ActiveState

ACTIVESTATE PLATFORM ENTERPRISE TERMS OF SERVICE (ETOS)

ver. August 01, 2023

THESE TERMS AND CONDITIONS ("AGREEMENT") APPLY TO ANY THIRD PARTY, WHO INSTALLS, DOWNLOADS, AND/OR USES THE SERVICE ("CUSTOMER or YOU or YOUR"). PLEASE CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE SELECTING "I AGREE" OR "I ACCEPT" IN REFERENCE TO THIS AGREEMENT, AS THEY DEFINE YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE SERVICE. BY SELECTING "I AGREE" OR "I ACCEPT" OR INSTALLING, DOWNLOADING OR USING THE SERVICE IN ANY MANNER, YOU AGREE TO BE BOUND BY AND TO BECOME A PARTY TO THIS AGREEMENT.

1.   DEFINITIONS

1.1   "ActiveState Platform" refers to ActiveState's Platform located at www.activestate.com and all content, services, Runtimes, Komodo, and any or all products provided by ActiveState at or through the ActiveState Platform. It also refers to ActiveState-owned subdomains of www.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

1.2   "Authorized Use" means the non-exclusive rights to install and use the Product on the supported Operating System during the Term.

1.3   "Concurrent Runtime Subscriptions" means the total number of Runtimes that are permanently installed or being used regularly and concurrently on a Node.

1.4   "Confidential Information" shall have the same meaning as ascribed in Section 14.

1.5   "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.

1.6   "Documentation" means the guides or manuals or specifications for the use of the Products.

1.7   "Distribution" means any of ActivePerl, ActivePython, ActiveTcl, ActiveGo, ActiveRuby, ActiveNode, ActiveLua and/or other custom distributions for any programming language that the ActiveState Platform builds, maintains, updates, hosts, and distributes to Users of the service 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   "Indemnification Icon" means the green indemnification icon used by ActiveState to denote those certain Products and other components such as packages or modules within the Services for which ActiveState will indemnify Customer pursuant to the terms hereof.

1.9   "Indemnified Distributions" shall mean Managed Distribution(s), and/or the Self-Serve Indemnified Distribution(s).

1.10   "IP Rights" means all present and future patent, copyright, database rights, rights in designs, trademarks, service marks, trade and business names, domain names, trade secrets and any other similar rights in any country, whether registered or not and including all applications for such rights, throughout the world including all extensions and renewals.

1.11   "Machine Account(s)" means an account set up by an individual human who accepts the Agreement 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.

1.12   "Managed Distribution" means a Distribution or set of Distributions that are built, maintained, and managed by ActiveState via the Service that includes and is limited to the Product Type, Product Version, Operating System, and the corresponding packages or modules as designated in the Quote or Invoice or Order Form or Statement of Work.

1.13   "Node" means a single installation of an Operating System running on a machine (virtual or physical) that can utilize a Runtime.

1.14 "OEM Distribution" means any distribution to, and/or use of the Products by, others outside Customer's organization and distribution and/or use of the Products as either a bundled add-on to, or embedded component of another application, with such application being made available to its users as, but not limited to, an on-premises application, a hosted application, a software-as-a-service offering or a subscription service for which the distributor of the application receives a license fee or any form of direct or indirect compensation and whether for commercial or non-commercial purposes.

1.15 "Operating System" means supported platform of licensed Product as offered by ActiveState.

1.16 "Personal Data" means network, User-name, User email address, User IP address, and the date and time of User's access to the ActiveState Platform.

1.17 "Platform Content" means Content created or owned by Customer and then posted to, or otherwise made available on, the Service. It would include, but is not limited to, any open-source code of the User that User may elect to use in conjunction with the Service or any output of any User program using a Runtime built on the platform as part of the Service.

1.18 "Product" means any Distribution, Managed Distribution, Self-Serve Indemnified Distribution, Product Type, and/or any other products provided and or licensed via ActiveState Platform and may include the media upon which such software is delivered to Customer but for the avoidance of doubt shall not include the ActiveState Platform.

1.19 "Product Type" means the software language of the licensed Product such as ActivePerl, ActivePython, ActiveTcl, ActiveGo, ActiveRuby, ActiveNode, and or ActiveLua, or other programming languages ActiveState may offer from time to time, and the accompanying materials 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.

1.20 "Product Version" means the number which identifies a specific version of the Product Type of the licensed Software.

1.21 "Professional Services" means training, consulting, custom development, or implementation services that ActiveState provides to Customers pursuant to a Statement of Work and Section 4 herein.

1.22 "Quote or Invoice or Order Form" means the form issued by ActiveState directly to Customer or through a third-party reseller for selling or reselling of the Products.

