

THE ACTIVESTATE® PLATFORM TERMS OF USE AND SERVICE AGREEMENT

Effective Date: March 16, 2018

Thank you for using the ActiveState Platform. By using the ActiveState Platform (as defined below) and any related software, you ("You" and or "Your") (as defined below) accept and agree to be bound by the following terms and conditions (the "Agreement"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE ACTIVESTATE PLATFORM.

The Agreement is effective between (a) You and (b) ActiveState Software Inc., a British Columbia Corporation ("ActiveState"). It is effective as of the date You accept this Agreement.

ActiveState may update or change this Agreement from time to time and recommends that you review the Agreement on a regular basis as posted on ActiveState's website. You understand and agree that your continued use of the ActiveState Platform after the Agreement has changed constitutes your acceptance of the Agreement as revised.

A. DEFINITIONS

- 1.1 The "Agreement" refers, collectively, to all the terms, conditions, notices contained or referenced in this document (the "Terms of Service" or the "Terms") and all other operating rules, policies for the ActiveState Platform.
- 1.2 The "Service" refers to the applications, software, products, and services provided by ActiveState and the ActiveState Platform.
- 1.3 The "ActiveState Platform" refers to ActiveState's ActiveState Platform located at www.activestate.com and all content, services, and products provided by ActiveState at or through the ActiveState Platform. It also refers to ActiveState-owned subdomains of activestate.com. Occasionally, websites and or products owned by ActiveState may provide different or additional terms of service. If those additional terms conflict with this Agreement, the more specific terms apply to the relevant page or service.
- 1.4 "The User," "You," and "Your" refer to the individual person, company, or organization that has visited or is using the ActiveState Platform and or Service; that accesses or uses any part of the account; or that directs the use of the account in the performance of its functions. A User must be at least 13 years of age. Special terms may apply for business or government accounts See Section B 4.: Additional Terms.
- 1.5 "ActiveState," "We," and "Us" refer to ActiveState Software, Inc., as well as our affiliates, directors, subsidiaries, contractors, licensors, officers, agents, and employees.
- 1.6 "Content" refers to content featured or displayed through the ActiveState Platform, including without limitation text, data, articles, images, photographs, graphics, software, applications, designs, features, and other materials that are available on the ActiveState Platform or otherwise available through the Service. "Content" also includes Services. "User-Generated Content" is Content, written or otherwise, created or uploaded by our Users. "Your Content" is Content that you create or own.
- 1.7 "Distribution" means any of ActivePerl, ActivePython, ActiveTcl, ActiveGo, ActiveRuby, ActiveNode, ActiveLua and or other custom distributions that the ActiveState Platform builds, maintains, updates, hosts, and distributes to Users of the ActiveState Platform including, but not limited to, source code, binary executables, documentation, images and scripts, which are distributed by ActiveState, and derivatives of that collection and/or those files.
- 1.8 "User Data" means all information and data collected by the ActiveState Platform or otherwise transmitted by the ActiveState Platform to ActiveState and or by other ActiveState products, including any data, metadata, metrics, statistics, or other information relating to the performance, operations, resource, health, or other

conditions of the ActiveState Platform and or resulting language distributions created by the ActiveState Platform, any component thereof (including third party components), and any related infrastructure, such as network host names, IP addresses, interpreter used, and system architecture, which includes filenames, full path, file size, and content hash.

B. ACCOUNT TERMS

1. Required Information

You must provide a valid email address in order to complete the signup process. Any other information requested, such as your real name, is optional, unless you are accepting these terms on behalf of a legal entity (in which case we may need more information about the legal entity) or if you opt for a paid account (See Section I), in which case additional information will be necessary for billing purposes.

2. Account Requirements

We have a few simple rules for accounts use of the ActiveState Platform and or Service.

2.1 You must be a human to create an account. Accounts registered by "bots" or other automated methods are not permitted. We do permit machine accounts: A machine account is an account set up by an individual human who accepts the Terms on behalf of the account, provides a valid email address, and is responsible for its actions. A machine account is used exclusively for performing automated tasks. Multiple users may direct the actions of a machine account, but the owner of the account is ultimately responsible for the machine's actions. You may maintain no more than one free machine account in addition to your free personal account.

