

## ACTIVESTATE® PLATFORM ENTERPRISE TIER ADDENDUM

Agreement Version: November 9, 2018

These are the additional terms for the ActiveState® Platform Enterprise Tier (“Platform Enterprise Tier Terms”). Any capitalized terms not defined in these Platform Enterprise Tier Terms will be defined in the [ActiveState® Platform Terms of Use and Service Agreement](#). By agreeing to the Platform Enterprise Tier Terms, you also agree to the ActiveState® Platform Terms of Use and Service Agreement, as determined by the type of account you have.

In the event that you issue any form of order to ActiveState authorizing the purchase of the license(s) for the Products, it is agreed that such order is issued exclusively for the purpose of confirming your purchase of the specified item(s) and the price(s) thereof and that NO OTHER TERMS AND CONDITIONS SPECIFIED OR PREPRINTED ON OR OTHERWISE INCORPORATED IN YOUR ORDER SHALL ADD TO OR MODIFY THE TERMS AND CONDITIONS OF THIS PLATFORM ENTERPRISE TIER TERMS, nor shall such terms and conditions affect either party’s responsibility to the other party as set forth herein. YOUR PURCHASE ORDER OR YOUR PAYMENT ACCEPTED BY ACTIVESTATE SHALL CONSTITUTE YOUR ACCEPTANCE OF ACTIVESTATE’S OFFER AS SET FORTH ON A QUOTE/INVOICE OR ORDER FORM, SUBJECT SOLELY TO THE TERMS AND CONDITIONS OF THIS PLATFORM ENTERPRISE TIER TERMS. ACTIVESTATE RESERVES THE RIGHT TO REJECT ANY ORDER FROM YOU. ACTIVESTATE WOULD NOT BE ABLE TO OFFER THE PRODUCTS ON AN ECONOMIC BASIS ON TERMS OTHER THAN THE TERMS AND CONDITIONS OF THIS PLATFORM ENTERPRISE TIER TERMS.

### 1. Definitions.

“Authorized Machine” means a single instance of the Product on a single instance of an Operating System. The Product can be deployed using thin-client technology for application deployment such as with terminal services, file server, remote desktop services environment, or XenApp or any similar environments where by more than a single user is concurrently accessing subject to the installation/instances count of the licensed Product that may be used by the You, as designated in the Quote/Invoice or Order Form issued by ActiveState. The Product cannot be deployed in a way other than the use cases specifically permitted in Section 2, License Grant, herein. Any use case other than described in the foregoing requires a different license agreement from ActiveState. If the number of Authorized Machines is not specified or silent on the Quote/Invoice or Order Form, then the Authorized Machine count is capped at five hundred (500).

“Authorized Use” means the non-exclusive rights to install and use the Product Type with the Product Version on the supported Operating System during the Term on a defined number of copies or installations/instances of the licensed Software that may be used by the You, and where applicable, limited to the number of Authorized Machines, as designated in the Quote/Invoice or Order Form issued by ActiveState.

“Confidential Information” means all information designated in writing as confidential by ActiveState or You, or which under the circumstances of disclosure reasonably ought to be considered as confidential. Confidential Information will include the Products, including all source and object code, all associated Documentation, and any and all business, pricing, and Fees terms.

“Fees” means the fees payable by the You to ActiveState as specified in the Quote/Invoice or Order Form.

“Intellectual Property Rights” means all present and future patent, copyright, confidential information, database rights, rights in designs, know-how, mask works, 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.

“Managed Distribution” means a Distribution or set of Distributions that are built, maintained, and managed by ActiveState via the ActiveState Platform and which includes and is limited to the Product Type, Product Version, Operating System, and the corresponding packages/modules as designated in the Quote/Invoice issued by ActiveState.

“Operating System” means supported platform of licensed Product such as Windows, Linux, macOS, AIX, HP-UX, Solaris or other supported platform, including containers, ActiveState may offer.

