

# LICENCE AND SUPPORT SERVICES AGREEMENT FOR POSTSHARP

Version: July 3<sup>rd</sup>, 2017. Applies to PostSharp 5.0 and later.

IMPORTANT! READ CAREFULLY: THIS IS A LEGAL AGREEMENT. THE SOFTWARE IS LICENSED UNDER THIS LICENCE AND SUPPORT SERVICES AGREEMENT (HEREINAFTER '**AGREEMENT**').

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THE AGREEMENT, YOU MAY NOT INSTALL OR USE THE SOFTWARE AND YOU MAY NOT CONTACT THE LICENSOR FOR SUPPORT SERVICES IN RELATION TO SOFTWARE.

BY ATTEMPTING TO SET UP, INSTALL, COPY OR SAVE THE SOFTWARE ON YOUR COMPUTER, OR OTHERWISE USE THIS SOFTWARE, OR BY CLICKING ON THE RESPECTIVE ICON ACCEPTING THE AGREEMENT, AS THE CASE MAY BE, YOU, OR THE ENTITY YOU ARE REPRESENTING, AS THE CASE MAY BE, ARE BECOMING A PARTY TO THIS AGREEMENT AND YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

## 1. PARTIES

- 1.1 '**Licensor**' means SharpCrafters s.r.o., with its registered office at Prague 5, nám. 14. října 1307/2, Postal Code 150 00, the Czech Republic, ID 28953690, registered in the Commercial Register maintained by the Municipal Court in Prague, Section C, File 155506. Licensor is doing business under the trade names of 'PostSharp' or 'PostSharp Technologies'.
- 1.2 '**Licensee**' means the legal entity or individual specified in the respective **Certificate of Licences and Services**, as defined below.

## 2. DEFINITIONS

- 2.1 As used in this Agreement, the capitalized terms shall have the following meanings:

**'Authorised User'** means any employee, independent and/or non-independent contractor and other temporary worker contracted by the Licensee by a written contract that is authorised by the Licensee to use the Software while performing duties within the scope of his/her employment or assignment.

**'Limited Authorised User'** means any employee, independent and/or non-independent contractor and other temporary worker contracted by the Licensee by a written contract that is authorised by the Licensee to use the Software while performing duties within the scope of his/her employment or assignment in connection to any Authorised Person, where the use of the Software by the Limited Authorised User shall be limited subject to the terms and conditions of this Agreement exclusively to compiling source code that has been created by an Authorized User

while using the Software and has not been created, modified, amended and/or extended by the Limited Authorized User, as a result of which the Licensee's Product is created.

**'Certificate of Licences and Services'** means the certificate issued by the Licensor or by the reseller authorised by the Licensor to distribute the Software (**'Authorised Reseller'**) and dispatched to the Licensee confirming the acceptance by the Licensor or by the Authorised Reseller of the respective Order Licence Form submitted by the Licensee. The Certificate of Licences and Services shall include a listing of the Licences and Services granted under this Agreement.

**'Client'** means a computer device used by an Authorised User for running the Software.

**'Confidential Information'** means any and all data and information of a confidential nature in any form, electronic data or facts of any kind, especially (but not exclusively), including business and/or commercial information, production, organizational, business development, price information, business strategy and/or technical information, know-how and trade secrets relating to the business and other intellectual property rights, data, documents, personal data of any person, and the products of the Licensor or the Licensee. Confidential Information may be communicated orally, in writing or in any other recorded or tangible form. Data and information shall be considered to be Confidential Information especially, (i) if one party has advised the other of such confidential nature, or (ii) if, due to such character or nature, a reasonable person in a like position and under like circumstances as the Licensor or the Licensee would treat such as secret and confidential

**'Licence'** shall mean the licence granted hereunder by the Licensor to the Licensee in the extent and subject to the terms and conditions hereof. The type of the licence which is granted hereunder is specified in the respective Certificate of Licences and Services.

**'Licence Key'** means a unique key-code that enables one or unspecified number of Authorised Users and/or Limited Authorised Users (as the case may be) to use the Software at a time. Only the Licensor and/or its representatives are entitled to produce Licence Keys for the Software.

