ACTIVESTATE PLATFORM FREE TIER TERMS OF SERVICE (FTOS)

ver. August 1, 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.

ActiveState Software Inc., ("ActiveState or We or Us or Our") and You agree that this Agreement shall be applicable from the date of acceptance ("Effective Date") of this Agreement.

1. DEFINITIONS

1.1 "ActiveState Platform" refers to ActiveState's ActiveState 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 "Concurrent Runtime Subscriptions" means the total number of Runtimes that are permanently installed or being used regularly and concurrently on a Node.

1.3 "Confidential Information" shall have the same meaning as ascribed in Section 10.

1.4 "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.

1.5 "Fork/Forked" means allowing others to view and copy Your Platform Content from Your projects in projects they control.

1.6 "Free Tier" means as described in ActiveState pricing page which is found at: https://www.activestate.com/solutions/pricing.

1.7 "Machine Account(s)" means 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.

1.8 "Node" means a single installation of an Operating System running on a machine (virtual or physical) that is capable of utilizing a Runtime.

1.9 "Operating System" means supported platform for using Services offered by ActiveState.

1.10 "Personal Information or Personal Data or PI" means User-name, User email address, User IP address, and the date and time of User's access to the ActiveState Platform.

1.11 "Runtime" means a collection of open-source components and or other components provided by ActiveState in compiled form (if needed) that must be present in order 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.

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

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

1.14 "Service" means the applications, software, products, Runtimes, and services provided by ActiveState and the ActiveState Platform.

1.15 "Term" means the time period during which a Customer uses the Service. Term starts when a Customer makes an account and accepts this Agreement and ends when their usage is either terminated or suspended under this Agreement.

1.16 "Third Party Content" means Content that You did not create or do not own and then post to, or otherwise make available on, the Service, including the ActiveState Platform.

1.17 "User(s)" means the users of the ActiveState Platform including a Customer, You, or Your.

1.18 "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 Runtimes 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.

1.19 "User Data License" means a royalty-free, perpetual, irrevocable, transferable, worldwide non-exclusive right to reproduce, analyze, review, process, diagnose, or otherwise use the User Data (in whole or in part) for the purpose of supporting, maintaining, and providing the Service, and any related services provided by ActiveState relating to the Service.

1.20 "Your Platform Content or Platform Content" means Content that you create or own and then post to, or otherwise make available on, the Service, including the ActiveState Platform. Your Platform Content would include, but is not limited to, any open-source components of the User that User may elect to use in conjunction with the Platform or any output of any User program using a runtime built on the Platform as part of the Service. Your Platform Content should not include any proprietary source code that User wishes to keep confidential.

2. ACCOUNT TERMS

2.1 To use certain features of our Service, You must provide a valid email address. ActiveState Platform does not require and collect any PI during the signup process.

2.2 The following rules shall apply to usage of the Service by a User:

i. 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. You may maintain no more than one free Machine Account in addition to your free personal account.

ii. One person shall only maintain one free account (Machine Account can only be used for running a machine).

iii. You must be aged 13 years or older. ActiveState reserves the right to terminate any account made by a User under the age of 13. If You are a resident of a country outside the United States or Canada, You are responsible for complying with Your country's laws.

iv. Your login may only be used by one person i.e., a single login may not be shared by multiple people.

v. You are responsible for keeping Your account secure while You use Our Service.

vi. You are responsible for all content posted and activity that occurs under Your account.

vii. You are responsible for maintaining the security of Your account and password. You will promptly notify Us 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.

3. ACCEPTABLE USE

3.1 Your use of the 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 complies with any applicable laws and regulations.

3.2 You may create or upload Your Platform Content and or Third Party Content while using the Service. You are solely responsible for that Content and for any harm resulting from any Content that You post, upload, link to or otherwise make available via the Service. We are not responsible for any public display, illegal use, or other form of Content misuse that You may commit via the Service.