“Product” means any Distribution, Managed Distribution, and or any other products provided and or licensed via the ActiveState Platform or as specified in the Quote/Invoice or Order Form and for which a license is purchased by the You

pursuant to this Platform Enterprise Tier Terms, including the Product Type, Product Version and Operating System for such software. Such term may include the media upon which such software is delivered to You and the guides and manuals for use of such Products (the "Documentation").

"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.

"Product Version" means the number which identifies a specific version of the Product Type of the licensed Software (e.g. ActivePerl 5.8 where ActivePerl is the Product Type and 5.8 is the version of ActivePerl).

"Professional Services" means training, consulting, custom development, or implementation services that ActiveState provides You pursuant to a mutually executed Statement of Work related but not necessarily limited to the Product, Product Type, Product Version. Professional Services do not include Support Services (as defined in section 3 herein).

"Quote/Invoice" and or "Order Form" means the ActiveState offer whether it is made by website, e-commerce receipt/invoice, or document issued by ActiveState directly to or through a third party reseller to You offering a license for the Products under the "ActiveState Platform Enterprise Edition" license and services, together with supported extensions (if any) for the term, price(s), copies/installations/instances, and "Ship to" You location(s) described therein.

"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.

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

"User Cap" means the maximum number of Users that can be set up and can access the ActiveState Platform as designated in the Quote/Invoice or Order Form issued by ActiveState. If User Cap is not specified or is silent on the Quote/Invoice or Order Form, then the User Cap cannot exceed ten (10).

"You" means the direct purchaser (or recipient, if purchased through a third-party reseller) of an "ActiveState Platform Enterprise Edition" license, maintenance and support, from ActiveState as identified in the Quote/Invoice or Order Form for this Platform Enterprise Tier Terms.

## **2. License Grant.**

Subject to Your compliance with the terms and conditions of this Platform Enterprise Tier Terms, including payment of the Fees, ActiveState hereby grants to You, and You hereby accepts, a worldwide, personal, revocable, limited, non-exclusive, non-transferable, non-sub-licensable right and license to download, install, and use the Products for Your internal use in accordance with the terms and conditions of this Platform Enterprise Tier Terms, including the Authorized Use and User Cap. You will not copy (except for archival purposes) or distribute, adapt, alter, amend, modify, reverse engineer, decompile, disassemble or decode the Products. Except as expressly authorized under this Platform Enterprise Tier Terms, You will not modify, rent, lease, loan, sell, make available, re-sell, offer for re-sale, distribute, sublicense, or create derivative works based on the Products, in any manner, and You will not exploit the Products in any unauthorized manner whatsoever.

Except to the extent expressly authorized by ActiveState, You shall not alter, modify, remove, delete, or otherwise change ActiveState's Trademarks or other Intellectual Property Rights notices of ActiveState and/or its licensors, if any, appearing on the Products as delivered to You or on any splash screens of the Products.

If You are unsure or require a greater number of Authorized Use, Authorized Machines, and or User Cap please contact your account executive or contact [sales@activestate.com](mailto:sales@activestate.com).

**Scope of License.** The Products are not sold to You but licensed for the duration of the Term. You have no other rights to the Products except as specified in this Platform Enterprise Tier Terms. Unless applicable law gives You more rights despite this limitation, You may use the Products only as expressly permitted in this Platform Enterprise Tier Terms.

## **3. Maintenance and Support.**

Provided You have paid all payable Fees to ActiveState, ActiveState will provide the following support services (the "Support Services"):

- correction of any material Product errors and bug-fixes, which corrections are available to all of ActiveState's customers for the same Products;
- Making available of stable releases for the Products and supported extensions, if any, (but specially excluding any Product Upgrades) on a regular basis via on-line delivery via the ActiveState Platform at <http://platform.activestate.com> providing You with a user name and password to access and download the Product(s) and updates from the ActiveState Platform; and
- Remote support for the build, installation, usage, configuration, and diagnosis (dependent on ActiveState's product life cycle) of the Products.

