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Version effective date: March 25, 2019

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“Wrapped Application” means a single-file executable in which all binary components are encapsulated in a single binary without exposing the base programming language as a scripting language within Your own application program to end users.

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   V. to provide content or functionality through external-facing servers or internal-facing production servers.


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8. **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.

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16. **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.

17. **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.

18. **Entire Agreement & Amendment.** This Agreement 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 Agreement, appendices and attachments. ActiveState reserves the right to change this Agreement at any time, which change shall be effective as of the effective date for the terms and conditions of this Agreement as shown on ActiveState’s Website (the “Change Effective Date”). Your continued use of the Software after the Change Effective Date constitutes Your acceptance of such changes. This Agreement may not be otherwise amended without ActiveState’s prior written agreement. You agree to periodically review the terms and conditions of this Agreement as updated from time to time on ActiveState’s website.

19. **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.

20. **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.

21. **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.
22. **Publicity and Audit Rights.**

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

(b) If You entered into this Agreement on behalf of a Person, where such Person has more than 100 employees, if requested by ActiveState, You will furnish ActiveState with a signed certification (i) verifying that the Software is being used pursuant to the terms of this Agreement, including any user limitations and (ii) listing the locations where the Software is being used, the version(s) of the Software being used, how long and how the Software is being used, and the number computing devices and operating systems the Software is being used with. You agree to grant ActiveState reasonable access to Your site(s) and/or systems, upon prior notice during normal business hours, to audit the use of the Software. Any such audit shall be at ActiveState’s expense.

23. **Assignment.** Except as expressly provided herein, neither this Agreement nor any rights granted hereunder, nor the use of any of the 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 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 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.

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

25. **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.
Exhibit A

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