ZERIDIAN BETA TERMS OF USE AGREEMENT

This Terms of Use Agreement was last updated on August 24, 2017.

ActiveState's Zeridian Beta Terms of Use Agreement.

Thank you for using Zeridian. By using the ActiveState's Zeridian and any related software (collectively "Zeridian"), you ("You" and or "Your") 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 Zeridian.

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 Zeridian after the Agreement has changed constitutes your acceptance of the Agreement as revised.

Limitations of Zeridian.
You understand and acknowledge that Zeridian is being provided in "Beta" form, and is made available on an "AS IS" and "AS AVAILABLE" basis for the purpose of providing ActiveState with feedback on the quality and usability of Zeridian. Zeridian may contain errors or inaccuracies that could cause failures, including but not limited to data corruption or loss of data from Zeridian and from peripherals (including, without limitation, servers and computers) connected thereto. In addition, ActiveState is not obligated to provide any maintenance, technical or other support for Zeridian. You are responsible for backing up, to your own computer or other device, any data that You store or access via Zeridian.

You further understand and acknowledge that ActiveState has not made Zeridian generally available, that ActiveState has not promised or guaranteed to You that Zeridian will be announced or made available to anyone in the future, that ActiveState has no express or implied obligation to You to announce or introduce Zeridian, and that ActiveState may not introduce a product similar or compatible with Zeridian. Accordingly, You acknowledge that any research or development that You perform regarding Zeridian or any product associated with Zeridian is done entirely at Your own risk.

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

Prohibited Uses of Zeridian.
You agree that you will not reproduce, copy, duplicate, sell, resell, rent or trade Zeridian (or any part thereof) for any purpose. Your use of Zeridian must be in accordance with the documentation. You agree that You are responsible for Your own conduct and content while

using Zeridian and for any consequences thereof. You agree to use Zeridian only for purposes that are legal, proper and in accordance with this Agreement and any applicable policies or guidelines.

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.

Use of Zeridian.
a. User Accounts. Zeridian is accessed via individual user accounts ("User Account"). User Accounts are for designated users and cannot be shared or used by more than one user. You are responsible for all activity that takes place on Your User Account. You agree that You are responsible for keeping Your password confidential and secure, and further understand that You are solely responsible and liable for any activities that occur under Your User Account and for any harm that You may cause to Zeridian.

b. Prohibited Uses of Zeridian. Please note the following prohibitions apply to Zeridian, 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 Zeridian 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 Zeridian and for any consequences thereof. You agree to use Zeridian 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 Zeridian, 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 Zeridian;
(viii) use Zeridian for any illegal or unauthorized purpose;
(ix) remove any copyright, trademark or other proprietary rights notices contained in or on Zeridian;
(x) interfere with or disrupt Zeridian or servers or networks connected to Zeridian, or disobey any requirements, procedures, policies or regulations of networks connected to Zeridian;
(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.

c. Revocation. ActiveState reserves the right to revoke a user generated name or account anytime, without notice, if the name or account is being used to abuse Zeridian, confuse or mislead users or is generally offensive or is generally not consistent with the terms of this Agreement.

d. Zeridian Rules and User Account Limits.
(i) You can use Zeridian at no charge during the Term (as defined below) of this Agreement from the date You receive an automated email notification activating Your Zeridian User Account. After the Term Your Zeridian account will be deleted entirely, without notice, and there will be no mechanism to restore any of the contents of Your Zeridian account.
(ii) Zeridian is provided exclusively as a means for You to try Zeridian in a hosted environment rather than setting up Your own environment.
(iii) You will not be provided with any custom URLs.
(iv) Upon activating your User Account you will be provided with 1 user account
(v) Your Zeridian use will be limited to, subject to change without notice, 20 separate applications running Zeridian.
(vi) Access to Zeridian is subject to space availability and by invitation only.

The above Zeridian Rules and User Account Limits may change at anytime without notice.

Open Source Software.
Zeridian may include 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.