To provide the Support Services, ActiveState's support representatives will provide telephone and email support TO A MAXIMUM OF TWO (2) CONTACTS IN YOUR ORGANIZATION (or to a greater number of contacts upon payment by You of the applicable fees) in respect of the Products, Monday to Friday, 8am to 5pm PST, excluding U.S. Federal holidays in accordance with the response times set forth below (based on the severity level of the problem with the applicable Product):

Severity Level	Criteria	Response Time
1	CRITICAL IMPACT - A reproducible problem of the Products which has or will have, within 24 hours, a severe impact or impair the performance of substantially all major functions of Your business.	2 business hours
2	SEVERE IMPACT - A reproducible problem of the Products which prevents or seriously impairs the performance of a major function of Your business.	4 business hours
3	MINOR IMPACT - A problem of the Products which disables or impairs the performance of a minor function of Your Business	1 business day

Support Services inquiries should be addressed to [enterprise-support@activestate.com](mailto:enterprise-support@activestate.com) , 778.786.1102, or sent directly via the ActiveState Platform chat functionality. You may order customized build modifications and or additional Professional Services based upon a Statement of Work and Fees as agreed upon between ActiveState and You.

#### 4. Maintenance and Support Restrictions.

ActiveState reserves the right, at its sole discretion, to limit or cancel the Support Services, in whole or in part: (1) for any module, extension, script or other software program that has become obsolete or has been superseded by more recent modules, extensions, scripts or programs or (2) upon the discontinuance of support by the manufacturer of a platform, to limit or cancel support for such platform (the "Archived Platform") upon notice to You. In such case, ActiveState will provide You with the most recent stable version of the Products (as distributed regularly from the ActiveState Platform) for the Archived Platform, so long as You are current in payment of the Fees. You acknowledge that the Support Services, including that for an Archived Platform, may, at ActiveState's sole discretion, be limited to ActiveState's commercially reasonable efforts and that major fixes may no longer be possible. ActiveState will provide the Support Services solely to Your two (2) designated contacts and any additional contacts for which ActiveState has paid applicable Fees. ActiveState does not provide the Support Services for software that You have modified. ActiveState will only provide the Support Services with respect to Products made available to You via the ActiveState Platform, and products or other software downloaded from ActiveState's public website at [www.activestate.com](http://www.activestate.com) will not be covered by the Support Services and are not supported under this Platform Enterprise Tier Terms. ActiveState is not obligated to fix any identified maintenance and support issue covered under section 3 above, and ActiveState's sole obligation under this Platform Enterprise Tier Terms with respect to such maintenance and support issue is limited to response and diagnosis of the maintenance and support issue as specified.

ACTIVESTATE WILL NOT PROVIDE ANY SUPPORT SERVICES TO YOUR THIRD-PARTY CUSTOMERS.

#### 5. Fees.

Unless otherwise agreed in writing, You will pay ActiveState the Fees within 30 days of receipt of ActiveState's invoice. All payments, fees and other charges payable by You to ActiveState under this Platform Enterprise Tier Terms are

exclusive of all taxes, levies and assessments of any jurisdiction. You will bear, and be responsible, for the payment of all such taxes, levies and assessments imposed on You or ActiveState arising out of this Platform Enterprise Tier Terms, excluding any tax based on ActiveState's net income. If You is required to pay ActiveState a lower amount under this Platform Enterprise Tier Terms because of any withholding or tax, You shall pay to ActiveState such grossed-up amount as would be necessary to provide ActiveState the full amount of the fees absent any withholding tax imposed on amounts payable under this Platform Enterprise Tier Terms.

## **6. Term and Renewal.**

The term of this Platform Enterprise Tier Terms shall be for one (1) year or as specified on the Quote/Invoice or Order Form and shall commence as of the date of purchase (the "Initial Term"). Upon expiration of the Initial Term, this Platform Enterprise Tier Terms will automatically renew on consecutive one (1) year terms (each a "Renewal Term"), unless terminated by either You or ActiveState in writing not less than sixty (60) days prior to the end of the Initial Term or a Renewal Term, as applicable or otherwise pursuant to the terms or conditions of this Platform Enterprise Tier Terms. Within thirty (30) days of the commencement of a Renewal Term, ActiveState will issue an invoice for the Fees applicable to the Renewal Term to the You and the You will be obligated to pay such Fees in accordance with Section 5. "Term" means the Initial Term and any Renewal Term.