1.23 "Runtime" means a collection of open-source components and or other components provided by ActiveState in compiled form (if needed) that must be present to perform an activity. Examples of activities shall include but are not limited to development, running an application, using a language interpreter, linting, reformatting or compiling source code, executing code, updating dependencies or interpreters via ActiveState's or third-party command line interface ("CLI"), installing additional dependencies via CLI and or any other deployment methodologies offered by the ActiveState Platform. For customers with agreements that include the definition of Active Runtime and Static Runtime; those definitions are included under this definition of Runtime.

1.24 "Runtime Creator" means a User who uses the Service to create a Runtime.

1.25 "Runtime Consumer '' means a User, Machine Account, and or anonymous User of the Service who consumes a Runtime created by the Runtime Creator.

1.26 "Service" means the applications, software, Products, Runtimes, websites, documentation, API (application programming interface), and services provided by ActiveState and the ActiveState Platform.

1.27 "Self-Serve Indemnified Distribution" means a Distribution or set of Distributions available via the Service wherein: (a) those individual Products and other components such as packages or modules selected by Customer have been explicitly and individually marked by ActiveState with the Indemnification Icon at the time of selection; and (b) once all such Products and other components such as packages or modules are compiled into the completed Distribution selected by Customer, such completed Distribution has also been marked with the Indemnification Icon by ActiveState at the time of selecting and running such Distribution using the Service. ActiveState may at its sole discretion remove the Indemnification Icon at anytime for any packages, modules, components, or completed Distribution.

1.28 "Statement of Work" or "SOW" means a mutually executed statement of work detailing the Professional Services ActiveState will perform for You, related Fees, and each party's related obligations.

1.29 "Term" means the Initial or any Renewal Term as specified in Section 6 herein.

1.30 "Trademarks" means the trademarks, whether registered or unregistered, used by ActiveState and/or its affiliates or their licensors.

1.31 "User(s)" means the Customer's employees authorized and licensed to use the ActiveState Platform.

1.32 "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 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), host names, interpreter used, and system architecture, which includes filenames, full path, file size, and content hash.

2. LICENSE GRANT

2.1 Upon ActiveState's acceptance of Customer's order and Customer's payment of associated fees and for the duration of the Term, Customer shall have a worldwide, personal, revocable, limited, non-exclusive, non-transferable, non-sub-licensable right and license to download, install, and use the ActiveState Platform and Products for Customer's internal use only subject to compliance with the terms of this Agreement. Services are for the use of Customer only, and may not be resold, leased, sublicensed, or otherwise transferred or made available to or for the benefit of any other party. The ActiveState Platform and Products are not sold but licensed for the duration of the Term. Customer has no other rights to the ActiveState Platform and Products except as specified in this Agreement. The ActiveState Platform and Products shall be used only as expressly permitted in this Agreement. Customer shall be required to submit a signed certificate to ActiveState, upon request verifying that the ActiveState Platform and Products are being used pursuant to this Agreement, including any user limitations.

2.2 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services including internet connectivity, needed to connect to, access or otherwise use the ActiveState Platform and Products. Customer shall also be responsible for maintaining the security of Customer's account or passwords or use of ActiveState Platform by Users with or without Customer's knowledge or consent, and Customer hereby acknowledges and agrees that ActiveState shall have no responsibility for such matters. Customer may not terminate this Agreement or request any refund based on failure of its equipment or any ancillary service required for proper functioning of ActiveState Platform and Products.

2.3 Customer owns and accepts all responsibility for Platform Content or User Data or information that Customer and its Users process or submit to the Service in the course of using the Services. Customer agrees to separately back up all customer data. Customer shall provide notices to, and obtain any consents from, third parties as required by applicable law, rule or regulation in connection with ActiveState's processing of Personal Data via Service including but not limited to obligations placed by GDPR, PIPEDA or CCPA.

2.4 Customer agrees to act as a reference to prospective ActiveState customers and agrees to grant ActiveState the right to include Customer's name and logo as a Customer in Product promotional material, the consent can be rescinded by Customer at any time by sending an email to marketing@activestate.com.

3. CONCURRENT RUNTIME SUBSCRIPTIONS

3.1 Services that are consumed by the Customer shall be measured as a unit of Concurrent Runtime Subscriptions.

3.2 If the Customer creates a Runtime using the Service the maximum number of Concurrent Runtime Subscriptions that the Customer or other Runtime Consumers can use will be those defined under the Quote.

3.3 Additional Concurrent Runtime Subscriptions for Runtime Creators may be purchased by paying the applicable additional charges. ActiveState has a usage philosophy that the creator of the Runtime – the Runtime Creator – pays for the Service, whereas the consumer of the Runtime – the Runtime Consumer - is free to use the Service for unlimited consumption (subject to the thresholds put in place by the creator of the Runtime).