2.2 One person or legal entity may maintain no more than one free account (if you choose to control a machine account as well, that's fine, but it can only be used for running a machine).

2.3 You must be age 13 or older. While we are thrilled to see brilliant young coders get excited by learning to program, we must comply with United States and Canadian law. ActiveState does not target our Service to children under 13, and we do not permit any Users under 13 on our Service. If we learn of any User under the age of 13, we will terminate that User's account immediately as per Section J of this Agreement. If you are a resident of a country outside the United States or Canada, your country's minimum age may be older; in such a case, you are responsible for complying with your country's laws.

2.4 Your login may only be used by one person — i.e., a single login may not be shared by multiple people. A paid organization account may create separate logins for as many users as its subscription allows.

2.5 Overall, the number of Users must not exceed the number of accounts you've ordered from us.

3. User Account Security

3.1 You are responsible for keeping your account secure while you use our Service. We offer tools such as two-factor authentication to help you maintain your account's security, but the content of your account and its security are up to you.

3.2 You are responsible for all content posted and activity that occurs under your account (even when content is posted by others who have accounts under your account).

3.3 You are responsible for maintaining the security of your account and password. ActiveState cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.

3.4 You will promptly notify ActiveState if you become aware of any unauthorized use of, or access to, our Service through your account, including any unauthorized use of your password or account.

4. Additional Terms

If you have signed up for a paid plan with ActiveState as per the Quote/Invoice (as defined in the appropriate addendum), then such addendum applies to you and you agree to its provisions. The applicable addendums are either [Business Edition](#), [Enterprise Edition](#), [Enterprise Edition Limited](#), and or a custom signed agreement between you and ActiveState.

C. ACCEPTABLE USE

1. Compliance with Laws and Regulations

- 1.1 Your use of the ActiveState Platform and Service must not violate any applicable laws, including copyright or trademark laws, export control laws, or other laws in your jurisdiction. You are responsible for making sure that your use of the Service is in compliance with laws and any applicable regulations.
- 1.2 If You are located outside of the United States, You further agree to comply with Your own local laws regarding online conduct and acceptable content.
- 1.3 Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the ActiveState Platform. Diversion contrary to U.S. law is prohibited. Without limiting the foregoing, You agree that (1) You are not, and are not acting on behalf of North Korea, Sudan or Syria, or any other country to which the United States has prohibited export transactions; (2) You are not, and are not acting on behalf of, any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (3) You will not use the ActiveState Platform for, and will not permit the ActiveState Platform to be used for, any purposes prohibited by law, including, without limitation, for any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.

2. Content Restrictions

You agree that you will not under any circumstances upload, post, host, or transmit any content that:

- is unlawful or promotes unlawful activities;
- is or contains sexually obscene content;
- is libelous, defamatory, or fraudulent;
- is discriminatory or abusive toward any individual or group;
- contains or installs any active malware or exploits, or uses our platform for exploit delivery (such as part of a command and control system); or
- infringes on any proprietary right of any party, including patent, trademark, trade secret, copyright, right of publicity, or other rights.

3. Conduct Restrictions

Prohibited Uses of the ActiveState Platform. Please note the following prohibitions apply to the ActiveState Platform, as provided to you by ActiveState. Nothing in this Section prevents you from creating your own service with different terms and conditions. You may not access the ActiveState Platform for the purpose of monitoring its availability, performance and functionality, or for any other benchmarking or competitive purposes. You agree that You are responsible for your own conduct and content while using the ActiveState Platform and for any consequences thereof. You agree to use the ActiveState Platform only for purposes that are legal, proper and in accordance with this Agreement and any applicable policies or guidelines. By way of example, and not as a limitation, You agree that when using the ActiveState Platform, You will not, and will not permit users or other third parties to:

- (i) defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- (ii) upload, post, email or transmit or otherwise make available any inappropriate, defamatory, infringing, obscene, or unlawful content;
- (iii) upload, post, email or transmit or otherwise make available any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party, unless You (or the user posting the content) are the owner of the rights or have the permission of the owner to post such content;
- (iv) upload, post, email or transmit or otherwise make available messages that promote pyramid schemes, chain letters or disruptive commercial messages or advertisements, or anything else prohibited by applicable law, this Agreement, or any applicable policies or guidelines.