## **7. Limited Product Warranty and Remedy.**

During the Term, provided the You is current in payment of all Fees, taxes, and charges hereunder (the "Warranty Period"), ActiveState warrants to You that the Products as delivered to You: (1) are compatible with the operating systems identified in the Documentation; (2) will operate in conformance with all Documentation and specifications applicable thereto; (3) do not contain any known viruses, routines, programs or devices that could interfere with Your use thereof; and (4) do not include any timer, clock, counter or other limiting mechanism that would allow ActiveState to disable the Products or cause the Products to be erased, inoperable or otherwise incapable of being used by You. If ActiveState is advised that the Products are not operating in conformance with all Documentation and specifications applicable thereto during the Warranty Period, then ActiveState will respond to the error within the applicable time period described in Section 3 entitled "Maintenance and Support" above and subject to the limitations described in Section 4 entitled, "Maintenance and Support Restrictions". Unless otherwise set forth in a SOW, ActiveState represents and warrants that any Professional Services performed under this Agreement will be performed in a professional and workmanlike manner by appropriately qualified personnel. ActiveState's only obligation, and Your only remedy, for a breach of this warranty will be, at ActiveState's option and expense, to either: (i) promptly re-perform any Professional Services that fail to meet this limited warranty or (ii) if the breach of limited warranty cannot be cured, terminate the SOW and ActiveState will refund You the unused prepaid Fees.

## **8. Conditions of Warranty.**

THE WARRANTIES SET OUT IN SECTION 7 (THE "LIMITED WARRANTIES") ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, AND ACTIVESTATE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES AS TO THE PERFORMANCE OR SUITABILITY OF THE PRODUCTS FOR ANY PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ACTIVESTATE EXCLUDES AND DISCLAIMS, AND YOU WAIVES, ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, DURABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM COURSE OF DEALING, USAGE OR TRADE.

The Limited Warranties are void and have no application with respect to any error: (1) that results from use by You of the Products in an environment other than that recommended by ActiveState; (2) that results from any modifications to the Products made by You that are not authorized by ActiveState or, if such authorization is granted, are made using software other than ActiveState recommended software; or (3) caused by any bug, defect, virus or error in other software or hardware used with the Products. In the event of breach of the Limited Warranties, ActiveState's exclusive liability and Your sole remedy for breach thereof shall be (at ActiveState's option) to correct or replace the Products and/or the Documentation within a reasonable time or to refund the total Fees paid to ActiveState by You in the relevant portion of the Term and terminate this Platform Enterprise Tier Terms. ActiveState shall only be liable under this Platform Enterprise Tier Terms for breach of the Limited Warranties where ActiveState is notified in writing of such breach within the Warranty Period. Notwithstanding the foregoing, ActiveState may at its option provide email and/or telephone support to You with respect to issues which are outside the scope of the warranties set forth in Section 7.

## **9. Limitation of Liability.**

NOTWITHSTANDING ANY OF THE PROVISIONS IN THIS PLATFORM ENTERPRISE TIER TERMS, IN NO EVENT AND UNDER NO LEGAL THEORY, INCLUDING WITHOUT LIMITATION, TORT, CONTRACT, OR STRICT SOFTWARE LIABILITY, SHALL ACTIVESTATE OR ANY OF ITS SUPPLIERS OR LICENSOR BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER MALFUNCTION, ANY CLAIMS MADE BY END USERS AGAINST YOU, OR ANY OTHER KIND OF COMMERCIAL DAMAGE, EVEN IF ACTIVESTATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. IN EACH YEAR DURING THE TERM, IN NO EVENT SHALL ACTIVESTATE'S CUMULATIVE AGGREGATE LIABILITY IN SUCH YEAR TO THE YOU FOR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING FOR ANY INDEMNIFICATION), AND REGARDLESS OF THE FORM OF ACTION (INCLUDING IN CONTRACT AND TORT (INCLUDING NEGLIGENCE)), EXCEED THREE TIMES THE AMOUNT OF ANNUAL FEES PAID TO ACTIVESTATE UNDER THIS PLATFORM ENTERPRISE TIER TERMS IN SUCH YEAR UNLESS SPECIFIED OTHERWISE ON THE QUOTE/INVOICE OR ORDER FORM.