3.4 As may be requested by ActiveState, at any time during the term of this Agreement, the Customer will furnish ActiveState with a signed certification (i) verifying that the Service is being used pursuant to the terms of this Agreement, including any user limitations; (ii) listing the total number of Concurrent Runtime Subscriptions being used (segregated between workstations or servers); (iii) listing the Products being used; (iv) the time

frame within which the Products and Concurrent Runtime Subscriptions have been used; and (iv) a general description of the use cases involved.

3.5   You agree to grant ActiveState reasonable access to audit Your site(s) and/or systems, upon prior notice during normal business hours, to audit the use of the Service being used.

4.   RESTRICTIONS

4.1   You shall not:

    i.   Make derivative works based on the Service; copy; reverse engineer the Service, or access the Service in order to build a competitive product; or copy any features, functions or graphics of the Service, or permit any third party to access the Service, or create unauthorized Internet links to the Service or mirror any content on any other server or wireless or internet-based device.

    ii.   Remove any proprietary notices or labels related to the Service, or access or use the Services to build or support, and/or assist a third party in building or supporting, products or services competitive to ActiveState.

    iii.   Conduct any systematic or automated data collection activities related to the Service.

    iv.   Sell, lease, sub-license or in any way exploit any material related to or from the Service.

4.2   You shall not use the Service:

    i.   In excess of the Usage Cap on any computing device in whatever form or manner, whether physical or virtual and external or internal-facing.

    ii.   On any operating systems that the Service does not support.

    iii.   For OEM Distribution without adequate authorization and licensing to do so from ActiveState.

5.   OWNERSHIP

5.1   ActiveState and its licensors retains exclusive title to and all rights to the Services and ActiveState Platform and its underlying technology, software, patents, know-how, associated documentation, in whole or in part, and anything developed and delivered under this Agreement, including all improvements, enhancements, modifications, and derivative works.

5.2   Any trademarks, logos and ActiveState marks displayed on the ActiveState sites are the property of their owners, whether ActiveState or third parties. Customer's may only use ActiveState's trademarks with prior written permission from ActiveState.

5.3   ActiveState shall own any and all IP Rights that are created by ActiveState by making any modifications to the ActiveState Platform.

5.4   The ActiveState Platform may include or use open-source software components and/or Customer may utilize additional open-source software components from the ActiveState Platform, each of which is licensed to Customer 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. For the avoidance of doubt, this Agreement does not limit Customer's rights or grants any right to Customer that supersedes the terms of any applicable open-source software license for the applicable open-source components.

5.5   Customer retains exclusive title to and all rights to the Platform Content along with any data that is derived from the User Data and provided to Customer as part of the Services.

6.   TERM

6.1   Services shall be provided for the period of three (3) years or as specified on the Quote or Invoice or Order Form ("Initial Term"), and shall automatically renew for consecutive terms of the same duration as the Initial Term ("Renewal Term") with a built in price increase per year for the Services during the Renewal Term unless specified otherwise on the Quote or Invoice or Order Form, or subject to Customer or ActiveState providing written notice of termination at least sixty (60) days prior to the end of the Initial Term or any Renewal Term and Customer providing a signed certificate of software in accordance to Section 13.2 of this Agreement when notice is provided by the Customer. All applicable fees must be paid prior to the provisioning of the Services. In the event any contradictions arise between the terms of Quote or Invoice or Order Form and this Section, the Quote or Invoice or Order Form shall prevail.

6.2   This Agreement commences on the date ActiveState starts providing services to Customer and continues, unless expired or terminated under Section 13.

7.   FEES & PAYMENTS

7.1   Customer agrees to pay for all Products or services ordered in the Quote. The services shall be invoiced to Customer annually in advance unless otherwise agreed in the Quote. All fees due under this Agreement are non-cancellable and the sums paid are non-refundable. All amounts invoiced hereunder are due and payable within 30 days of the date of the invoice.

7.2   Customer is responsible to pay for any sales, value-added or other similar taxes imposed by applicable law that ActiveState must pay based on the services ordered, except for taxes based on ActiveState's income. Fees for services listed on the Quote are exclusive of taxes and expenses. All fees are exclusive of all goods and services tax (GST), foreign export duties, withholding taxes, or any other similar taxes, however designated or levied against the sale, and/or use of the services. Customer will pay any such tax ActiveState may be required to collect or pay. ActiveState reserves the right to increase fees upon the anniversary of this Agreement, with thirty (30) calendar days' prior written notice to Customer.

7.3   Customer shall pay ActiveState interest at a rate of one and a half percent (1.5%) per month on the balance remaining unpaid, beyond the payment due date. Any expenses associated with collections on past due invoices will be paid by Customer.

7.4   Disputes for invoiced items must be received by ActiveState in writing explaining the reason for dispute along with the supporting documentation supporting the claim within ten (10) business days of Customer's receipt of invoice. Payment for the total amount of invoice, excluding the item(s) in any written dispute notice, shall be due pursuant to the invoice terms. ActiveState will use its reasonable efforts to respond to any disputed item within ten (10) business days of receipt of notice of the written dispute. Once any dispute is resolved, invoice shall be paid within ten (10) days.