**'Licence Server'** means a software program provided by the Licensor that is managing the distribution of the Licence Key by the Licensor to Authorised Users within the Licensee in order to control which Authorised Users are authorised to use the Software at the relevant moment.

**'Price List'** means a document specified in Section 11.1 of this Agreement.

**'Software'** means the software program known as PostSharp, in the respective edition i.e. PostSharp Essentials, PostSharp Ultimate, PostSharp Enterprise, PostSharp Threading, PostSharp Diagnostics, PostSharp XAML, PostSharp Framework or any other editions specified in Certificate of Licences and Services, as the case may be, and with respective build date as specified in the respective Certificate of Licences and Services. Software also means any third-party software programs that are owned and licensed by parties other than the Licensor and that are either integrated with or made part of PostSharp (collectively, **'Third Party Software'**). The general

specification of each the then current edition of the Software is contained on the website: <https://www.postsharp.net/>.

**'Support Case'** means any unique and indivisible problem experienced by the Licensee in the use of the Software and for which the help of the Licensor is requested.

**'Supported Platform'** means any platform on which a specific version of the Software is designed to run, as stated on the website <https://www.postsharp.net/>.

**'Support Services'** means the services specified in Section 9 of this Agreement.

**'Licensee's Product'** means any work in the meaning of the Act. No. 121/2000 Coll., on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (hereinafter the **'Copyright Act'**) or other work outside the Copyright Act which is created by the Licensee's workers (Authorised Users and/or Limited Authorised Users, as the case may be) using the Software provided by the Licensor for the Licensee.

**'Build Server'** means a central computer device and that runs the Software in an unattended manner, and uses the Software to build source code that has been produced by Authorised Users under the conditions of this Agreement.

### **3. SUBJECT MATTER**

- 3.1 The subject matter of this Agreement is the agreement on terms and conditions under which the Licensor grants to the Licensee certain type of Licence specified in the Certificate of Licence and Services, provides certain Support Services to the Licensee and the Licensee pays consideration to the Licensor for the Licence and for the Support Services.
- 3.2 The Software is the property of the Licensor. The title to and all applicable rights in patents, copyrights and trade secrets in the Software will remain sole and exclusive property of the Licensor or third parties from whom the Licensor has obtained rights to Licence the Software. The Licensee is entitled to use the Software exclusively under the conditions of this Agreement and under the Licence specified in the Certificate of Licence and Services.

### **4. GRANT OF LICENCE**

- 4.1 Subject to the terms, conditions and limitations set forth in this Agreement, the Licensor hereby grants to the Licensee a limited, non-exclusive Licence to use the Software. The Licence granted hereunder shall be solely the type of the Licence specified in the respective Certificate of Licences and Services issued by the Licensor and delivered to the Licensee, and shall be granted for the period specified therein.
- 4.2 The Licensee may use the Software solely (i) for the purposes for which the Software is determined by its functionality (ii) in accordance with the type of the Licence specified in the

respective Certificate of Licences and Services, and (iii) in accordance with this Agreement. The Licensee may not use of the Software for a purpose or in a manner for which the Software was not designed or licensed to Licensee.

- 4.3 Without limitations, the following uses of the Software are expressly forbidden to cause or permit (i) disclosure, display, access, or use of the Software by anyone other than an Authorised User and/or Limited Authorized User (as the case may be) and (ii) the loan, lending, publication, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise), sublicensing, rental, or other dissemination or use of the Software, in whole or in part, to or for any third party. Furthermore, the Licensee is not entitled to provide access to the Software to any third party (except Authorised Users and Limited Authorised Users) . The Licensee shall not (except as expressly required by law) reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the source code of the Software as it contains trade secrets. The Licensee may not otherwise modify, alter, adapt, or merge the Software. The obligations set forth in this clause shall survive any termination of this Agreement.
- 4.4 Void.
- 4.5 If the Licensee or any of the Authorised Users and/or Limited Authorised Users (as the case may be) breaches or threatens to breach any obligation of this Agreement, the Licensor will have the right, in addition to such other remedies which may be available to it, to seek legal defence forbidding such acts or attempts, it being acknowledged and agreed by the Licensee that monetary damages are inadequate to protect the Licensor.
- 4.6 The Licensor reserves all rights in the Software not explicitly granted herein. For avoidance of any doubts, the Licensor is entitled to use the Software without any limitations regardless to the granted Licence.
- 4.7 Any direct or indirect use of any part the Software by other persons than Authorized Users and/or Limited Authorised Users (as the case may be), including the use of parts of the Software in programs used by other persons than Authorized Users and/or Limited Authorised Users (as the case may be), is prohibited. The provision of Section 6 of this Agreement shall not be affected.