## **10. Ownership.**

ActiveState and its licensor, as applicable, are and will continue to be the owner of all rights, title and interest, including all Intellectual Property Rights, in and to the Products and Trademarks. Except as specifically provided under this Platform Enterprise Tier Terms, You have no right, title, or interest, including any Intellectual Property Right, in and to the Products or the Trademarks. You shall not use, adopt, apply for or register as trademarks or domain names any trademarks or domain names identical or confusingly similar to the Trademarks anywhere in the world. In the event that You makes suggestions to ActiveState regarding new features, functionality or performance ("Improvements"), You hereby assigns to ActiveState any and all of its rights, title and interest, including all Intellectual Property Rights, in and to any such Improvements. Upon ActiveState's request, You will execute or procure the execution of all such documents as may be required to assign such rights, title and interest in and to the Improvements to ActiveState or otherwise to enforce such rights, title, or interest.

## **11. Termination**

### **11.1 Termination by either Party.**

One party may terminate this Platform Enterprise Tier Terms immediately upon written notice to the other party if: (1) the other party materially breaches this Platform Enterprise Tier Terms and fails to correct the breach within thirty (30) days following written notice from the other party specifying the breach and requiring the breach to be remedied; (2) a resolution has been passed authorizing the issue of a notice (or a notice has been issued) convening a meeting of shareholders to consider a resolution for, or a petition has been presented (and not set aside within seven days of its presentation) for, the winding-up of the other party; (3) the other party goes into liquidation (other than a winding-up for the purposes of a solvent amalgamation or reconstruction the terms of which have previously been approved in writing by the other party and in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the obligations imposed on the relevant party under this Platform Enterprise Tier Terms); (4) the other party has taken or suffered any similar action or procedure due to debt; or (5) the other party has been dissolved. In the event of termination of any kind, no refunds will be made by ActiveState for sums previously paid to ActiveState by You, including any Fees, regardless of the timing of the termination.

### **11.2 Effect of Termination.**

Upon termination or expiration of this Platform Enterprise Tier Terms, ActiveState shall no longer be obligated to provide the Support Services to You and Your rights to the Products terminate. Termination or expiration of this Platform Enterprise Tier Terms shall not relieve You of its obligations to pay all Fees that have accrued or are otherwise owed by You to ActiveState. Sections 5, 8, 9, 10, 11.2, 11.3, 12.2, 13, 14, and 15 shall survive termination of this Platform Enterprise Tier Terms. Termination of this Platform Enterprise Tier Terms by either party in accordance with its terms shall not give the other party any right to compensation, damages, loss of profits or prospective profits of any kind or nature whatsoever, other than those that have accrued prior to the expiration or termination.

### **11.3. Handling of Product upon Termination.**

Upon termination of this Platform Enterprise Tier Terms for any reason You shall (a) cease using the Product; and (b) return to ActiveState or destroy all copies of the Product in its possession or under its control within one (1) month after the effective date of termination and, if requested by ActiveState, certify to ActiveState within one (1) month from the effective date of termination that You has destroyed or has returned to ActiveState the Product and all copies. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

