

ACTIVESTATE® ACTIVERUBY™ BETA COMMUNITY LICENSE AGREEMENT

Version effective date: May 29th, 2017

This license agreement (the “**Agreement**”) is made between you (either an individual or a company or organization, not including its affiliates or wholly owned subsidiaries) (“**You**”) and ActiveState Software Inc. (“**ActiveState**”). This Agreement establishes the terms under which ActiveState will license the Beta Software (as defined below) to You and establishes the terms under which You may use, copy, modify, distribute, and/or redistribute the Beta Software. This Agreement does not apply to Maintenance and Support or OEM Distribution (all such capitalized terms as defined below), each of which requires a separate agreement with ActiveState. For more information on these types of agreements, please visit www.activestate.com. The intent of this Agreement is to allow ActiveState to maintain control over the development and distribution of the Beta Software while allowing its use in a variety of ways. If the terms and conditions of this Agreement do not permit Your proposed use of the Beta Software or if You require clarification regarding the scope of Your intended use of the Beta Software, please contact sales@activestate.com.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THE BETA SOFTWARE. BY CLICKING ON “YES, ACCEPT” OR BY INSTALLING THE BETA SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOUR ACCEPTANCE REPRESENTS THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE “YOU” OR “YOUR” WILL REFER TO THE ENTITY ON BEHALF OF WHICH YOU ACT (“YOUR ENTITY”). IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT OR IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR ENTITY, YOU HAVE NO RIGHT TO INSTALL OR USE THE BETA SOFTWARE AND YOU SHOULD (A) RETURN, DELETE, OR DISABLE THE BETA SOFTWARE OR (B) IF YOU PURCHASED A PRODUCT FROM ACTIVESTATE OR ITS RESELLER OR DISTRIBUTOR ON WHICH THE BETA SOFTWARE IS PRE-INSTALLED BY ACTIVESTATE, RETURN THE PURCHASED PRODUCT TO ACTIVESTATE OR THE APPLICABLE RESELLER OR DISTRIBUTOR FROM WHOM YOU OBTAINED THE PRODUCT.

1. **Definitions.**

(a) “**Confidential Information**” means all information designated in writing as confidential by each party, or which under the circumstances of disclosure reasonably ought to be considered as confidential. Without limiting the foregoing, ActiveState Confidential Information will include the Beta Software, including all source and object code, and all associated documentation, but not Accessible Code.

(b) “**Maintenance and Support**” means maintenance and support for the Beta Software provided by ActiveState under separate terms.

(c) “**OEM Distribution**” means any distribution to, and/or use of the Beta Software by, others outside Your organization and distribution and/or use of the Beta Software 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.

(d) **“Beta Software”** means the beta version of ActiveRuby software 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.

2. **License Grant, Use And Ownership.**

(a) **Limited License.** Subject to the terms and conditions of this Agreement, ActiveState grants to You a non-exclusive, revocable (at any time and for any reason, at ActiveState’s sole discretion), royalty-free, non-transferable, non-assignable license (without the right to sublicense):

(i) to use the Beta Software in accordance with the documentation solely for purposes of (A) internal testing and evaluation to determine whether or not to license generally available versions of the Beta Software if such versions ever become available, and (B) internal development to create interoperability between the Beta Software and Your products, and or (C) community project development,

(ii) to use the documentation provided with the Beta Software in support of Your authorized use of the Beta Software, and

(iii) to copy Beta Software for Your archival or backup purposes, provided that all titles and trademarks, copyright, and restricted rights notices are reproduced on such copies.