7.5   The Customer agrees to pay ActiveState for any continued and unauthorized use of the ActiveState Platform and or Concurrent Runtime Subscriptions over the authorized usage cap stated herein, during the Initial Term, Renewal Term, or after termination or expiration of this Agreement. The Customer will pay for usage based on the current applicable usage rates. Unauthorized use identified by ActiveState as continued use of the Service after it has been terminated, shall imply a request from the Customer to automatically renew the Quote under which the Service was last provided, in accordance with Section 6.1. for an additional Renewal Term, and the Customer will be bound by the terms and conditions stated herein.

8.   ACTIVESTATE WARRANTY

8.1   During the Term and upon payment of all Fees ("Warranty Period"), ActiveState warrants to Customer that the ActiveState Platform and Products:
   i.   are compatible with the operating system and will operate in conformance with all the applicable Documentation and specifications as authorized by ActiveState;
   ii.   do not contain any known viruses, routines, programs, or devices that could interfere with Customer's use of the Products; and
   iii.   do not include any timer, clock, counter, or other limiting mechanism that would allow ActiveState to disable the ActiveState Platform and Products or cause the ActiveState Platform and Products to be erased, inoperable or otherwise incapable of being used by Customer.

8.2   ActiveState shall use reasonable efforts consistent with prevailing industry standards to provide and maintain the services in a manner which minimizes errors and interruptions in the services and shall perform the Professional Services in a professional and workmanlike manner. Customer acknowledges that the services may be temporarily unavailable due to scheduled maintenance or for unscheduled emergency maintenance, either by ActiveState or by third-party providers. Where reasonably possible, ActiveState shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. In the event of breach of Warranties, ActiveState's exclusive liability and Customer's sole remedy shall be to correct or replace the ActiveState Platform and Products and/or the Documentation within a reasonable time. ActiveState shall only be liable for any breach of Warranties claim when notified in writing during the Warranty Period.

8.3 If ActiveState is notified as per Section 8.2 that the ActiveState Platform is not operating in conformance with the applicable Documentation and specifications during the Warranty Period, then ActiveState will respond within the applicable time period described in Exhibit B.

8.4 Customer acknowledges, understands, and agrees that complex services are never wholly free from errors and/or defects and ActiveState gives no warranty or representation that the services will be wholly free from such errors and/or defects. ActiveState does not warrant or represent that the services will be compatible with any other software or systems that are not specified as compatible in the Documentation.

8.5 ActiveState will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of customer data.

8.6 EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SECTION, ACTIVESTATE PLATFORM AND PRODUCTS ARE PROVIDED BY ACTIVESTATE AND ACCEPTED BY THE CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND ACTIVESTATE GIVES TO THE CUSTOMER NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND DISCLAIMS ALL WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICE OR THE PERFORMANCE OR RESULTS OF USE THEREOF. WITHOUT LIMITING THE FOREGOING, ACTIVESTATE DOES NOT WARRANT THAT THE ACTIVESTATE PLATFORM OR PRODUCTS OR THE OPERATION THEREOF IS OR WILL BE ERROR-FREE OR UNINTERRUPTED OR MEETS OR WILL MEET THE CUSTOMER'S REQUIREMENTS, AND ACTIVESTATE GIVES NO IMPLIED WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WITH REGARD TO MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE AND WHETHER ARISING BY USAGE OF FATRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

8.7 ActiveState shall make available to Customer the Support Services as outlined in Exhibit B.

8.8 The Customer warrants the legality of the customer data and shall indemnify ActiveState and its indemnitees for any actual or alleged claim, action, lawsuit or any formal or informal proceeding resulting from the legality of the customer data or information that customer inputs while using the service.

8.9 The Warranties are void and shall have no application with respect to any error:
   i.   that results from Customer's use of the ActiveState Platform and Products in an environment other than recommended by ActiveState;
   ii. that results from any modifications to the ActiveState Platform and Products made by Customer that are not authorized by ActiveState or, if such authorization is granted, is made using software other than ActiveState recommended software;
   iii. caused by any bug, defect, virus or error in other software or hardware used by Customer with the ActiveState Platform and Products.

9. CUSTOMER WARRANTY

9.1 Customer represents and warrants that it has the right, power and authority to enter into this Agreement.

9.2 Customer's use of service must not violate any applicable laws, including copyright or trademark laws, export control laws, or other laws in any applicable jurisdiction.

9.3 Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the ActiveState Platform.