## 12. Indemnification

### 12.1 ActiveState Indemnity.

Subject to paragraphs 12.2 and 12.4, ActiveState will defend and indemnify You against any third-party claim brought against You to the extent that it is based on an allegation that Your authorized use or possession of the Managed Distributions and only the Managed Distributions infringes a U.S. copyright or misappropriates a trade secret of any third party ("Third Party IP") (each, a "Claim"), and pay damages and costs (including reasonable legal fees) awarded by a court of final appeal attributable to such a Claim. If any part of the Managed Distribution(s) is in ActiveState's opinion likely to or does become the subject of an allegation or claim for infringement of any Third Party IP, ActiveState, at its option, will either (a) procure a license so that Your possession or distribution of the Managed Distribution(s) in accordance with the terms and conditions of this Platform Enterprise Tier Terms does not infringe the Third Party IP; (b) modify the Managed Distribution(s) so that it no longer infringes the Third Party IP; and (c) terminate this Platform Enterprise Tier Terms forthwith by notice to the You if ActiveState is unable to obtain, in a manner which ActiveState considers commercially feasible, a license or modify the Managed Distribution(s) as referred to in (a) or (b) and refund an equitable portion of the applicable Fees paid by the You to ActiveState.

### 12.2 ActiveState Indemnity Limitation.

Notwithstanding Section 12.1, ActiveState will have no liability for any claim of infringement based on (i) use of other than a current, unaltered release of the Managed Distribution(s) or any portion thereof available from ActiveState if such infringement would have been avoided by the use of a current, unaltered release of the Managed Distribution(s) or any portion thereof; (ii) any portion of the Managed Distribution(s) that is developed based on any specification therefor that is required by You; (iii) any modification to the Managed Distribution(s) by anyone other than ActiveState; or (iv) the use of the Managed Distribution(s) or any portion thereof in combinations with other hardware or software provided by You or anyone other than ActiveState.

### 12.3 You Indemnity.

You will defend, indemnify, and save and hold harmless ActiveState and its past, present and future directors, officers, employees, agents, representatives, successors, permitted assigns, and related persons (the "**ActiveState Indemnitees**") from and against any and all claims and proceedings which may be brought or established against ActiveState, and which arises out of, or in relation to, or by reason of: (a) any breach by ActiveState of its obligations under this Platform Enterprise Tier Terms; (b) any unauthorized action or omission of the You or its employees; (c) the manner in which the You markets the Products; or (d) the independent supply by the You of products or services for use in conjunction with, or in relation to, the Products.

### 12.4 Indemnity Procedure.

Notwithstanding paragraphs 12.1 and 12.3, the obligations of one party (the "**Indemnifying Party**") to the other party (the "**Indemnified Party**") are conditional upon the Indemnified Party (which in the case of ActiveState, includes any ActiveState Indemnitee): (a) giving the Indemnifying Party prompt notice of the claim or proceeding covered by the indemnification obligation; (b) granting control of the defense and settlement of the claim or proceeding to the Indemnifying Party (provided that a claim or proceeding will not be settled without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld or delayed); and (c) reasonably co-operating with the Indemnifying Party regarding the defense and settlement of the claim or proceeding at the Indemnified Party's expense. Notwithstanding anything contained in this Platform Enterprise Tier Terms to the contrary, the Indemnified Party retains the right to participate in the defense of and settlement negotiations relating to any claim or proceeding with counsel of its own selection at its sole cost and expense.

## 13. Audit

On ActiveState's request, no more frequently than annually, You will furnish ActiveState with a signed certification verifying that the Products are being used pursuant to the terms of this Platform Enterprise Tier Terms, including any user limitations. You agree to grant ActiveState reasonable access to Your site(s), upon prior notice during normal business hours, to audit the use of the Products. Any such audit shall be at ActiveState's expense.