3.3 You agree that You will not under any circumstances upload, post, host, or transmit any Content that:

i. is unlawful or promotes unlawful activities; prohibited by local laws and regulations; contains sexually obscene content; libelous, defamatory, or fraudulent; discriminatory or abusive toward any individual or group;

ii. contains or installs any active malware or exploits, or uses Our platform for exploit delivery (such as part of a command and control system);

     iii.   infringes on any proprietary right of any party, including patent, trademark, trade secret, copyright, right of publicity, or other rights;

     iv.   impersonates 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;

     v.   restricts or inhibit any other user from using and enjoying the Service;

     vi.   interferes with or disrupts the Service or servers or networks connected to the Service or disobey any requirements, procedures, policies or regulations of networks connected to the Services;

     vii.   creates User Accounts by automated means or under false or fraudulent pretenses; or

     viii.   transmit any viruses, worms, defects, trojan horses, or any items of a destructive nature.

3.4   You may not access the Service for the purpose of monitoring its availability, performance and functionality, or for any other benchmarking or competitive purposes.

3.5   You agree that You are responsible for Your own conduct and content while using the Service and for any consequences thereof.

3.6   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.

3.7   You agree not to use the Service directly or indirectly with any external or a third party. For the avoidance of doubt any external use of the Service or any use of the Service with the intent to commercially benefit from the Service either directly or indirectly or making the Service a part of the larger offering or including the direct or indirect installation of the Service.

3.8   If we determine that 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 Service until You can reduce Your resource consumption and alternatively qualify to the next tiered usage.

3.9   We do not pre-screen Content posted or otherwise made available on the Service by Users, but we have the right (though not the obligation) to refuse or remove any such Content that, in our sole discretion, violates any ActiveState terms or policies.

4.   LICENSE GRANTS

4.1   You retain ownership of and responsibility of Your Platform Content that You create or own and then post to, or otherwise make available on, the Service. You will be fully liable and responsible for any Third Party Content You post to the ActiveState Platform, including any and all Content that You did not create or do not own the rights to.

4.2   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 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 Service under terms and conditions substantially similar to those in this Agreement.

4.3   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.

4.4   You shall grant Us and other ActiveState Users certain legal rights to Your Platform Content without any consideration. The licenses You grant to us will end when You remove Your Platform Content from Our servers, unless other Users have Forked it. We need these rights to host Your Platform Content, publish it, and share it.

4.5   You grant us and our legal successors the right to store, parse, and display Your Platform Content, and make incidental copies as necessary to render and provide the Service. This includes the right to 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; and perform it, in case Your Platform Content is music or a video. This User Data License grants ActiveState the right to commercialize Your Platform Content and/or Third Party Content or otherwise distribute or use it within the provision of the Service.

4.6   Your Platform Content that You post publicly on the Service, including issues, comments, and contributions to other Users' projects, may be viewed by others Users. You agree to allow others right to Fork. You grant each User of ActiveState a non-exclusive, worldwide license to use, display, and perform Your Platform Content through the Service and to reproduce Your Platform Content solely on ActiveState as permitted through

ActiveState's functionality. You shall be solely responsible to comply with Third Party Content license terms permitting such Third Party Content for use by all Users of the Service.

4.7   You hereby agree that You have the right to license and You hereby license Your contributions to a project containing notice of a license under the same terms. If You have a separate agreement to license Your contributions under different terms, such as a contributor license agreement, that agreement will supersede.

5.   CONCURRENT RUNTIME SUBSCRIPTIONS

5.1   The total number of Services to be used by the Customer shall be measured as a unit of Concurrent Runtime Subscriptions. By using the Service, the number of Runtime Consumers that can consume the Runtime is limited by the number of Concurrent Runtime Subscriptions licenses available to the Runtime Creator of the Runtime based on the Free Tier terms specified further in section 5.2 below.