(b) **Evaluation Feedback.** The purpose of this limited license is the testing and evaluation of the Beta Software and documentation and development by You of Your products that interoperate with the Beta Software. In furtherance of this purpose, You may provide feedback to ActiveState and or ActiveState may reasonably request feedback concerning the functionality and performance of the Beta Software, including, without limitation, identifying potential errors and improvements (collectively the “Feedback”). In the event You provide such Feedback to ActiveState, ActiveState may use Feedback, without restriction in any manner now known or in the future conceived, to improve or enhance its products and, accordingly, and You hereby grant to ActiveState a non-exclusive, perpetual, irrevocable, royalty-free, transferable, worldwide right and license, with the right to sublicense (i) to use, reproduce, disclose, distribute, modify, prepare derivative works of and otherwise exploit the Feedback and other information You provide to ActiveState under this Agreement, and (ii) to make, use, sell, offer to sell, import and export any product or service that incorporates the Feedback and other information You provide to ActiveState under this Agreement.

(c) **Restrictions.** You shall not disclose, provide, or disseminate in any manner the Beta Software (including the documentation) or Confidential Information to any third party, including but not limited to its partners, affiliates or subsidiaries. Except to the extent contrary to any applicable laws, You will not, and will not permit any third party to, sublicense, rent, copy, modify, create derivative works of, translate, reverse engineer, decompile, disassemble, or otherwise reduce to human perceivable form any portion of the Beta Software or accompanying documentation. Without limiting the generality of the foregoing, You shall not use the Beta Software for Licensee’s product development or any other commercial purpose, including, but not limited to sales or marketing activities, except as expressly permitted in this Agreement. The Beta Software and all performance data and test results, including without limitation, benchmark test results (collectively “Performance Data”), relating to the Beta Software are the

Confidential Information of ActiveState, and will be treated in accordance with the terms of Section 4 of this Agreement. Accordingly, You shall not publish or disclose to any third party any Performance Data relating to the Beta Software.

(d) **Ownership.** ActiveState shall own and retain all right, title and interest in and to the intellectual property rights in the Beta Software and any derivative works thereof, subject only to the limited license expressly set forth in Section 2(a) hereof. You do not acquire any other rights, express or implied, in the Beta Software. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO ACTIVESTATE.

(e) **No Support Services.** ActiveState is under no obligation to support the Beta Software in any manner or to provide any updates to You. In the event ActiveState, in its sole discretion, supplies any update to You, the update shall be deemed Beta Software under this Agreement and shall be subject to the terms and conditions of this Agreement.

3. Intentionally Left Blank.

4. Confidentiality.

(a) Except as reasonably required to exercise Your rights under this Agreement, You agree to prevent any unauthorized copying, use, distribution, installation or transfer of possession of Confidential Information received from ActiveState (the “**ActiveState Confidential Information**”). You will not acquire any interest in any ActiveState Confidential Information by reason of this Agreement. Nothing herein will restrict ActiveState’s use or disclosure of the ActiveState Confidential Information. ActiveState Confidential Information will not include any information which (i) becomes part of the public domain through no act or omission on Your part; (ii) is lawfully acquired by You from a third party without any breach of confidentiality; (iii) is independently developed by You without reference to the ActiveState 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 will be permitted to disclose the terms and conditions of this Agreement in conjunction with legal proceedings. Without limiting the generality of the foregoing, You will 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 to You.

(b) You acknowledge that any use or disclosure of the ActiveState Confidential Information in a manner inconsistent with the provisions of this Agreement may cause ActiveState irreparable damage for which remedies other than injunctive relief may be inadequate. You further agree that ActiveState will be entitled to attempt to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such use or disclosure in addition to other appropriate remedies.

5. Open Source Acknowledgement. The Beta Software is comprised of open source software, which is subject to the terms of the open source software license(s) accompanying or otherwise applicable to that open source software included in the Beta Software (the “**Open Source Components**”). You acknowledge that Your own distribution or deployment of instances containing or linking to the Beta Software, including the Open Source Components, or any other open source software may trigger open source license requirements for which You are responsible. Nothing in this Agreement limits Your rights under or grants rights to You that supersede the terms of any applicable open source software license for the applicable Open Source Components.

