



PRODUCT EVALUATION AGREEMENT

IMPORTANT: WE ARE PROVIDING THIS 30-DAY EVALUATION PRODUCT FOR YOUR USE SUBJECT TO YOUR AGREEMENT TO THE CONDITIONS SET FORTH BELOW. IF THESE TERMS AND CONDITIONS ARE NOT ACCEPTABLE TO YOU, DO NOT ACTIVATE THE EVALUATION PRODUCT.

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.

BY ACTIVATING THE EVALUATION PRODUCT, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND AND ABIDE BY ITS TERMS AND CONDITIONS.

The term of this agreement is 30 days from the date of your request to evaluate the Evaluation Product (the "**Evaluation Period**"). The "**Site**" where the Evaluation Product will be used the location specified in your registration.

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.

"*Evaluation Product*" means the version of our commercially available software provided to you by us for evaluation pursuant to this Agreement. The Evaluation Product may include software resident at client endpoint devices ("**Client Software**") and software resident on servers ("**Server Software**") when referenced collectively ("**Software**"). The Evaluation Product is licensed in object code form only, not sold.

2. **Limited License.**

(a) **Grant of License.** Active Endpoints grants Customer a royalty-free, nonexclusive, nontransferable, non-sublicensable, revocable license to use one copy of the Evaluation Product on one machine for evaluation purposes only during the Evaluation Period, at the Site, subject to all terms and conditions set forth in this Agreement. The license granted by this Agreement shall automatically terminate upon the expiration of the Evaluation Period unless extended in writing by Active Endpoints. Customer shall immediately destroy all copies of the Evaluation Product upon termination of this Agreement unless Customer subscribes for the Evaluation Product. The Evaluation Product is licensed not sold. 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.

(b) **Copies, Distribution.** Customer shall not copy the Evaluation Product onto any public or distributed network, operate the Evaluation Product in or as a SaaS environment, or modify the Evaluation Product. Customer may make copies of the Evaluation Product only for backup and archival purposes.

(c) **Intellectual Property Rights.** Except for the limited license rights granted to the Customer under section 2(a), all right, title and interest in and to the Evaluation Product, including without limitation all intellectual property embodied therein, shall remain exclusively in Active Endpoints. Customer acknowledges that the software and the documentation is copyrighted. Customer agrees that all intellectual property rights and other ownership rights in any ideas, modifications or suggestions it proposes or creates relating to the Evaluation Product are hereby assigned to Active Endpoints and shall be the sole and exclusive property of Active Endpoints. All third party licensors and suppliers retain all right, title and interest in third party software and all copies thereof, including all copyright and other intellectual property rights.

(d) **No Reverse Engineering or Modification; Proprietary Notices.** Neither the Customer nor its employees or consultants shall attempt to disassemble, alter, decompile or otherwise reverse engineer or modify the Evaluation Product in

any way or use the Evaluation Product for production purposes. Customer shall not remove or modify any copyright or other proprietary rights notices or confidentiality legends placed contained in the Evaluation Product.

3. **Limitation of Liability.**

THE EVALUATION PRODUCT IS PROVIDED "AS IS." ACTIVE ENDPOINTS MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE EVALUATION PRODUCT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ACTIVE ENDPOINTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR THE USE OF THE EVALUATION PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES, INCLUDING LOST PROFITS OR LOST DATA, EVEN IF ACTIVE ENDPOINTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACTIVE ENDPOINTS HAS NO LIABILITY IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE ARISING OUT OF THIS AGREEMENT OR THE USE AND/OR EVALUATION OF THE EVALUATION PRODUCT. CUSTOMER WAIVES ANY AND ALL CLAIMS THAT IT MAY HAVE AGAINST ACTIVE ENDPOINTS ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THE EVALUATION PRODUCT.

4. **Confidentiality.**

Customer acknowledges that the Evaluation Product, information relating to the Evaluation Product and the results of its evaluation contain and constitute commercially valuable, proprietary trade secrets and confidential information of Active Endpoints. Customer and its employees shall keep all information pertaining to the Evaluation Product and such results confidential for a period of three (3) years from the termination of this agreement, unless given written permission by Active Endpoints to disclose such information. This Agreement imposes no obligation upon Customer with respect to information that Customer's can establish (a) was in the Customer possession before receipt from Active Endpoints; (b) is or becomes available to the public through no fault of the Customer; (c) was received in good faith by Customer from a third party that was not subject to an obligation of confidentiality; or (d) is independently developed by Customer without reference to information received hereunder.

5. **Miscellaneous.**

(a) **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.

(b) **Governing Law; Enforceability.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflicts of law. The invalidity or unenforceability of any part of this Agreement for any reason whatsoever shall not affect the validity or enforceability of the remainder.

(c) **Assignment.** Neither party shall assign or sublicense its rights or obligations under this Agreement, except that Active Endpoints may assign such rights or obligations to a successor to substantially all of its business pertaining to the Evaluation Product.

(d) **Injunctive Relief.** Customer acknowledges and agrees that the non-disclosure and limited-use provisions set forth in this Agreement (collectively, the "**Restrictive Covenants**") are reasonable and necessary for the protection of the Active Endpoints' business interests, that irreparable injury will result to Active Endpoints if Customer breaches any of the terms of said Restrictive Covenants, and that in the event of the Customer's actual or threatened breach of any such Restrictive Covenants, Active Endpoints will have no adequate remedy at law. Customer accordingly agrees that in the event of any actual or threatened breach by it of any of the Restrictive Covenants, Active Endpoints shall be entitled to immediate temporary injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages. Nothing contained herein shall be construed as prohibiting Active Endpoints from pursuing any other remedies available to it for such breach or threatened breach, including recovering any damages.