9.4 Customer agrees that Platform Content shall not:
   i.   be unlawful or promote unlawful activities;
   ii.   contains sexually obscene content;
   iii. be libellous, defamatory, or fraudulent;
   iv.   be discriminatory or abusive toward any individual or group;
   v.   contain or install any active malware or exploits, or uses our platform for exploit delivery;
   vi.   infringe on any proprietary right of any party, including patent, trademark, trade secret, copyright, right of publicity, or other rights;
   vii. remove any copyright, trademark or other proprietary rights notices contained in or on the ActiveState Platform;
   viii. restrict or inhibit any other user from using and enjoying the ActiveState Platform.

      ix.   interfere with or disrupt Service or servers or networks, or disobey any requirements, procedures, policies or regulations of networks connected to the ActiveState Platform;

      x.   create User Accounts by automated means or under false or fraudulent pretences.

9.5   Customer shall not access ActiveState Platform for the purpose of monitoring its availability, performance, and functionality, or for any other benchmarking or competitive purposes. Customer shall be liable for its and users' conduct and content while using the ActiveState Platform.

9.6   The Customer acknowledges that any usage above the authorized Services usage cap, as defined in this Agreement, without payment of appropriate and applicable fees, will constitute a willful copyright infringement and/or licence violation.

10. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT AS PERMITTED BY LAW, IN NO EVENT SHALL ACTIVESTATE BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE OR LOSS OR CORRUPTION OF DATA, ACCOUNT, PROFIT, BARGAIN, OR BUSINESS, INABILITY TO ACCESS ACTIVESTATE SERVICES, PERFORMANCE RELATED DELAYS, COMPUTER VIRUSES OR FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHER LEGAL THEORY. ACTIVESTATE'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER TO ACTIVESTATE IN THE PRECEDING TWELVE (12) MONTHS. ACTIVESTATE SHALL HAVE NO LIABILITY FOR ANY CUSTOM DEVELOPMENT. NO ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION HEREUNDER MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN, EXCEPT FOR AN ACTION FOR NON-PAYMENT. THE CUSTOMER AGREES THAT IT HAS READ AND UNDERSTOOD THIS SECTION. IN CASE OF ANY CONFLICT BETWEEN THIS SECTION AND ANY OTHER SECTION OF THIS AGREEMENT, THE PROVISIONS OF THIS SECTION SHALL PREVAIL. FOR THE AVOIDANCE OF ANY DOUBT, THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING THE TERMINATION, REPUDIATION OR EXPIRY OF THIS AGREEMENT.

11. INFRINGEMENT INDEMNITY

11.1   Subject to the limitations below, ActiveState will defend and indemnify Customer against any judgment, including costs and direct damages, rendered by a court of competent jurisdiction, against Customer which definitively concludes that the Indemnified Distributions infringe an existing US copyright or misappropriates a trade secret of any third party. For the avoidance of doubt, ActiveState's indemnity obligations hereunder shall only apply towards Indemnified Distributions.

11.2   Subject to the limitations below, ActiveState will defend and indemnify Customer against any actual or threatened claims, judgment, including costs and direct damages rendered by a court of competent jurisdiction against Customer that ActiveState Platform infringes an existing patent or copyright or misappropriates a trade secret of any third party.

11.3   Customer must provide written notice to ActiveState regarding the initiation of any such suit or proceeding, provide full authority, information, and assistance for defence, and permit ActiveState to assume defence upon ActiveState's request. Customer agrees that ActiveState shall be relieved of its obligations under the Sections 11.1 and 11.2, unless Customer notifies ActiveState of such Claim within ten (10) calendar days after Customer's receipt thereof and gives ActiveState the authority to proceed as contemplated herein and, at ActiveState's expense (except as provided below), gives ActiveState the relevant information then in its possession and provides reasonable assistance to ActiveState, in ActiveState's discretion, to settle and/or defend any such claim.

11.4   If any part of the ActiveState Platform and Indemnified Distributions has become or in ActiveState's opinion will become or has been determined by adjudication that it has become the subject of an infringement claim, then ActiveState may, at its sole option and expense either:

      i.   procure for Customer the continued right to use the Service;

ii.   replace the Indemnified Distribution with other suitable and reasonably equivalent services or parts thereof so that the Services becomes non-infringing;

iii.   suitably modify the Indemnified Distributions so that the Service becomes non-infringing; or

iv.   if it is not commercially reasonable to take the actions specified in items (i), (ii), or (iii), terminate this Agreement and Customer's use.

11.5   ActiveState shall not be liable for any compromise entered or settlement made by Customer without ActiveState's prior written consent. Notwithstanding anything to the contrary, ActiveState shall not be liable for any losses, costs, or damages, and Customer will indemnify, defend, and hold ActiveState harmless from any expenses, damages, costs, or losses resulting from any suit or proceeding based upon a claim arising from:

i.   any modification to the ActiveState Platform and Indemnified Distributions by anyone except ActiveState;

ii.   use of other than a current or unaltered release of the Indemnified Distributions, or any portion thereof available from ActiveState if such infringement would have been avoided by the use of a current or unaltered release of the Indemnified Distributions, or any portion thereof; or

iii.   use of the services in any manner contrary to this Agreement.

iv.   unauthorized use by the Customer of an open source Copyleft license.