#### **14. Confidentiality**

Except as reasonably required to exercise its rights under this Platform Enterprise Tier Terms, both ActiveState and You agrees to prevent any unauthorized copying, use, distribution, installation or transfer of possession of the Confidential Information. At a minimum, both You and ActiveState shall maintain at least the same procedures regarding the Confidential Information that it maintains with respect to its own. You or ActiveState shall not acquire any interest in any Confidential Information received from the other or from ActiveState by reason of this Platform Enterprise Tier Terms. Confidential Information shall not include any information which (i) becomes part of the public domain through no act or omission of You or ActiveState; (ii) is lawfully acquired by You or ActiveState from a third party without any breach of confidentiality; (iii) is independently developed without reference to the Confidential Information; or (iv) is disclosed in accordance with judicial or other governmental order or timely disclosure requirements imposed by law or stock exchange policies. Notwithstanding the foregoing, either party shall be permitted to disclose the terms and conditions of this Platform Enterprise Tier Terms in conjunction with legal due diligence proceedings. Without limiting the generality of the foregoing, You or ActiveState shall take reasonable steps to prevent any personnel from removing any proprietary or other legend or restrictive notice contained or included in any material provided by ActiveState or You. Each party shall both during the term of this Agreement and during the 3 years thereafter (or such longer period as the Confidential Information remains confidential): 1) keep all Confidential Information strictly confidential; 2) not disclose any Confidential Information to a third party, other than to such of its consultants, employees and/or officers as will of necessity acquire it as a consequence of the performance of that party's obligations under this Agreement (in which case the relevant party shall ensure that each such consultant, employee and/or officer shall keep such Confidential Information confidential and shall not use any of it for any purpose or disclose it to any person, firm or company other than those for which or to whom that party may lawfully use or disclose it under this Agreement); and 3) use Confidential Information only in connection with the proper performance of this Agreement.

#### **15. Professional Services.**

Upon Your request, ActiveState will provide a Statement of Work ("SOW") detailing the Professional Services. Each SOW is binding upon signature by the parties and any Professional Services will be governed by the terms of this Agreement. In the event of any conflict between the terms of this Agreement and any SOW, the terms of this Agreement will control. ActiveState must perform the Professional Services described in each SOW according to the timeframes set forth in that SOW and or Order Form. ActiveState will control the manner and means by which the Professional Services are performed and reserve the right to determine which personnel is/are assigned to perform the Professional Services. ActiveState may use third parties to perform the Professional Services provided ActiveState remains responsible for all their acts and omissions. You acknowledge that ActiveState retains all right, title and interest in and to anything used or developed in connection with performing the Professional Services, including, among other things, software programs, tools, specifications, ideas, concepts, inventions, processes, techniques, and know-how. To the extent ActiveState delivers anything to You during the course of performing the Professional Services, ActiveState grants to You a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to use those deliverables during the term of this Agreement, solely in conjunction with Your use of the Product.

#### **16. General Provisions.**

**Notices.** Any notice under or in connection with this Platform Enterprise Tier Terms shall be in writing and shall be delivered by hand, or sent by first class post (or by airmail if sent abroad) or by fax or by email as follows: if to ActiveState, to the following address: 1000 - 1177 West Hastings, Vancouver, BC, Canada, V6E 2K3 Canada, to [legal@activestate.com](mailto:legal@activestate.com) or to fax number 778.786.1133 (marked for the attention of the Head of Legal); if to You, to the address, email and/or fax number set out in the Quote/Invoice or Order Form or to such other person, address or fax number as either party may specify to the other from time to time by notice given in accordance with this Platform Enterprise Tier Terms, provided that any party giving any notice by fax shall also send a copy of that notice by post, which shall be placed in the post by that party on the date of transmission of the fax or the next business day thereafter.

**Relationship Between the Parties.** Each party is an independent contractor of the other; nothing in this Platform Enterprise Tier Terms shall be construed to create a partnership, joint venture or agency relationship between the parties.

**Publicity Rights.** The You grants ActiveState the right to include the You name and logo as a customer in Product promotional material. You can deny ActiveState this right at any time by submitting a written request via email to [marketing@activestate.com](mailto:marketing@activestate.com), requesting to be excluded from Product promotional material. Requests made after purchasing may take up to thirty (30) calendar days to process.