Proprietary Rights.
a. Reservation of Rights. Subject to the limited rights expressly granted hereunder, ActiveState reserves all right, title and interest in and to Zeridian, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

b. Restrictions. You shall not (i) create derivate works based on Zeridian, (ii) copy, frame or mirror any part or content of Zeridian, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iii) reverse engineer Zeridian, or (iv) access Zeridian in order to (a) build a competitive product, or (b) copy any features, functions or graphics of Zeridian. If You wish to exercise any rights to reverse engineer to ensure interoperability in accordance with applicable law, You must first provide ActiveState with written notice and all reasonably requested information and permit ActiveState thirty (30) days to assess your claim and, at ActiveState's sole discretion, to make an offer to provide alternatives that reduce any adverse impact on ActiveState's intellectual property or other rights.

c. Restrictions. You shall not (i) permit any third party to access Zeridian or (ii) frame or mirror any third party content of Zeridian, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes.

d. Ownership of Your Data. As between ActiveState and You, You exclusively own all right, title and interest in and to all of Your data. You will be solely responsible for the accuracy, quality, integrity and legality of Your data and of the means by which You acquired Your data,

e. Suggestions. As part of using Zeridian, you agree to submit comments, suggestions and other feedback regarding your use of Zeridian. 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.

Indemnity.
You agree to hold harmless and indemnify ActiveState, and its subsidiaries, affiliates, officers, agents, and employees, advertisers or partners, from and against any third party claim arising from or in any way related to your use of Zeridian or violation of this Agreement, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorney's' fees, of every kind and nature. In such a case, ActiveState will provide You with written notice of such claim, suit or action.

Disclaimer of Warranties.
YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

a. ACTIVESTATE HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ACTIVESTATE MAKES NO WARRANTY THAT (i) Zeridian WILL MEET YOUR REQUIREMENTS, (ii) Zeridian WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF Zeridian WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH Zeridian WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN Zeridian WILL BE CORRECTED.

b. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH Zeridian IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

c. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ACTIVESTATE OR THROUGH OR FROM Zeridian SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

Limitation of Liability.
YOU UNDERSTAND AND AGREE THAT ACTIVESTATE SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE Zeridian; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS RESULTING FROM ANY GOODS, DATA, INFORMATION OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM Zeridian; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON Zeridian; OR (v) ANY OTHER MATTER RELATING TO Zeridian.

Exclusions and Limitations.
SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Term and Termination.

a. Term and Termination. The term of this Agreement shall commence on the date upon which You agree to the Agreement and shall continue in force thereafter until ActiveState announces the termination of the Beta of Zeridian (the "Term"). Additionally, either party may terminate this Agreement at any time for any reason or no reason by providing the other party written notice thereof.

b. Survival. In the event of any termination or expiration of the Agreement for any reason, Sections titled, "Proprietary Rights", "Indemnity", Disclaimers and Warranty", "Limitation of Liability", Exclusions and Limitations", "Term and Termination", "Confidentiality" and "General Information" shall survive termination. Neither party shall be liable to the other party for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

Confidentiality.
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 the 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.

General Information.
a. Choice of Law and Forum. The Agreement and the relationship between You and ActiveState shall be 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.

b. Waiver and Severability of Terms. The failure of ActiveState to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.

c. Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using Zeridian. 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 Zeridian for, and will not permit

Zeridian 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.

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

e. Limitations Period. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of Zeridian or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

f. Headings. The section headings in the Agreement are for convenience only and have no legal or contractual effect.

g. 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 Zeridian 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 beta 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 Zeridian. 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.

h. Notifications and Opting Out. By accessing ActiveState Zeridian Virtual Machine, Client Software, & Zeridian and related websites, You authorize ActiveState to contact You with relevant email offers and updates. To unsubscribe from all ActiveState email updates, click unsubscribe at the bottom of the next email You receive from ActiveState, or send Your email address to unsubscribe@activestate.com. Please be aware that You agree You may not opt out of receiving information regarding the expiration of our products or services.

i. Trademarks. Any trademarks, logos and ActiveState marks ("Marks") displayed on this website are the property of their owners, whether ActiveState or third parties.

j. Entire Agreement & Amendment. 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 on ActiveState's Website (the "Change Effective Date"). Your continued use of the Software 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.