5.2   If You create a Runtime using the Service the maximum number of free Concurrent Runtime Subscriptions that You or other Runtime Consumers can use under this Agreement as a Runtime Creator is 1 Concurrent Runtime Subscription. If You are a company or an organization or its affiliates or subsidiaries ("Org"), shall be measured by the number of times the Org's domain name is used to create a Runtime and the maximum number of Runtime Consumers of the Concurrent Runtime Subscriptions is limited to 5 Concurrent Runtime Subscriptions by the Org (the "Usage Cap"). Additional Concurrent Runtime Subscriptions for Runtime Creators may be purchased by paying the applicable fees and upgrading to the pro tier, team tier, or enterprise tier. If you are a Runtime Consumer you may use unlimited Runtimes from the Service.   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). Runtime Creators of eligible open-source projects may have unlimited Concurrent Runtime Subscriptions, see Exhibit A for details.

5.3   If You entered this Agreement as an Org at any time during the term of this Agreement, if requested by ActiveState, You 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) the time frame within which the Concurrent Runtime Subscriptions have been used; (iv) a general description of the use cases involved; and (v) 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.

6.   OWNERSHIP AND MORAL RIGHTS

6.1   You retain all moral rights to Your Platform 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 this Agreement.

6.2   To the extent this Agreement is not enforceable by applicable law, you grant ActiveState the rights needed to use Your Platform Content without attribution and to make reasonable adaptations of Your Platform Content as necessary to render the ActiveState Platform and provide the Service.

6.3   If You believe that content of Our website violates Your copyright, please contact Us at support@activestate.com. Before sending a takedown request, You must consider legal uses such as fair use and licensed uses. We will terminate the Users that repeatedly misuses this Section.

6.4   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, legality and acquisition of Your User Data.

7.   OWNERSHIP OF SERVICE

7.1   Subject to the limited rights expressly granted hereunder, ActiveState reserves all right, title and interest in and to the Service and retains ownership of all intellectual property rights of any kind related to the Service. We reserve all rights that are not expressly granted to You under this Agreement or by law. 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.

7.2   Any trademarks, logos and ActiveState marks displayed on the ActiveState sites are the property of their owners, whether ActiveState or third parties. If You would 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.

8.   RESTRICTIONS

8.1 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.
8.2 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.

9. OPEN-SOURCE SOFTWARE

9.1 The Service may include or use open-source software components and/or You may utilize additional open-source software components from the Service, 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. Nothing in this Agreement limits or grants You rights that supersede the terms of any applicable open-source software license for the applicable open-source components. You are responsible for complying with open-source license requirements.

10. CONFIDENTIAL INFORMATION

10.1 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, 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.

10.2 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.

10.3 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 10 shall survive the expiration or termination of this Agreement for a period of three (3) years.

11. API TERMS

11.1 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.

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

11.3 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.

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

11.5 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.

12. TERMINATION

12.1 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 requesting cancellation of your account.

12.2 Except for our obligation to comply with legal obligations, Our back up procedures, resolve disputes, and enforce our agreements, we will delete Your full profile and the Content of Your projects within 90 days of cancellation or termination. This information cannot be recovered once your account is cancelled. We will not delete Content that you have contributed to other Users' projects or that other Users have Forked. 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.

12.3 ActiveState has the right to suspend or terminate Your access to all or any part of the Service 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.

12.4 All provisions of this Agreement which by their nature should survive termination shall survive termination.

13. COMMUNICATIONS WITH ACTIVESTATE

13.1 You consent to receive communications from ActiveState in an electronic form via the email address you have submitted or via the Service and agree that all 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.

13.2 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.

14. DISCLAIMER OF WARRANTIES

Service is provided by ActiveState and accepted by You on an "as is" and "as available" basis and ActiveState gives to You 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 Service or the operation thereof is or will be error free or uninterrupted or meets or will meet Your 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 trade, course of dealing or course of performance.

15. INDEMNITY RELEASE AND LIMITATION OF LIABILITY

15.1 If You have a dispute with one or more Users, You agree to release and indemnify 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.

15.2 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, inability to access service, 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 even if ActiveState has been advised of the possibility of such damages.

16. GENERAL

16.1 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 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 shall enure to the benefit of the parties permitted successors and assigns.

16.2 Subject to any express restrictions elsewhere in this Agreement, ActiveState may subcontract any of its obligations under this Agreement.

16.3 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.

16.4 Customer 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, Customer 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.

