

ACTIVESTATE® PLATFORM OEM DISTRIBUTION LICENSE ADDENDUM

Agreement Version: November 9, 2018

These are the additional terms for the ActiveState® Platform OEM Distribution License ("Platform OEM Distribution License Terms"). Any capitalized terms not defined in these Platform OEM Distribution License Terms will be defined in the [ActiveState® Platform Terms of Use and Service Agreement](#) and or the [ActiveState Platform Enterprise Tier Addendum](#). By agreeing to the Platform OEM Distribution License Terms, you also agree to the ActiveState® Platform Terms of Use and Service Agreement, ActiveState Platform Enterprise Edition Addendum (if applicable as specified Quote/Invoice or Oder Form), 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 OEM DISTRIBUTION LICENSE 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 OEM DISTRIBUTION LICENSE 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 OEM DISTRIBUTION LICENSE TERMS.

1) Definitions.

- a) "Bundled Software" means a product listed in the Quote/Invoice or Oder Form, which consists of the Products and Your Product (to be distributed in binary form only, NOT source code) distributed to End Users as a single package.
- b) End User" means an unaffiliated, third party customer of You who is a party to an End User License Agreement or a software company using the Bundled Software to create products for commercial licensing.
- c) "End User License Agreement ("EULA")" means Your then current standard license agreement terms under which the Bundled Software and their related documentation and any updates to them are licensed and as may be updated and negotiated from time-to-time.
- d) "Redistribution Cap" means the maximum number of units of Bundled Software as described in the Quote/Invoice or Oder Form that may be licensed under Section 2) herein.
- e) "Resellers" means entities to which You distribute the Bundled Software for the purpose of distribution to End Users (and such term includes any other entities, other than End Users, through which the Bundled Software are distributed by such entities).
- f) "Your Product(s)" means the computer hardware and/or computer software products owned or licensed by You as described in the Quote/Invoice or Oder Form.

2) License.

- a) License Grant. Limited to the Redistribution Cap and Your Product(s) on the Order Form ActiveState hereby grants to You and Your subsidiaries and You and Your subsidiaries hereby accept, a worldwide, non-exclusive, non-transferable right and license to use the Products as follows, until this Agreement expires or is terminated:
 - i) to use the Products to develop and test the Bundled Software and provide support to End Users, directly or indirectly through Resellers, and to provide training to Resellers and End Users for the Bundled Software;
 - ii) to use ActiveState's Trademarks solely in connection to market the Products in accordance with ActiveState's current style guidelines as such may be amended from time to time.
 - iii) to copy, market and distribute the Products solely as part of the Bundled Software to Resellers for their distribution to End Users provided that Licensee must (a) cause each Reseller to enter into a written executed agreement ("Reseller Agreement") binding the Reseller to terms and conditions no less protective of ActiveState's rights and remedies than the terms of this Agreement and (b) enforce each such Reseller Agreement fully;
 - iv) to copy, market, sub-license and distribute the Products as part of the Bundled Software directly to End Users;
 - v) to use, demonstrate, display and provide the Products as part of the Bundled Software to Resellers and/or End Users at no charge for evaluation only and not for sale, solely for the limited purpose of promoting and marketing the Products as part of the Bundled Software;
 - vi) to provide licenses of the Bundled Software to other software companies who wish to create integrations to the Bundled Software.

3) Appointment. Subject to the terms and conditions of this Agreement, ActiveState hereby appoints You as a non-exclusive, authorized distributor and sub-licensor of the Product(s), solely in combination with and as part of the Bundled Software

to End Users and software partners either (i) directly, as a distributor or reseller itself or (ii) indirectly, through Resellers.

- 4) **Bundled Software.** You shall ensure that and shall procure that each Reseller to whom it supplies Bundled Software shall ensure that, it distributes and resells the Products only as Bundled Software and not as Product(s).
- 5) **Quality Assurance of Bundled Software.** Following a request on reasonable notice by ActiveState, You shall submit samples of the Bundled Software to ActiveState at no cost for review and approval where these are being used by, are to be used by or are for marketing or distribution to, End Users or Resellers or other software partners. You shall use ActiveState's Trademarks solely on Bundled Software that are of a quality level at least comparable to the quality level of samples approved by ActiveState.
- 6) **YOUR SPECIAL OEM OBLIGATIONS AND WARRANTIES.** You warrant and agrees that You shall:
 - a) be responsible for integrating the Products into the Bundled Software;
 - b) any Product updates will be distributed as a Bundled Software to Resellers, software partners and End Users licensed to use a Product solely in combination with and as part of a Bundled Software.
- 7) **Term and Renewal.** Term. The term of this Platform OEM Distribution License 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 OEM Distribution License 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 Edition 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 You and You will be obligated to pay such Fees in accordance with Section 5 of the Platform Enterprise Edition Terms. "Term" means the Initial Term and any Renewal Term.
- 8) **Termination.**
 - a) **Termination by either Party.** One party may terminate this Platform OEM Distribution License Terms immediately upon written notice to the other party if: (1) the other party materially breaches this Platform OEM Distribution License 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 OEM Distribution License 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.
 - b) **Termination by ActiveState.** ActiveState may terminate this Agreement immediately upon notice to You if You fail to integrate and/or combine the Products as part of a Bundled Software or engage in any activity that, in ActiveState's opinion, materially or adversely affects ActiveState's reputation (or the reputation of its affiliates) including, without limitation, making claims regarding ActiveState's products that are not authorized by ActiveState, distributing a virus, or implementing an email 'spam' campaign.
 - c) **Effect of Termination.** Termination or expiration of this this Platform OEM Distribution License Terms shall not relieve You of its obligations to pay all Fees that have accrued or are otherwise owed by You to ActiveState. Termination of this this Platform OEM Distribution License 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.
 - d) **Handling of Product upon Termination.** Upon termination of this Platform OEM Distribution License Terms for any reason You shall (a) cease using, sub-licensing and distributing all ActiveState's Trademarks, Products and Bundled Software; and (b) return to ActiveState or destroy all copies of the Products in its possession or under its control within one (1) month after the end of the period referred to in (a) above and, if requested by ActiveState, certify to ActiveState within one (1) month from the end of that period that You have destroyed or has returned to ActiveState the Products and/or Bundled Software 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.