11.6   Customer shall defend, indemnify, and hold harmless ActiveState against claims, actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Customer's use of the Service in an unlawful manner or any violation of this Agreement.

12.   API TERMS

12.1   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 its 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.

12.2   You may not share API tokens to exceed ActiveState's rate limitations.

12.3   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 to recruiters, headhunters, and job boards.

12.4   All use of the ActiveState API is subject to this Agreement.

12.5   ActiveState may offer subscription-based access to API for those Users who require high-throughput access or access that would result in resale of ActiveState's Service.

13.   TERMINATION

13.1   Either party may terminate this Agreement upon thirty (30) days written notice if:

i.   the other party materially breaches any of the terms or conditions of this Agreement and fails to cure the breach within thirty (30) days; or

ii.   if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

iii.   the non-breaching party may agree in its sole discretion to extend the thirty (30) day period for so long as the breaching party continues reasonable efforts to cure the breach. ActiveState will have the right to suspend or terminate Customer's right to use the service, if Customer fails to pay any and all required fees, attempts a transfer or assignment of the right to use the services except as expressly herein permitted or otherwise materially breaches this Agreement.

13.2   Effective termination or expiration of this Agreement will be contingent upon the Customer delivering a signed copy of the certificate of software destruction included in Exhibit A of this Agreement as well as providing termination notice per the terms of this Agreement. If a signed copy of the certificate of software destruction is not delivered by the Customer when termination notice is provided, ActiveState may at its sole discretion, enforce an audit right pursuant to Section 3.5 of this Agreement or apply Section 7.5 for unauthorized usage. If ActiveState provides termination notice to the Customer, a signed certificate of software destruction from the Customer will not be necessary for effective termination or expiration of this Agreement to take place.

13.3 The Customer will commit to cease using the ActiveState Platform and Product(s) immediately upon termination or expiration of this Agreement and to uninstall, return, or destroy all copies of the Product(s) in its possession or under control within thirty (30) days after the effective date of termination or expiration. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether modified or merged into other materials. Upon any termination, and upon receiving Customer request, ActiveState will make Platform Content available to Customer only for electronic retrieval for a period of thirty (30) days, but thereafter ActiveState will delete or destroy all copies of customer data in its systems or otherwise in its possession or control. For the avoidance of doubt, if no request is received, customer data will be automatically deleted after termination.

13.4 In the event of expiration or termination of this Agreement, the provisions of this Agreement that by their nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied including but not limited to Exhibit C. Termination of this Agreement will not affect either party's accrued liabilities or rights as of the date of termination.

13.5 ActiveState may retain any document (including any electronic document) containing the Customer's Confidential Information after the termination of this Agreement if ActiveState is obliged to retain such document by any law or regulation or other rule enforceable against ActiveState or the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to ActiveState.

14. CONFIDENTIAL INFORMATION

14.1 Each party acknowledges that, while performing its duties under this Agreement, it may obtain information relating to the other party, which is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, this Agreement; pricing and proposals; any intellectual property including but not limited to computer software, trade secrets, know-how, inventions, techniques, processes, programs, schematics; data; customer lists; financial information; and sales and marketing plans. Each party shall at all times maintain in the strictest confidence and trust all such Confidential Information, which shall not be less than those measures employed by each party in protecting its own Confidential Information of equivalent value. Customer and its employees agree not to disclose such information to any third party.

14.2 The commitments set forth above shall not apply to any Confidential Information which:
i.   is now generally known or available or which hereafter through no act or failure on the part of the receiving party becomes generally known or available;
ii.   is legally known to the receiving party at the time of receiving such information;
iii. is hereafter furnished to the receiving party by a third party without restriction on disclosure, where such third party legally obtained such information and the right to disclose it to the receiving party; or
iv.   is independently developed by the receiving party without violation of any legal rights which the disclosing party may have in such information.

14.3 Except as may be required by applicable law, neither Party shall disclose to any third party the contents of this Agreement, or any amendments hereto without the prior written consent of the other Party.

14.4 Where the parties have entered into a separate confidential non-disclosure agreement ("NDA") and the terms of the NDA are inconsistent with the terms contained herein, the terms of the NDA shall take precedence.

14.5 Both Parties agree that all Confidential Information disclosed hereunder shall remain the property of the discloser and may only be copied or reproduced as expressly permitted herein. Upon expiration or termination of this Agreement, Recipient shall return all Confidential Information to discloser along with all copies and portions thereof or certify in writing that all such Confidential Information has been destroyed. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. All Confidential Information disclosed hereunder is provided by discloser without representation or warranty of any kind. The provisions of this Section 14 shall survive the expiration or termination of this Agreement for a period of three (3) years.

