



SUPPORT SERVICES AND SERVICE LEVEL CONDITIONS FOR ACTYX CLOUD AND HYBRID SERVICES

2 May 2019

These terms and conditions form part of the contract concluded separately with the customer (hereinafter "**Individual contract**") concerning the licensing of software (hereinafter "**Actyx Software**") by Actyx. The Actyx Software is provided as cloud-based software as a service or "SaaS" (hereinafter "**Cloud Service**") or on hardware provided by the customer or provided to the customer by Actyx. The provision of support services and adjustments to the Actyx Software and the Cloud Service level to be maintained by Actyx shall be governed by these provisions.

1. SUBJECT MATTER OF THE CONDITIONS

- 1.1 The following provisions specify the services owed by Actyx according to the individual contract concluded with the customer.
- 1.2 These provisions supplement and do not supersede the provisions relating to maintenance in accordance with the GENERAL TERMS AND CONDITIONS FOR ACTYX CLOUD, EDGE AND HYBRID SERVICES in force at the time of conclusion of the individual contract. The customer is entitled at any time to assert its rights due to the non-granting of the Actyx Software and the breach of duty during the performance of the services. If the customer asserts these rights, the customer can only assert the following rights to an extent that goes beyond this.

2. PERFORMANCE OF SERVICES

- 2.1 Actyx will provide support services based on state of the art technology. Actyx considers general process descriptions and industry standards (e.g. ITIL, DIN) as well as specific regulations, methods and application practices of the customer, if applicable.
- 2.2 Actyx will only employ qualified and reliable personnel. Only best practices and tools are used, the suitability of which is known to Actyx, and its implementation has been mastered and corresponds to the applicable state of the art.

3. AVAILABILITY OF THE CLOUD SERVICE

- 3.1 Actyx will make commercially reasonable efforts to provide customers with access to the Cloud Service 24 hours a day, 7 days a week, based on a monthly cloud service uptime rate of 99%.
- 3.2 The Cloud Service is available if it could be accessed during the period in question in accordance with the percentage share in accordance with the quality parameters specified in the individual contract.
- 3.3 When calculating the actual availability, any downtime not attributable to the provider shall be deemed to be available time. These harmless downtimes are
 - maintenance services or other services agreed with the customer that prevent access to the Cloud Service;

- unforeseen maintenance work becoming necessary, if this work was not caused by a breach of the obligations of Actyx to provide the services (force majeure, in particular unforeseeable hardware failures, strikes, natural disasters, etc.);
- downtimes due to virus or hacker attacks, insofar as Actyx has taken the agreed protective measures or, in the absence of an agreement, the usual protective measures;
- downtimes due to customer specifications, non-availability of customer equipment or other interruptions caused by the customer (e.g. failure of the customer to cooperate);
- extended downtime caused by the customer blocking console or remote access;
- downtime due to software vendor specifications;
- downtime for the installation of urgently needed security patches;
- downtime due to software errors in customer applications or due to errors in system and system-related software caused by customer applications or data;
- downtime caused by third parties (persons not attributable to Actyx).

The periods for the execution of scheduled maintenance work and data backups, which are associated with a restriction or failure of operation, shall be agreed with the customer at least 5 days in advance.

4. DEFECT AND MALFUNCTION REPORTS AND SERVICE TIMES

- 4.1 The notification of defects of the Actyx Software and of faults in the Cloud Services by the customer must be made to the service desk provided by Actyx. The service desk is available 24 hours a day, 7 days a week at <https://support.actyx.io/>. by telephone at +4932211122247 or by email at support@actyx.io.
- 4.2 The notification of defects of the Actyx Software must always be made in writing, e.g. by email to the service desk. A verbal notification is sufficient if this is confirmed to the customer by the service desk. Otherwise, the customer must submit the written notification within two working days at the latest. The notification shall describe precisely the defect (in particular the conditions under which it occurs, symptoms and effects of the deficiency) and include a proposal to classify the deficiency into a category according to Clause 5.2 of these terms.
- 4.3 Upon receipt of a notification pursuant to Clause 4.1, the service desk will create an incident and assign a ticket number to it. The ticket number allows subsequent communication between the service desk or Actyx employees who are in charge of the incident and the customer to be allocated to the incident.