16.5 ActiveState shall not be liable for any failure or delay 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, ActiveState 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.

16.6 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.

16.7 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.

16.8 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. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership, employment, or formal business organization of any kind.

16.9 The headings in this Agreement are for convenience only and shall not affect the meaning or construction of the clauses to which they relate.

16.10 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.

16.11 ActiveState Platform 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 may only the Service with only those rights as are granted to all other end users pursuant to this Agreement. Unpublished rights are reserved under the copyright laws of Canada and United States.

16.12 This Agreement contain and constitute the entire understanding and agreement between You and ActiveState with the subject matter of this Agreement and supersede all prior discussions or representations or warranties or understandings. 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.

16.13 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.

EXHIBIT A
COST FREE CUSTOM DISTRIBUTIONS FOR ELIGIBLE OPEN-SOURCE PROJECTS

1. OVERVIEW
The term "Distribution" as used in this Exhibit refers to 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.

Participants of an Eligible Open-Source Project (as defined below) can use the Service for free to prepare Distributions, subject to this Agreement, and any Distribution produced by such participants with the Service will be licensed under the terms and conditions of the ActiveState Open-Source Distribution License Agreement.

2. ELIGIBLE OPEN-SOURCE PROJECT CRITERIA
ActiveState will consider an open-source project to be an "Eligible Open-Source Project" if ActiveState determines, in its absolute discretion that the project meets the following criteria:
- ✔ The open-source project should be freely available to the general public i.e. should be in a public repository and developed in public.
- ✔ The use of the Service by the open-source project must always be flagged "public" on the ActiveState Platform. No Distributions, projects, and or content used or made by the open-source project on the ActiveState Platform can be flagged "Private". "Private" use of the ActiveState Platform is only available for paid accounts.
- ✔ The open-source project must be comprised fully of components that are publicly available free-of-charge and are licensed under the approved open-source licenses listed on the Open-Source Initiative's website, including those listed at https://opensource.org/licenses. Excluding dependencies on Operating System, any components cannot have dependencies on closed sourced or commercially licensed components.
- ✔ The use of the Service by the participants of an open-source project is free as long as it is being used directly by and for the open-source project it was created for. Further, a participant of such open-source project can use and distribute the Distributions generated by the Service, for any purpose as long as the open-source project continues to support it for that project. The participants must agree not to use the Service for free for other projects, including open-source projects that are not Eligible Open-Source Projects.
- ✔ If the Eligible Open-Source Project has a commercial version, the cost-free Distribution(s) created using the Service pursuant to the ActiveState Open-Source Distribution License Agreement cannot be offered in the commercial version. Please contact sales@activestate.com for a separate license for this purpose.

3. USING THE SERVICE FOR CUSTOM DISTRIBUTIONS OF AN ELIGIBLE OPEN-SOURCE PROJECT
If You would like ActiveState to consider whether Your open-source project qualifies as an Eligible Open-Source Project, please contact community@activestate.com.

4. HOSTING OF CUSTOM DISTRIBUTIONS OF ELIGIBLE OPEN-SOURCE PROJECT CRITERIA
Distributions created by participants of an Eligible Open-Source Project using the Service must be publicly accessible via the ActiveState Platform. Eligible Open-Source Projects are encouraged to use their website and other communication channels to direct people to download the Open-Source Project's Distribution from the ActiveState Platform. However, Eligible Open-Source Projects may also host the Distribution outside of the ActiveState Platform. ActiveState has the right, in its absolute discretion, to "rate-limit" any participants of an Eligible Open-Source Project that puts unreasonable demands on the ActiveState Platform capacity/servers.

5. DISQUALIFICATION
If a participant of an Eligible Open-Source Project, while using the Service, fails to comply with or breaches this Agreement or ActiveState Open-Source Distribution Agreement, then ActiveState, in its sole discretion has the right to revoke the designation of an open-source project as an Eligible Open-Source Project and/or terminate the right for participants of an Eligible Open-Source Project to access or use the ActiveState Platform, including ActiveState's Distribution mechanics.