- (v) distribute any file posted by another that You know, or reasonably should know, cannot be legally distributed in such manner;
- (vi) impersonate another person or entity, or falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material;
- (vii) restrict or inhibit any other user from using and enjoying the ActiveState Platform;
- (viii) use the ActiveState Platform for any illegal or unauthorized purpose;
- (ix) remove any copyright, trademark or other proprietary rights notices contained in or on the ActiveState Platform;
- (x) interfere with or disrupt the ActiveState Platform or servers or networks connected to the ActiveState Platform, or disobey any requirements, procedures, policies or regulations of networks connected to the ActiveState Platform;
- (xi) create User Accounts by automated means or under false or fraudulent pretenses;
- (xii) promote or provide instructional information about illegal activities or promote physical harm or injury against any group or individual; or
- (xiii) transmit any viruses, worms, defects, trojan horses, or any items of a destructive nature.

4. Services Usage Limits

You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service, or access to the Service without ActiveState's express written permission.

5. Privacy

5.1 Misuse of ActiveState Users' Personal Information is prohibited.

5.2 Any person, entity, or service collecting data from ActiveState must comply with the [ActiveState Privacy Statement](#), particularly in regards to the collection of our users' personal information. If you collect any ActiveState user's personal information from ActiveState, you agree that you will only use the personal information you gather for the purpose for which our User has authorized it. You agree that you will reasonably secure any personal information you have gathered from ActiveState, and you will respond promptly to complaints, removal requests, and "do not contact" requests from ActiveState or ActiveState Users.

6. Excessive Resource Use

If we determine your bandwidth, storage, and or compute usage to be significantly excessive in relation to other Users, we reserve the right to suspend your account or throttle your usage of the ActiveState Platform until you can reduce your resource consumption.

7. User Protection

You agree not to engage in activity that significantly harms our Users. We will resolve disputes in favor of protecting our Users as a whole.

D. USER-GENERATED CONTENT

1. Responsibility for User-Generated Content

You may create or upload User-Generated Content while using the Service. You are solely responsible for the content of, and for any harm resulting from, any User-Generated Content that you post, upload, link to or otherwise make available via the Service, regardless of the form of that Content. We are not responsible for any public display or misuse of your User-Generated Content.

2. ActiveState May Remove Content

We do not pre-screen User-Generated Content, but we have the right (though not the obligation) to refuse or remove any User-Generated Content that, in our sole discretion, violates any ActiveState terms or policies.

3. Ownership of Content, Right to Post, and License Grants

You retain ownership of and responsibility for Content you create or own ("Your Content"). If you're posting anything you did not create yourself or do not own the rights to, you agree that you are responsible for any Content you post; that you will only submit Content that you have the right to post; and that you will fully comply with any third party licenses relating to Content you post. Because you retain ownership of and responsibility for Your Content, we need you to grant us — and other ActiveState Users — certain legal permissions, listed in Sections D.4 — D.8. These license grants apply to Your Content. If you upload Content that already comes with a license granting ActiveState the permissions we need to run our Service, no additional license is required. You understand that you will not receive any payment for any of the rights granted in Sections D.4 — D.8. The licenses you grant to us will end when you remove Your Content from our servers, unless other Users have forked it.

4. User Data

You acknowledge, agree, and expressly consent to ActiveState's collection of Your User Data through the Service. ActiveState does not claim ownership of any User Data. You hereby grant to ActiveState and its sublicensees a royalty-free, perpetual, irrevocable, transferable, worldwide non-exclusive right to reproduce, analyse, review, process, diagnose, or otherwise use the User Data (in whole or in part) for the purpose of supporting, maintaining, and providing the ActiveState Platform, the maintenance and support, if any, and any related services provided by ActiveState relating to the ActiveState Platform (the "User Data License"). ActiveState will not disclose the User Data to any third parties and will only use the User Data in accordance with the User Data License, except that ActiveState may provide Your User Data to third parties providing services relating to the ActiveState Platform to ActiveState (which will protect the User Data on terms and conditions that are commensurate in scope with this Agreement). In addition to the rights granted under the User Data License, You acknowledge and agree that ActiveState has the right to (i) publicly disclose, in any manner whatsoever, User Data that have been anonymized; and (ii) review or analyze the User Data and publicly disclose any results of such review or analysis, including in the form of reports, blog posts, newsletters, marketing materials, or otherwise, provided You will not be identified in such publicly disclosed materials.