6. **Intellectual Property Ownership.** All right, title and interest in and to the Beta Software and all intellectual property rights embodied therein, including copyrights, trade names, trademarks, service marks, product names, trade secrets embodied in the Beta Software's design and coding methodology and other proprietary materials in the Beta Software belong exclusively to ActiveState or its third party licensors. The Beta Software is protected by Canada and United States copyright laws and international treaty provisions as implemented locally in different jurisdictions. Except as specifically provided under this Agreement, You acknowledge that no other right, title or interest in and to the Beta Software or any parts thereof is granted to You. ActiveState grants You the limited right to use the trade names, trademarks, service marks or product names of ActiveState as required for reasonable and customary use in describing the origin of the Beta Software. You may not use the trade names, trademarks, service marks or product names of ActiveState in any way that might state or imply that ActiveState endorses Your work, or might state or imply that You created the Beta Software.

7. **Term.** This Agreement will be effective upon Your agreement to be bound by the terms and conditions of this Agreement and will continue in effect unless otherwise terminated in accordance with the terms and conditions of this Agreement.

8. **Termination.** Unless otherwise terminated as specified under this Agreement, Your rights with respect to the Beta Software will terminate upon the initial commercial release by ActiveState of a generally available version of the Beta Software. Either party may terminate this Agreement at any time for any reason or no reason by providing the other party advance written notice thereof. If You breach any term or condition of this Agreement, ActiveState may immediately terminate this Agreement with respect to the Beta Software that You have licensed under this Agreement by providing notice to You. ActiveState may also terminate this Agreement, without any liability to You, if any law, regulations, orders, or legal requirements prohibits ActiveState's provision or licensing of the Beta Software to You. Upon termination of this Agreement by ActiveState, You will immediately cease all use of the Beta Software and return all copies of the Beta Software that are under Your control to ActiveState or to delete all such copies.

9. **Infringement Indemnification.** You will indemnify, hold harmless, and defend ActiveState, its licensors, and their respective employees, agents and distributors against any and all claims, proceedings, demands and costs resulting from or in any way connected with Your use of the Beta Software and arising from Your breach of this Agreement; provided, however, that ActiveState will notify You in writing of any such claim; ActiveState will not enter into any settlement or compromise any such claim without Your prior written consent; You will have sole control of any such action and settlement negotiations; and ActiveState will provide You with commercially reasonable information and assistance, at Your request and expense, necessary to settle or defend such claim.

10. **Disclaimer of Warranty.**

(a) NEITHER ACTIVESTATE NOR ANY OF ITS SUPPLIERS, LICENSORS, OR RESELLERS MAKES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ACTIVESTATE AND ITS SUPPLIERS, LICENSORS, AND RESELLERS SPECIFICALLY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE BETA SOFTWARE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY

OR CONDITION OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, DURABILITY, MERCHANTABILITY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, UPDATES, UPGRADES, SUPPLEMENTS, PRODUCTS, APPLIANCES, SYSTEM INTEGRATION, DATA ACCURACY AND ANY OTHER ITEMS PROVIDED HEREUNDER. ACTIVESTATE MAKES NO WARRANTY OR GUARANTEE THAT THE OPERATION OF THE BETA SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR VIRUS-FREE, OR THAT THE BETA SOFTWARE WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE, QUALITY, ACCURACY, PURPOSE, OR NEED. YOU ASSUME THE ENTIRE RISK OF SELECTION, INSTALLATION, AND USE OF THE BETA SOFTWARE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

(b) TO THE EXTENT ANY IMPLIED WARRANTIES CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE PERIOD REQUIRED BY APPLICABLE LAW.

(c) SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, AND SO SOME OR ALL OF THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS SET OUT IN THIS SECTION MAY NOT APPLY TO YOU.

11. Limitation of Liability.

(a) INDEPENDENT OF THE FOREGOING PROVISIONS, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT AND UNDER NO LEGAL THEORY, INCLUDING WITHOUT LIMITATION, TORT, CONTRACT, OR STRICT PRODUCTS LIABILITY, WILL ACTIVESTATE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, PRINCIPALS, SUPPLIERS OR LICENSORS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER MALFUNCTION, OR ANY OTHER KIND OF COMMERCIAL DAMAGE, EVEN IF ACTIVESTATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL ACTIVESTATE BE LIABLE TO YOU FOR DAMAGES UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION.

