

Early Access User Agreement

ver. April 24, 2023

This Early Access Users Agreement (“Agreement”) is made between ActiveState Software Inc. (“ActiveState”) and the Early Access User (“User”), each known independently as a “Party” or together referred to as the “Parties”. This Agreement is supplemental to the [ActiveState Platform Free Tier Terms of Service \(FTOS\)](#). This Agreement establishes additional terms and conditions specifically governing Users’ participation in the Early Access Program for selected components of *the ActiveState Platform (“Software”)*. The User hereby accepts and agrees to the terms and conditions of this Agreement and the FTOS.

1. Scope of Agreement

The Early Access Program is created by ActiveState to pre-release versions of “Software” services, features, or functionalities not immediately available for public release (“Software”).

The purpose of the Early Access Program is to gather feedback from real users with real-life use cases and environments to increase the probability of success when the Software is launched. ActiveState intends for the Software included in the Early Access Program to be tested prior to a generally available commercial release. Therefore, ActiveState grants Users limited access at no charge to the Software, for the purpose of allowing participation in one of the Early Access Program Trial periods, during which the Software will be used in conjunction with, or separate from, existing ActiveState services (“Early Access Program”). The Software trial period specifications will be detailed in a Welcome Email sent to selected Users at ActiveState’s sole discretion. The Welcome email will contain a description of the trial phase, Software features, trial duration, and feedback gathering method.

The User hereby confirms consent to participate in testing the Software and acknowledges the disclaimer of warranties set forth in section 5 of this Agreement.

2. Rights and Obligations of the Parties

The Parties agree to perform the following obligations:

- Access to the Software: ActiveState will provide limited access to the Software developed and selected for Users to test and evaluate the Software's performance. Support will be offered to Users as determined by ActiveState. Any other details governing the User’s access to the Software and support will be specified within the Welcome Email.
- User Feedback: Users participating in the Early Access Program agree to participate in the testing program, gather and report test data to ActiveState by email, survey, workshop, group call, or another method specified by ActiveState in the Welcome Email, within the term of this Agreement. User agrees to give ActiveState feedback, comments, or enhancement suggestions on the Software (the “Feedback”) and hereby assigns to ActiveState all rights, title, and interest to such ideas for enhancements, including any product enhancements developed as a result of such ideas. Users agree that ActiveState may use the Feedback for any purpose.
- Product Support: User acknowledges that ActiveState is under no obligation to provide (a) technical support under the terms of this Agreement, (b) to continue to develop, productize, support, repair, offer for sale or in any other way continue to provide or develop the Software either to User or to any other party, and (c) provides no assurance that any specific errors or discrepancies in the Software will be corrected.



3. Intellectual Property and Restrictions

Users acknowledge that the Software and all related materials provided by ActiveState during the Early Access period are the sole and exclusive property of ActiveState. Users agree not to copy, distribute, or otherwise reproduce the Software or any related materials, in whole or in part, without ActiveState's prior written consent.

4. Disclaimer of Warranties

The Software is provided on an "as is" basis, and ActiveState has the right to significantly change or remove the Software from the User's account at any time. It is recommended that Early Access Users do not incorporate the Software into production as it may change significantly when officially released or may not be released at all. The primary purpose of the Early Access Program is to obtain feedback on software performance and the identification of defects. Users are advised to safeguard important data, to use caution and not to rely in any way on the correct functioning or performance of the Software.

ActiveState is not responsible for any damage caused by improper use of the Software.

5. Confidential Information

User agrees that the Software is the sole and exclusive property of ActiveState and includes valuable intellectual property of ActiveState. User agrees to treat the Software and any documentation or other materials provided with the Early Access Program as confidential, and will not without the prior express written authorization of ActiveState: a) Demonstrate, copy, sell, market or grant access to the Software to any third party; or b) Publish or otherwise disclose information relating to performance or quality of the Software to any third party or share any documentation or other materials relating to the Software with any third party; or c) Modify, reuse, disassemble, decompile, reverse engineer or otherwise translate the Software or any portion thereof.

6. Term and Expiration

User's rights with respect to the Early Access Program will expire upon the commercial release of the Software or as specified by ActiveState in the Welcome Email. ActiveState may terminate this Agreement at any time with or without cause by providing written notice. Upon expiration or termination of this Agreement the rights granted to Users under this Agreement shall immediately terminate. User rights may be terminated by ActiveState immediately without previous written notice upon failure to comply with any of the terms and conditions of the Agreement or failure to provide reasonable feedback in a timely manner.

7. Entire Agreement

This Agreement constitutes the entire and only agreement between the Parties for the Early Access Program and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

8. Governing Law and Jurisdiction

This Agreement shall be governed, construed, and enforced in accordance with the laws of British Columbia, Canada. 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.

9. Assignment

Neither this Agreement nor any rights granted hereunder, nor the License of Software may be assigned, or otherwise transferred, in whole or in part, by the User, without the prior written consent of ActiveState.