**Disputes.** Any disputes between the parties arising out of or in connection with this Platform Enterprise Tier Terms which cannot be settled amicably shall in the first instance be notified in writing to the authorized representatives of each party. In the event that such authorized representatives do not reach an amicable settlement within 7 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 1 month of referral to the same, the parties may proceed to the courts as set out herein.

**Export Controls.** You agree to comply with all export laws and restrictions and regulations of Canada, the United States or foreign agencies or authorities, and not to export or re-export the Products or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. As applicable, each party shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to its own export of the Products from the U.S. Neither the Products nor the underlying information or technology may be electronically transmitted or otherwise exported or re-exported (i) into any country subject to Canada or U.S. trade sanctions covering the Products, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; or (ii) to anyone on Canada's Area Control List of the Export and Import Permits Act, or; (iii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Table of Denial Orders. By installing or using the Products, You agree to the foregoing and represents and warrants that it complies with these conditions.

**Injunctive Relief.** You acknowledge and agrees that any breach of its obligations with respect to confidential information and Intellectual Property Rights would cause substantial harm to ActiveState that could not be remedied by payment of damages alone. Accordingly, ActiveState will be entitled to preliminary and permanent injunctive relief in any jurisdiction where damage may occur in addition to all other remedies available to it for any such breach.

**Construction.** The headings in this Platform Enterprise Tier Terms are for purposes of convenience only and shall not affect the meaning or construction of the clauses to which they relate. Any use in this Platform Enterprise Tier Terms of words denoting the singular include the plural and vice versa.

**U.S. Government End-Users.** 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.

**Force Majeure.** Neither party shall be liable for damages for any delay or failure of delivery arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures. Notwithstanding anything to the contrary contained herein, if either party is unable to perform hereunder for a period of thirty (30) consecutive days, then the other party may terminate this Platform Enterprise Tier Terms immediately without liability by ten (10) days written notice to the other. This provision shall not apply to any payment obligations under this Platform Enterprise Tier Terms.

**Assignment.** Neither this Platform Enterprise Tier Terms nor any rights granted hereunder, nor the use of any of the Products may be assigned, or otherwise transferred, in whole or in part, by You, without the prior written consent of ActiveState. ActiveState may assign this Platform Enterprise Tier Terms in the event of a merger or sale of all or substantially all of the stock or assets of ActiveState relating to the Products without Your consent. Any attempted assignment will be void and of no effect unless permitted by the foregoing. This Platform Enterprise Tier Terms shall enure to the benefit of the parties permitted successors and assigns.



**Severability.** To the extent any section, clause, provision or sentence or part thereof ("Part") of this Platform Enterprise Tier Terms is determined to be illegal, invalid or unenforceable by a competent authority in any jurisdiction, then such determination of that Part will not affect: (i) the legality, validity or enforceability of the remaining Parts of this Platform Enterprise Tier Terms; or (ii) the legality, validity or enforceability of that Part in any other jurisdiction, and that Part will be limited if possible and only thereafter severed, if necessary, to the extent required to render the Platform Enterprise Tier Terms valid and enforceable.

**Waiver.** The failure to exercise or delay in exercising a right or remedy under this Platform Enterprise Tier Terms shall not constitute a waiver of the right or remedy or a waiver of any other or subsequent right or remedy.

**Entire Agreement.** This Platform Enterprise Tier Terms together with any Quote/Invoice or Order Form which makes reference to this Platform Enterprise Tier Terms 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 Platform Enterprise Tier Terms, appendices and attachments. ActiveState reserves the right to change this Platform Enterprise Tier Terms at any time, which change shall be effective as of the effective date for the terms and conditions of this Platform Enterprise Tier Terms as shown on ActiveState's Website (the "Change Effective Date"). Your continued use of the Products and the Support Services after the Change Effective Date constitutes Your acceptance of such changes. This Platform Enterprise Tier Terms may not be otherwise amended without ActiveState's prior written agreement. You agree to periodically review the terms and conditions of this Platform Enterprise Tier Terms as updated from time to time on ActiveState's website.

**United Nations Convention of Contracts.** 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 Platform Enterprise Tier Terms, 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.