15. FORCE MAJEURE EVENT

15.1 Neither party shall be liable for any failure or delay (except for Customer's failure to make payments) caused by events beyond its reasonable control, including but not limited to, an act of war or hostility or terrorism

or sabotage or act of God or electrical, internet, or telecommunication outage that is not caused by the obligated party or government restrictions (including the denial or cancellation of any export or other license) or other event outside the reasonable control of the obligated party or a pandemic or an epidemic ("Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from further performance of its obligations pursuant to this Agreement affected by the Force Majeure Event only for so long as such Force Majeure Event continues, and such party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

15.2 A party who becomes aware of a Force Majeure Event, which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will forthwith notify the other party; and will inform the other party of the period for which it is estimated that such failure or delay will continue. A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

16.   NOTICES

Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in writing to the Parties at the address set forth below, and shall reference this Agreement and will be deemed to have been received: (i) on the delivery date if delivered personally or by email to the party to whom it is directed; (ii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt or (iii) three (3) business days after the mailing date, if sent properly addressed, return receipt requested via rapid mail delivery of which a receipt confirming the delivery is produced. Either party may change its address by notifying the other party in writing.

>   ACTIVESTATE SOFTWARE INC.,
>   ATTN: ACTIVESTATE LEGAL
>   1000 - 1177 West Hastings
>   Vancouver, BC, Canada, V6E 2K3
>   legal@activestate.com
>
>   CUSTOMER:
>   Customer Contact Name, mailing address, and email as included in the Quote or Invoice or Order Form.

17.   GENERAL

17.1 The interests of Customer in this Agreement are personal and shall not be assigned, transferred, shared, or divided in any manner by Customer without the prior written consent of ActiveState. ActiveState will only consent to an assignment if Customer has paid ActiveState all Fees due under this Agreement and the assignee agrees to be bound by this Agreement. ActiveState shall be entitled to assign this Agreement and the rights granted hereunder to any affiliate or subsidiary or successor in interest or in the event of a merger or sale of all or substantially all of the stock or assets of ActiveState. This Agreement will be enforceable by the parties' permitted successors and assigns.

17.2 Subject to any express restrictions elsewhere in this Agreement, ActiveState may subcontract any of its obligations under this Agreement and ActiveState shall remain responsible to the Customer for the performance of any subcontracted obligations.

17.3 All the projects created or made by User(s) using the service under this Agreement will be classified as "Public" projects, meaning the project would not qualify as confidential or proprietary and shall be available to general public. User(s) will have to qualify to Team or Enterprise tier in order to have their projects classified as "Private" projects. ActiveState shall only have confidentiality obligations towards Private projects.

17.4 Each party agrees to comply with all applicable export and reexport control laws and regulations of Canada or United States, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. Specifically, each party covenants that it shall not directly or indirectly sell, export, reexport, transfer, divert, or otherwise dispose of any software, source code, or technology (including

products derived from or based on such technology) received from the other party under this Agreement to any country (or any individual national thereof) subject to antiterrorism controls or U.S. or Canadian embargo, or to any other person, entity, or destination prohibited by the laws or regulations of the United States or Canada, without obtaining prior authorization from the competent government authorities as required by applicable laws and regulations. Customer shall be bound by the ActiveState Export Control Policy.

17.5   The laws of the Province of British Columbia, excluding its conflict of laws provisions, shall govern this Agreement. Provincial and Federal Courts in Vancouver shall have exclusive jurisdiction under this Agreement. Any disputes between the parties arising out of or in connection with this Agreement which cannot be settled amicably shall be first notified in writing to the authorized representatives of each party. In the event that such authorized representatives do not reach an amicable settlement within fifteen (15) days of receiving written notice of such a dispute, then the matter shall be referred to a mediator mutually agreeable to the parties. In the event that the mediation does not reach an amicable settlement within thirty (30) days of referral, the parties may proceed to the courts as set out herein.

17.6   During the term of this Agreement and for a period of one (1) year following its termination, each party agrees that it will not, without the written permission of the other party, directly or indirectly, solicit, hire or otherwise engage the services of any person who is an employee of or is otherwise being utilized as a consultant or contractor by the other party. The foregoing will not prohibit general solicitations for employment not specifically directed towards employees of the other party.

17.7   If a court of competent jurisdiction holds any provision in this Agreement to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way, and a court of competent jurisdiction is authorized to modify the affected provision to preserve the parties' intended benefits to the fullest extent permitted by law. Either party's failure, at any time, to require the other party's performance of any provision of this Agreement shall in no way affect that party's right to enforce such provision, nor shall either party's waiver of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.