12. Export Controls. You will 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 Beta Software or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. As applicable, each party will obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to its own export of the Beta Software from Canada or the U.S. Neither the Beta Software nor the underlying information or technology may be electronically transmitted or otherwise exported or re-exported: into any country subject to Canada or U.S. trade sanctions covering the Beta Software, 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; to anyone on Canada's Area Control List of the Export and Import Permits Act; or 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 Beta Software, You agree to the foregoing and represent and warrant that it complies with these conditions.

13. **U.S. Government End-Users.** The Beta Software 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 Beta Software 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.

14. **Licensee Outside The U.S.** If You are located outside the U.S., then the following provisions will apply: (a) Les parties aux presentes confirment leur volonte que cette convention de meme que tous les documents y compris tout avis qui siy rattache, soient rediges en langue anglaise (translation: "The parties confirm that this Agreement and all related documentation is and will be in the English language."); and (b) You are responsible for complying with any local laws in Your jurisdiction which might impact Your right to import, export or use the Beta Software, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

15. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and merges all prior communications, representations, and agreements.

16. **Severability.** If any provision of this Agreement is declared invalid or unenforceable, such provision will be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision will not affect any other provision of this Agreement, and this Agreement will continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

17. **Amendment.** ActiveState reserves the right to change this Agreement at any time, which change will be effective immediately upon the posting on ActiveState's website for the version of the applicable Beta Software found here: <https://www.activestate.com/eulas>. Your continued use of the Beta Software following amendment will be deemed to constitute Your acceptance of any and all such amendments.

18. **Arbitration.** Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof will be submitted to and be finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There will be one arbitrator, and such arbitrator will be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration will take place in Vancouver, BC, Canada, and may be conducted by telephone or online. The

arbitrator will apply the laws of the Province of British Columbia, Canada to all issues in dispute. The controversy or claim will be arbitrated on an individual basis, and will not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator will be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment will be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Should either party file an action contrary to this provision, the other party may recover legal fees and costs up to \$1,000.00

19. **Jurisdiction and Venue.** The superior courts of Vancouver in the Province of British Columbia, Canada will be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under this Agreement.

20. **Force Majeure.** Neither party will 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 Agreement immediately without liability by ten (10) days' written notice to the other.

21. **Publicity Rights.** You grant ActiveState the right to include Your name, trade name, trademark, service mark or logo in its Beta Software promotional material. You may retract this grant at any time in writing to sales@activestate.com, requesting Your name, trade name, trademark, service mark or logo be excluded from future releases of ActiveState Beta Software promotional material. Requests cannot be complied with retroactively and may require up to thirty (30) days to process.

22. **Assignment.** Except as expressly provided herein, neither this Agreement nor any rights granted hereunder, nor the use of any of the Beta Software may be assigned, or otherwise transferred, in whole or in part, by You, without the prior written consent of ActiveState. Any permitted assignment by You under this Section will be conditional upon You delivering all copies of the Beta Software to the transferee along with a copy of this Agreement, the transferee accepting the terms and conditions of this Agreement, and Your license to the Beta Software terminating upon transfer. Any attempted assignment by You will be void and of no effect unless permitted by the foregoing. You acknowledge and agree that ActiveState may assign this Agreement to any third party without Your prior consent.

23. **Enurement.** This Agreement will enure to the benefit of the parties' permitted successors and assigns.

24. **Governing Law.** This Agreement will be construed under the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to the conflict of law rules. The application of the United Nations Convention of Contracts for the International Sale of Goods and any local implementations thereof are expressly excluded. The parties agree that the Uniform Computer Transactions Act or any version thereof, adopted by any jurisdiction, in any form ("**UCITA**"), will 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.