5. License Grant to Us

We need the legal right to do things like host Your Content, publish it, and share it. You grant us and our legal successors the right to store, parse, and display Your Content, and make incidental copies as necessary to render the ActiveState Platform and provide the Service. This includes the right to do things like copy it to our database and make backups; show it to you and other users; parse it into a search index or otherwise analyze it on our servers; share it with other users; and perform it, in case Your Content is something like music or video.

This license does not grant ActiveState the right to sell Your Content or otherwise distribute or use it outside of our provision of the Service.

6. License Grant to Other Users

Any User-Generated Content you post publicly, including issues, comments, and contributions to other Users' projects, may be viewed by others. By setting your projects to be viewed publicly, you agree to allow others to view and "fork" your projects (this means that others may make their own copies of Content from your projects in projects they control).

If you set your projects to be viewed publicly, you grant each User of ActiveState a non-exclusive, worldwide license to use, display, and perform Your Content through the ActiveState Service and to reproduce Your Content solely on ActiveState as permitted through ActiveState's functionality (for example, through forking). If you are uploading Content you did not create or own, you are responsible for ensuring that the Content you upload is licensed under terms that grant these permissions to other ActiveState Users.

7. Contributions Under Project License

Whenever you make a contribution to a project containing notice of a license, you license your contribution under the same terms, and you agree that you have the right to license your contribution under those terms.

If you have a separate agreement to license your contributions under different terms, such as a contributor license agreement, that agreement will supersede.

8. Moral Rights

- 8.1 You retain all moral rights to Your Content that you upload, publish, or submit to any part of the Service, including the rights of integrity and attribution. However, you waive these rights and agree not to assert them against us, to enable us to reasonably exercise the rights granted in Section D.5, but not otherwise.
- 8.2 To the extent this agreement is not enforceable by applicable law, you grant ActiveState the rights we need to use Your Content without attribution and to make reasonable adaptations of Your Content as necessary to render the ActiveState Platform and provide the Service.

E. PRIVATE PROJECTS

1. Control of Private Projects.

Some accounts, such as paid accounts, may have private projects, which allow the User to control access to Content.

2. Confidentiality of Private Projects.

ActiveState considers the contents of private projects to be confidential to you. ActiveState will protect the contents of private projects from unauthorized use, access, or disclosure in the same manner that we would use to protect our own confidential information of a similar nature and in no event with less than a reasonable degree of care.

3. Access.

ActiveState employees may only access the content of your private projects in the following situations:

3.1 With your consent and knowledge, for support reasons. If ActiveState accesses a private repository for support reasons, we will only do so with the owner's consent and knowledge.

3.2 When access is required for security reasons.

3.3 You may choose to enable additional access to your private projects. For example: You may enable various ActiveState services or features that require additional rights to Your Content in private projects. These rights may vary depending on the service or feature, but ActiveState will continue to treat your private project Content as confidential. If those services or features require rights in addition to those we need to provide the ActiveState Service, we will provide an explanation of those rights.

3.4 You may also grant a third-party application authorization to use, access, and disclose the contents of your private projects. Your use of third-party applications is at your sole risk; ActiveState is not liable for disclosures to third parties that you authorize to access a private repository.

4. Exclusions.

If we have reason to believe the contents of a private project are in violation of the law or of these Terms, we have the right to access, review, and remove them. Additionally, we may be compelled by law to disclose the contents of your private projects.

F. COPYRIGHT INFRINGEMENT AND DMCA POLICY

If you believe that content on our website violates your copyright, please contact us at support@activestate.com. If you are a copyright owner and you believe that content on ActiveState violates your rights, please contact us. There may be legal consequences for sending a false or frivolous takedown notice. Before sending a takedown request, you must consider legal uses such as fair use and licensed uses. We will terminate the accounts of repeat infringers of this policy.