## 5. TYPES OF LICENCE AND DELIVERY

- 5.1 The Licensee may purchase various licences. This Agreement applies to any and all licenses to Software which the Licensee purchases. The type of licence which the Licensee purchases shall be specified in the respective Certificate of Licences and Services.
- 5.2 '**Commercial Licence**' shall mean a licence designed for physical persons and legal entities and is based on the following principles. The access to (provision of) the Software will be provided/restricted to (a) an unlimited number of Build Servers of the Licensee, (b) 1,000 (one thousand) Limited Authorized Users under the terms and conditions of the Agreement and (c) for the Authorised Users, the number of which will be specified in the respective Certificate of

Licences and Services for whom Licences have been validly acquired and paid for under this Agreement. The Licensee shall have the right to change Authorised Users provided that no individual Authorised User may be changed more than once every calendar day. In no event may the Software be concurrently used by more Authorised Users than for which the licence is granted. The Software may be installed concurrently on two Clients of the particular Authorised User and/or Limited Authorised User. The Commercial Licence shall be a worldwide licence, provided that all the aforesaid limitations must be complied with for the entire term of the licence. The Commercial Licence shall be non-transferable.

In case that the distribution of the Licence Key to Authorised Users and/or Limited Authorised Users is managed through the Licence Server, the following terms shall be applied:

(a) The number of actual concurrent Authorised Users may exceed, for a maximum period of ninety (90) consecutive calendar days (the '**Grace Period**') up to 30% of the number of Authorised Users for which the Licence has been validly acquired and paid for under this Agreement,

(b) Provided that the Licensee increased the number of the Authorised Users of the Software by additional purchase in the minimum extent equal to the maximal number of the additional Authorised Users during the Grace Period i.e. validly acquired and paid for, the Grace Period shall apply again.

5.3 '**Site Licence**' shall mean a licence designed for legal entities and is based on the following principles. The access to the Software will be provided to unlimited number of Authorised Users and Limited Authorised Users and unlimited number of Build Servers of the Licensee placed on the site(s) specified in the respective Certificate of Licences and Services, and provided that the Software is used solely by the Authorised Users and Limited Authorised Users and on unlimited number of Build Servers within this site (location). The Software may be used in another site than the site specified in the respective Certificate of Licences and Services solely by Authorised Users and Limited Authorised Users whose principal place of business is the licensed site. The Site Licence shall be non-transferable.

5.4 '**Global Licence**' shall mean a licence designed for legal entities and is based on the following principles. The access to the Software will be provided to (i) unlimited number of Authorised Users and Limited Authorised Users of the Licensee and unlimited number of Build Servers, including its branches, or (ii) unlimited number of Authorised Users and Limited Authorised Users of the Licensee and unlimited number of Build Servers, and within its subsidiary companies in which the Licensee holds the majority share, as explicitly specified in the respective Certificate of Licences and Services. The specific scope of the particular Global Licence shall be specified in the respective Certificate of Licences and Services. The Global Licence shall be a worldwide licence, provided that all the aforesaid limitations must be complied with for the entire term of the licence. The Global Licence shall be non-transferable.

