE MEANINGS GIVEN IN THE APPLICABLE LICENSE AGREEMENT.

YOUR GENERAL TERMS OF BUSINESS DO NOT APPLY.

## 1. GENERAL

In this Maintenance Agreement:

- (i) "ActiveXperts" means ActiveXperts Software B.V., Lansinkesweg 4, 7553AE Hengelo (OV), The Netherlands.
- (ii) "Customer" means the individual(s), organization or business entity buying a license of the Software from ActiveXperts or its Distributors or its Resellers.
- (iii) "Software" means computer programs (and their storage medium) supplied by ActiveXperts and known collectively as "ActiveXperts Network Monitor" in which ActiveXperts has property rights and any user manuals, example code, operating instructions, brochures and all other documentation relating to the said computer programs (the expression "Software" to include all or any part or any combination of Software).
- (iv) Patch shall mean a fix to a program error.
- (v) Error shall mean a demonstrable instance of adverse and incorrect operation of the Software that impacts Licensee's ability to use a functionality described in the Documentation.
- (vi) Error Resolution shall mean the following: A solution has been generated in the form of a Patch, or a Version of the Software corrects the error, neither of which create additional problems; or The origin of the Error lies in the Documentation and the appropriate Documentation has been clarified; or ActiveXperts demonstrates that the technical issue is caused by third party software or hardware or other causes beyond ActiveXperts' control.
- (vii) Version means a release of the Software, that is identified in the form of x.y, where x represents a major release or base level, and y represents a minor release level version.

## 2. TERMS

This Maintenance Agreement is in effect for Twelve (12), Twenty-Four (24) or Thirty-Six (36) months, depending on the Agreement period. Customer may purchase Maintenance for additional annual Maintenance periods, unless ActiveXperts has elected to retire the Software for which support is requested. If ActiveXperts does retire the Software, ActiveXperts will notify Licensee at least ninety (90) days before expiration of the existing annual Maintenance period.

Maintenance renewals that come in after the maintenance has expired will be backdated to start from the old expiry date.

ActiveXperts reserves the right, from time to time, to change its standard Maintenance terms and conditions, including the applicable fees. Any change to the Maintenance terms and conditions will not materially reduce the level of support set forth herein. The new Maintenance fees and/or terms and conditions will become effective on Customer's next annual Maintenance period.

This Agreement shall be construed in accordance with the laws of The Netherlands and the Dutch courts shall have sole jurisdiction in any dispute relating to these conditions. If any part of these conditions shall be or become invalid or unenforceable in any way and to any extent by any existing or future rule of law, order, statute or regulation applicable thereto, then the other conditions shall remain in full force and effect as all other provisions.

### 3. DESCRIPTION OF MAINTENANCE

- (i) Support and Response Times: Support is given by answering questions by e-mail or phone in the English language. Support will be responded to within two business days. By giving Support ActiveXperts does not warrant any result. Support as defined in this Maintenance Agreement is an obligation of best intents.
- (ii) Version Life: All Versions of the Software are supported for at least twenty-four (24) months from the date the Software is purchased or a New Version is released.
- (iii) New Versions: Provided that Licensee is a current subscriber to Maintenance, ActiveXperts will make each New Version of the Software that ActiveXperts releases available to Customer.
- (iv) Right to Upgrade Software with New Versions: If Customer has purchased maintenance for its Licenses, then Customer will be entitled to use and distribute an upgraded version of Customer's Software with the new features/functionality of the new Version of the Software incorporated therein. If Customer is not paying for Software Maintenance, Customer shall not have the right to upgrade.

### 4. UPGRADES AND SUPPLEMENTS

If the Software is labeled as an upgrade, you must be properly licensed to use a product identified by ActiveXperts as being eligible for the upgrade in order to use the Software. Software labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this License unless we provide other terms along with the update or supplement. If the Software is an upgrade of a component of a package of software programs that you licensed as a single product, the Software may be used and transferred only as part of that single product package.

### 5. PAYMENT OF FEES / SUSPENSION OF MAINTENANCE FOR NON-PAYMENT

Unless otherwise agreed in writing by the parties, Maintenance fees for the first annual Maintenance period are due within thirty (30) calendar days of the commencement date of the applicable license agreement, but no later than thirty (30) calendar days of the commencement date of this Maintenance Agreement. If Licensee chooses to renew Maintenance for subsequent annual Maintenance periods, the annual Maintenance fees shall be due and payable thirty (30) days following the next Maintenance period anniversary date, unless otherwise agreed in writing by ActiveXperts. If payment is not received pursuant the applicable payment terms agreed between parties, and ActiveXperts has not received confirmation that Licensee has elected to renew Maintenance for the coming year within thirty (30) days of Maintenance anniversary date, ActiveXperts shall have the right to discontinue Licensee's Maintenance until such time as Customer pays the applicable Maintenance fees in full. ActiveXperts shall have no obligation to provide Customer with Maintenance if Customer has not paid the applicable Maintenance fees pursuant to the agreed payment terms.

### 6. EXCLUSIONS

- (i) Maintenance does not cover resolution of Errors which result from (a) third party software or hardware, (b) any non-ActiveXperts modification to the Software, or (c) use of the Software by Customer which is not in accordance with the documentation.
- (ii) ActiveXperts will only support (development) platforms and operating systems for which all components are supported by their respective vendors, under standard conditions, at the date the support request is made by the Customer to ActiveXperts.
- (iii) Maintenance does not cover modifications to the Software (to work around the dysfunction or limitation of third party software, hardware or services).

### 7. TERMINATION

Without prejudice to any other rights, ActiveXperts may cancel or dissolve this Maintenance Agreement if Customer does not abide by the terms and conditions of the applicable License Agreement or this Maintenance Agreement.

## 8. LIMITATION OF LIABILITY AND REMEDIES

Customer's exclusive remedy and the entire liability of ActiveXperts will be, at ActiveXperts option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to Customer. In no event does ActiveXperts warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. The Customer will safeguard ActiveXperts against any claim relating to the use of the Software by the Customer.

ActiveXperts is in no event liable if the Customer has not reported an Error to ActiveXperts within two business days and/or if the software (a) has been altered, except by ActiveXperts, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by ActiveXperts, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultra hazardous activities. Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct, indirect or general damages), the entire liability of ActiveXperts under any provision of this Maintenance Agreement and your exclusive remedy for all of the foregoing shall be limited to the greater of the amount actually paid by you for the Maintenance of the Software with a maximum of U.S.\$5.00. ActiveXperts is relieved of any obligation to pay damages if the Customer has not upgraded the Software when possible. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

## 9. OTHER TERMS

ActiveXperts shall become owner of all the intellectual property relating to the Support.

All other terms of the applicable license, including but not limited to the sections related to the license grants, title and general contractual provisions, are hereby incorporated by reference. In the event of any inconsistency between the terms of the applicable license agreement and the terms of the Maintenance Agreement, the terms of this Maintenance Agreement shall control only with respect to determining ActiveXperts' obligations with respect to providing Maintenance. In all other cases, the applicable license agreement will prevail.