G. INTELLECTUAL PROPERTY NOTICE

1. ActiveState's Rights to Content

1.1 ActiveState and our licensors, vendors, agents, and/or our content providers retain ownership of all intellectual property rights of any kind related to the ActiveState Platform and Service and the

Distributions. We reserve all rights that are not expressly granted to you under this Agreement or by law. The look and feel of the ActiveState Platform, the Service, the Distributions are copyright © ActiveState Software, Inc. All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from ActiveState.

- 1.2 Reservation of Rights. Subject to the limited rights expressly granted hereunder, ActiveState reserves all right, title and interest in and to the ActiveState Platform and Distributions, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 1.3 Restrictions. You shall not (i) create derivative works based on the ActiveState Platform and or the Distributions, (ii) copy, frame or mirror any part or content of the ActiveState Platform, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iii) copy, frame or mirror any part or content of the Distributions except as specified in applicable license agreement attributable to the relevant Distribution, (iv) reverse engineer the ActiveState Platform and or any Distributions, or (v) access the ActiveState Platform in order to (a) build a competitive product, or (b) copy any features, functions or graphics of the ActiveState Platform.
- 1.4 Restrictions. You shall not (i) permit any third party to access the ActiveState Platform or (ii) frame or mirror any third party content of the ActiveState Platform, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes.
- 1.5 Ownership of User Data. As between ActiveState and You, You exclusively own all right, title and interest in and to all of Your User Data. You will be solely responsible for the accuracy, quality, integrity and legality of Your User Data and of the means by which You acquired User Data.

2. ActiveState Trademarks and Logos

- 2.1 Any trademarks, logos and ActiveState marks displayed on the ActiveState sites are the property of their owners, whether ActiveState or third parties.
- 2.2 If you'd like to use ActiveState's trademarks, you must follow all of our trademark guidelines and seek written permission from ActiveState prior to use of any of ActiveState's trademarks.

3. Open Source Software.

The ActiveState Platform may include or use open source software components, each of which is licensed to You under its own applicable license terms and conditions, which can be found in the license file or the corresponding source files for such software component.

4. License to this Agreement

This Agreement is licensed under the Creative Commons Zero license.

5. Confidential Information

"Confidential Information" shall mean all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, planned product features, functionality, performance and software source documents relating to ActiveState, and other information provided by ActiveState, whether disclosed orally, in writing, or by examination or inspection, other than information which You can demonstrate (i) was already known to You, other than under an obligation of confidentiality, at the time of disclosure; (ii) was generally available in the public domain at the time of disclosure to You; (iii) became generally available in the public domain after disclosure other than through any act or omission of You; (iv) was subsequently lawfully disclosed to You by a third party without any obligation of confidentiality; or (v) was independently developed by You without use of or reference to any information or materials disclosed by ActiveState or its suppliers. You shall not use any Confidential Information for any purpose other than as expressly authorized under this Agreement. In no event shall You disclose any Confidential Information to any third party. Without limiting the foregoing, You shall use at least the same degree of care that You use to prevent the disclosure of your own confidential information of like importance, but in no event less than reasonable care, to prevent the disclosure of such Confidential Information.

H. API Terms

1. No Abuse or Overuse of the API

- 1.1 Abuse or excessively frequent requests to ActiveState via the API may result in the temporary or permanent suspension of your account's access to the API. ActiveState, in our sole discretion, will determine abuse or excessive usage of the API. We will make a reasonable attempt to warn you via email prior to suspension.
- 1.2 You may not share API tokens to exceed ActiveState's rate limitations.
- 1.3 You may not use the API to download data or Content from ActiveState for spamming purposes, including for the purposes of selling ActiveState users' personal information, such as to recruiters, headhunters, and job boards.
- 1.4 All use of the ActiveState API is subject to these Terms of Service.
- 1.5 ActiveState may offer subscription-based access to our API for those Users who require high-throughput access or access that would result in resale of ActiveState's Service.

I. PAYMENT

1. Pricing

Our pricing and payment terms are available www.activestate.com. If you agree to a subscription price, that will remain your price for the duration of the payment term; however, prices are subject to change at the end of a payment term.

2. Upgrades, Downgrades, and Changes

- 2.1 We will immediately bill you when you upgrade from the free plan to any paying plan.
- 2.2 ActiveState will always bill you for a full year for use of the Service.
- 2.3 If you upgrade to a higher level of service, we will bill you for the upgraded plan immediately.
- 2.4 You may change your level of service at any time by. If you choose to downgrade your account, you may lose access to Content, features, or capacity of your account at the end of the term. Please see our section on Cancellation for information on getting a copy of that Content.