5. REMOVAL OF DEFECTS AND MALFUNCTIONS

- 5.1 Actyx will remedy any defects in the Actyx Software which occur during the term of the individual contract concluded with the Customer in accordance with the following provisions.
- 5.2 Defects occurring on the Actyx Software are to be classified in the following categories and then processed according to the response times and recovery times. Actyx will keep the customer informed of the status and success of the removal.

Priority	Classification	Description
1	Critical Defect	A malfunction that causes a failure of the entire system or essential parts of it, so that use is completely or almost completely impossible. The operating procedure is impaired to such an extent that immediate remedial action is unavoidable.
2	Significant Defect	A malfunction which impairs the use of the system to such an extent that reasonable work with the system is no longer possible or only possible with disproportionate effort. The simultaneous occurrence of several significant performance deficiencies can lead to a critical performance deficiency.
3	Other Defect	Other malfunctions that do not or only insignificantly impair the use of the system. The simultaneous occurrence of several such defects can lead to a significant or critical lack of performance.

- 5.3 Actyx shall classify the defects into the different categories at its reasonable discretion taking into account (i) the impact of the relevant deficiency on the Customer's business and (ii) Actyx's interests.
- 5.4 Actyx will respond to the notification of a defect by the customer within the following deadlines ("**Response Period**"):
- In case of critical defects within 2 hours after receipt of the notification.
 - In the case of significant defects within 18 hours of receipt of the notification.
 - For other defects, within 36 hours of receipt of the notification.
- 5.5 The services of Actyx within the meaning of this contract include the limitation of the cause of the defect, the diagnosis of the defect as well as services aimed at the removal of the defect (in particular patches and service packs). Actyx is not responsible for the correction of the defect. Actyx can also provide defect handling services at its discretion by circumvention, update or upgrade delivery and, after consultation with the customer, by provision of a new version.

- 5.6 In the event of several performance deficiencies being present at the same time, the customer is entitled to set Actyx priorities for rectification. Actyx's obligation to comply with the response and rectification deadlines specified for each defect category remains unaffected.
- 5.7 If, in the course of maintenance work, it appears that the priority initially assigned to the fault is no longer justified, Actyx shall be entitled to adjust the priority to the actual circumstances.
- 5.8 Actyx shall be entitled to perform the maintenance services by remote maintenance or remote diagnosis, provided that this is not detrimental to the customer, in particular that it does not exceed the timeframe for performing the relevant maintenance services on site, that there are no risks to IT security and that customer's technical requirements are met.
- 5.9 Upon receipt of a proper fault report from the customer concerning the Cloud Service, Actyx will start the analysis and, if possible, the remedy of the fault within the response times specified in Clause 5.4 at the latest. The work to remedy the fault shall be carried out within the scope of Actyx's capabilities and in compliance with its contractual obligations. A claim to the removal of the malfunction within a certain time does not follow from the agreement of reaction times.
- 5.10 A malfunction of the Cloud Service to be remedied by Actyx shall not be deemed to be an impairment of data transmission outside the data network operated by Actyx, e.g. due to a line failure or malfunction at other providers or telecommunications providers, or a breach of contract of the system capacities provided, e.g. due to an excessive number of visits by the customer.

6. NEW PROGRAMME VERSION

- 6.1 Actyx ensures that the Actyx Software is always adapted to the latest state of the art and that a consistent release status is held in the customer's system. Actyx will provide the customer with the latest programme version and install it for this purpose. The customer is obliged to have Actyx install the latest programme versions within 90 days of release.
- 6.2 The user documentation is adapted to the current programme version.
- 6.3 The object of the maintenance services owed under the contract is the current program version.

7. CUSTOMER DUTIES OF COOPERATION

- 7.1 The customer shall provide Actyx with on-site access to its premises, access to the hardware and software required for the provision of the services and the necessary technical facilities during its regular business hours and to the extent necessary. To the extent required by the urgency of the respective support services, access shall also be granted outside the customer's regular business hours. Actyx will ensure that the customer's business operations are disturbed as little as possible by activities on site.

7.2 The customer will appoint a qualified member of staff to act as Actyx's point of contact who will be authorised to make the decisions necessary to provide the support services.

8. REMUNERATION

No separate fee will be charged for the provision of support services in the event of a defect in the Actyx Software or a malfunction of the Cloud Service under these provisions.

9. OTHER

Otherwise, the provisions of the GENERAL TERMS AND CONDITIONS FOR ACTYX CLOUD, EDGE and HYBRID SERVICES shall apply mutatis mutandis to the provision of support services.