17.8   ActiveState shall perform activities under this Agreement only as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Under no circumstances shall any personnel of ActiveState be considered as an employee or agent of Customer. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other, implied, or otherwise, without prior review and written agreement. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

17.9   The headings in this Agreement are for convenience only and shall not affect the meaning or construction of the clauses to which they relate. This Agreement or exhibits or attachments or Quote contain the base terms that govern the relationship between the Parties. Any discrepancies, conflict or errors between various documents shall be resolved by giving precedence in the following order: (i) any signed amendment; (ii) Terms of Service; (iii) Exhibit A; (iv) Exhibit B; (v) any other Exhibit attached to this Agreement; and (vi) any other attachment.

17.10 In the event of any conflict or inconsistency between the terms and conditions hereof and any terms or conditions set forth in any other document between the Customer and ActiveState relating to the transactions contemplated by this Agreement, the terms and conditions set forth in this Agreement shall prevail.

17.11 The application of the United Nations Convention of Contracts for the International Sale of Goods and any local implementation, including the British Columbia International Sales of Goods Act, is expressly excluded. The parties agree that the Uniform Computer Transactions Act or any version thereof, adopted by any state, in any form ("UCITA"), shall not apply to this Agreement, and to the extent that UCITA may be applicable, the parties agree to opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.

17.12 The Product is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Product with only those rights as are

granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of Canada and the United States.

17.13 This Agreement and relevant exhibits contain and constitute the entire understanding and agreement between the Parties in connection with the subject matter of this Agreement and supersede all prior discussions or representations or warranties or understandings between the Parties. Any representations, warranties, statements, and assurances which are not expressly set out in this Agreement will not be of any effect whether by virtue of any usage or course of dealing or otherwise. This Section shall not exclude the liability of a party for fraud or fraudulent misrepresentation or concealment or any resulting right to rescind this Agreement.

17.14 ActiveState reserves 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 Service. You acknowledge that ActiveState has no express or implied obligation to provide or continue to provide the Service or any part thereof, now or in future. ActiveState may update this Agreement at any time, and You are solely responsible to review this Agreement on a regular basis on ActiveState's website. You understand and agree that Your continued use of the Service after the Agreement has been updated constitutes Your acceptance of the revised Agreement.

ActiveState

EXHIBIT A
CERTIFICATE OF SOFTWARE DESTRUCTION

This Certificate of Software Destruction (CoSD) between the Customer (as defined below) and ActiveState Software Inc., (ActiveState), a corporation of British Columbia, Canada. The Effective Date of this CoSD will be thirty (30) days after the License Expiration Date.

The Customer is the Organization Completing the Destruction:

Name:	_____
Address:	_____
Email:	_____

The Customer licensed the following ActiveState products/services ("ActiveState Software"):

If applicable mark with an X	ActiveState Software	Usage Details	Quote/Invoice/PO Serial Number(s)	License Expiration Date
	ActiveState Community License for ActivePerl, ActivePython, ActiveGo, and Active Tcl			
	ActiveState Platform Free Tier			
	ActiveState Platform Team Tier			
	ActiveState Platform Enterprise Tier			
	ActiveState OEM Distribution			
	Other ActiveState Products/ Services: (Details to be inserted here)			

The Customer hereby represents, warrants, and declares, the following:
1. To take the necessary measures to permanently uninstall, remove, delete, and destroy the ActiveState Software and any/all copies, described hereinabove, including but not limited to any instances where Customer's products incorporate or otherwise include ActiveState Software, by the Effective Date;
2. Relinquish all rights to use the ActiveState Software on the License Expiration Date;
3. Destroy all hard copy documentation provided within ActiveState Software download, by the Effective Date;
4. Not give away, donate, or otherwise distribute the ActiveState Software or copies thereof;

ActiveState reserves the right to verify and confirm compliance of the declarations herein made by The Customer. The Customer agrees to pay ActiveState for any continued or unauthorised use of the ActiveState Software after the Effective Date in accordance with the applicable current usage rates. Furthermore, unauthorized usage of the ActiveState Software identified by ActiveState after a license has terminated will imply a request from the Customer to automatically renew their license subject to ActiveState's current renewal terms and fees, and the Customer will automatically be bound by the applicable ActiveState Platform Terms of Service. The Customer also acknowledges that unauthorized use, after the Effective Date, will constitute willful copyright infringement and/or a licence violation.

IN WITNESS WHEREOF, THE CUSTOMER HAS DULY SIGNED BELOW AND BY DOING SO HAS ACCEPTED AND UNDERSTOOD ALL THE TERMS AND CONDITIONS OF THIS CERTIFICATION.

CUSTOMER NAME

SIGNATURE: _____   NAME: _____

DATE: _____   TITLE: _____

ACTIVESTATE PLATFORM ENTERPRISE TERMS OF SERVICE
ASETOS080123