3. Billing Schedule; No Refunds

- 3.1 For yearly payment plans, the Service is billed in advance on a yearly basis respectively and is non-refundable. There will be no refunds or credits for partial months of service, downgrade refunds, or refunds for months unused with an open account; however, the service will remain active for the length of the paid billing period.
- 3.2 In order to treat everyone equally, no exceptions will be made.

4. Authorization

By agreeing to these Terms, you are giving us permission to charge your on-file credit card, PayPal account, or other approved methods of payment for fees that you authorize for ActiveState.

5. Responsibility for Payment

You are responsible for all fees, including taxes, associated with your use of the Service. By using the Service, you agree to pay ActiveState any charge incurred in connection with your use of the Service. If you dispute the matter, contact ActiveState Support at support@activestate.com. You are responsible for providing us with a valid means of payment for paid accounts. Free accounts are not required to provide payment information.

J. CANCELLATION AND TERMINATION

1. Account Cancellation

It is your responsibility to properly cancel your account with ActiveState. You can cancel your account at any time by sending an email to support@activestate.com and requesting cancellation of your account.

2. Upon Cancellation

- 2.1 We will retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements, but barring legal requirements, we will delete your full profile and the Content of your projects within 90 days of cancellation or termination (though some information may remain in encrypted backups). This information cannot be recovered once your account is cancelled.
- 2.2 We will not delete Content that you have contributed to other Users' projects or that other Users have forked.
- 2.3 Upon request, we will make a reasonable effort to provide an account owner with a copy of your lawful, non-infringing account contents after account cancellation, termination, or downgrade. You must make this request within 90 days of cancellation, termination, or downgrade.

3. ActiveState May Terminate

ActiveState has the right to suspend or terminate your access to all or any part of the ActiveState Platform at any time, with or without cause, with or without notice, effective immediately. ActiveState reserves the right to refuse service to anyone for any reason at any time.

4. Survival

All provisions of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

K. COMMUNICATIONS WITH ACTIVESTATE

1. Electronic Communication Required

For contractual purposes, you (1) consent to receive communications from us in an electronic form via the email address you have submitted or via the Service; and (2) agree that all Terms of Service, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that those communications would satisfy if they were on paper. This section does not affect your non-waivable rights.

2. Legal Notice to ActiveState Must Be in Writing

Communications made through email or ActiveState Support's messaging system will not constitute legal notice to ActiveState or any of its officers, employees, agents or representatives in any situation where notice to ActiveState is required by contract or any law or regulation. Legal notice to ActiveState must be in writing and served at legal@activestate.com.

L. DISCLAIMER OF WARRANTIES

1. ActiveState provides the ActiveState Platform and the Service "as is" and "as available," without warranty of any kind. Without limiting this, we expressly disclaim all warranties, whether express, implied or statutory, regarding the ActiveState Platform and the Service including without limitation any warranty of merchantability, fitness for a particular purpose, title, security, accuracy and non-infringement.
2. ActiveState does not warrant that the Service will meet your requirements; that the Service will be uninterrupted, timely, secure, or error-free; that the information provided through the Service is accurate, reliable or correct; that any defects or errors will be corrected; that the Service will be available at any particular time or location; or that the Service is free of viruses or other harmful components. You assume full responsibility and risk of loss resulting from your downloading and/or use of files, information, content or other material obtained from the Service.
3. No advice or information, whether oral or written, obtained by you from Activestate or through or from the ActiveState Platform shall create any warranty not expressly stated in this Agreement.

M. LIMITATION OF LIABILITY

You understand and agree that we will not be liable to you or any third party for any loss of profits, use, goodwill, or data, or for any incidental, indirect, special, consequential or exemplary damages, however arising, that result from:

1. the use, disclosure, or display of your User-Generated Content;
2. your use or inability to use the Service;
3. any modification, price change, suspension or discontinuance of the Service;
4. the Service generally or the software or systems that make the Service available;
5. unauthorized access to or alterations of your transmissions or data;
6. statements or conduct of any third party on the Service;
7. any other user interactions that you input or receive through your use of the Service; or

Our liability is limited whether or not we have been informed of the possibility of such damages, and even if a remedy set forth in this Agreement is found to have failed of its essential purpose. We will have no liability for any failure or delay due to matters beyond our reasonable control.

N. RELEASE AND INDEMNIFICATION

If you have a dispute with one or more Users, you agree to release ActiveState from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

You agree to indemnify us, defend us, and hold us harmless from and against any and all claims, liabilities, and expenses, including attorneys' fees, arising out of your use of the ActiveState Platform and the Service, including but not limited to your violation of this Agreement, provided that ActiveState (1) promptly gives you written notice of the claim, demand, suit or proceeding; (2) gives you sole control of the defense and settlement of the claim, demand, suit or proceeding (provided that you may not settle any claim, demand, suit or proceeding unless the settlement unconditionally releases ActiveState of all liability); and (3) provides to you all reasonable assistance, at your expense.

O. CHANGES TO THESE TERMS

We reserve the right, at our sole discretion, to amend these Terms of Service at any time and will update these Terms of Service in the event of any such amendments.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the ActiveState Platform (or any part of it) with or without notice. You agree that ActiveState shall not be liable to You or any third party for any modification or cessation of the ActiveState Platform. You acknowledge that ActiveState has no express or implied obligation to provide, or continue to provide, the ActiveState Platform, or any part thereof, now or in the future.

P. MISCELLANEOUS

1. Governing Law

Except to the extent applicable law provides otherwise, this Agreement between you and ActiveState and any access to or use of the ActiveState Platform or the Service are governed by the laws of the British Columbia without regard to its conflict of law provisions. You and ActiveState agree to submit to the personal and exclusive jurisdiction of the courts located within the Province of British Columbia, Canada.

2. Non-Assignability

ActiveState may assign or delegate these Terms of Service, in whole or in part, to any person or entity at any time with or without your consent, including the license grant in Section D.5. You may not assign or delegate any rights or obligations under the Terms of Service or Privacy Statement without our prior written consent, and any unauthorized assignment and delegation by you is void.

3. Section Headings and Summaries

Throughout this Agreement, each section includes titles and brief summaries of the following terms and conditions. These section titles and brief summaries are not legally binding.

4. Suggestions

As part of using the ActiveState Platform, you agree to submit comments, suggestions and other feedback regarding your use of the ActiveState Platform. You agree that ActiveState will be free to use any feedback you

provide for any purpose and that ActiveState shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, and exploit without restriction, any suggestions, enhancement requests, recommendations or other feedback provided by You.

5. Severability, No Waiver, and Survival

If any part of this Agreement is held invalid or unenforceable, that portion of the Agreement will be construed to reflect the parties' original intent. The remaining portions will remain in full force and effect. Any failure on the part of ActiveState to enforce any provision of this Agreement will not be considered a waiver of our right to enforce such provision. Our rights under this Agreement will survive any termination of this Agreement.

6. Product Reference and Publicity Rights

You agree, upon request and with reasonable notice from ActiveState, to act in the capacity of a reference, discussing ActiveState's ActiveState Platform utilized and received by you, with potential ActiveState's resellers or business partners (the "Product Reference"). Notwithstanding this Product Reference you grant ActiveState the right to include your name and or company name and logo as a user and or customer in product promotional material. Further You hereby grant to ActiveState a nontransferable, nonexclusive license to use your trademark to advertise that You are using the ActiveState Platform. You can deny ActiveState this right at any time by submitting a written request via email to marcom@activestate.com, requesting to be excluded from product promotional material.

7. Relationship of the Parties

This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between ActiveState and You.

8. Amendments; Complete Agreement

This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement, appendices and attachments. ActiveState reserves the right to change this Agreement at any time, which change shall be effective as of the effective date for the terms and conditions of this Agreement as shown at the top of this Agreement (the "Change Effective Date"). Your continued use of the ActiveState Platform after the Change Effective Date constitutes Your acceptance of such changes. This Agreement may not be otherwise amended without ActiveState's prior written agreement. You agree to periodically review the terms and conditions of this Agreement as updated from time to time on ActiveState's website.