5.5 '**Essentials Licence**' (formerly 'Express Licence', 'Community Licence' or 'Starter Licence') shall mean a licence to the parts of the Software named 'PostSharp Essentials' and 'PostSharp

Diagnostics Developer Edition', which is according to the sole discretion of the Licensor determined for free use but has limited features and/or a time limitation on the use of some features. No fees will be paid for the Essentials Licence. The extent and scope of the rights related to the Essentials Licence is specified on the product website on the address (URL) <https://www.postsharp.net> and/or in the product documentation. In case of contradiction between the documentation and the implementation, the implementation shall prevail. The Essentials Licence shall be non-transferable.

5.6 '**Academic Licence**' shall mean a licence designed for students, teachers, professors, universities, schools, or other physical or legal entities specialised in education or research (whether free or for profit), and is based on the same principles as the Commercial Licence with the following restrictions:

(a) The Academic Licence only allows for education and research. It does not allow for general commercial use of the product by the Licensee, such as development of production software. The Licensee is obliged not to use the Software for any commercial purpose under the Academic Licence.

(b) The Academic Licence shall be non-transferable.

(c) The Academic Licence shall not give right to Support Requests defined in section 9.3.

(d) Licensor may require Licensee to proof its academic status.

5.7 '**Evaluation Licence**' shall mean, in relation to any of the licences granted under this Agreement, licence designed for evaluation purposes only and is based on the following principles. The Licensee is granted the right to use the Software for evaluation or demonstration purposes for a period of forty-five (45) days from the date of installation of the Software, unless otherwise specified. The access to the Software will be provided as specified in relation to each specific licence hereunder, provided that the Software is used solely for internal evaluation for the sole purpose of determining whether the Software meets the Licensee's requirements and whether the Licensee desires to continue using the Software. The Evaluation Licence does not allow for general commercial use of the product by the Licensee, such as development of production software. The Evaluation Licence shall be non-transferable.

5.8 '**Anonymous Licence**' shall mean the licence to use the Software within the Licensee's Product (as this term is defined above) by the end customer of the Licensee. The end customer is granted this licence solely by the Licensor by a separate licence and service agreement between the Licensor and the end customers of the Licensee which is concluded automatically by the end customer downloading the Licensee's Product the part of which is the Software, including the cryptographic licence key delivered by the Licensor and associated with the Licensee's Product. The Anonymous Licence shall be non-transferable.

5.9 Delivery of the Software identified in the respective Certificate of Licences and Services will occur by means of electronic download by the Licensee from a website specified by the Licensor. The

Licensee shall be solely responsible for the installation of the Software on its Clients. The Licensee shall be solely responsible for procuring and proper operation of the Supported Platform.

- 5.10 **'Automatic Licence Auditing'**. Unless specified otherwise in the Certificate of Licenses and Services, the Software under any Licence except the Site Licence or Global Licence is allowed to periodically transmit to the Licensor the following pieces of information collected during the use of the Software: (i) the Licence Key, (ii) a non-personally identifiable identifier of the Client, (iii) a non-personally identifiable identifier of the Authorised User and/or Limited Authorised User running the Software, (iv) the respective edition and build date of the Software being executed, and (v) and the date when the Software has been used. The Licensee acknowledges this provision and gives an explicit consent with the automatic licence auditing. As the explicit consent with automatic licence auditing from Authorised User and/or Limited Authorised User is considered the installation of the Software to the Client which is used by the Authorised User and/or Limited Authorised User. The auditing process never affects the Licensee's right and possibility to use the Software even in case of technical failure of the licence auditing process, including in case of lack of network connectivity.
- 5.11 Use of the Software on Build Servers is only allowed if all software developers who produce or maintain the source code are properly licensed, at the moment the Software is used on the Build Servers, to use a Bundle that covers all the features of the Software used on the Build Servers.

## 6. DISTRIBUTION OF RUNTIME COMPONENTS

- 6.1 The Licensee shall always have the right to distribute the runtime components but solely for purposes of running the software created by the Licensee using the Software. The runtime component is for the purpose of this Agreement a component which is solely needed to run the software which was created by the Licensee as opposed to the build time component which is needed to build any software. For the purposes of this Agreement any component whose execution requires the execution of the component PostSharp.Compiler.Engine.dll is considered as a build time component.
- 6.2 Any Licensee's Products which are built by using the Software or including runtime components of the Software shall not be competitive with any of the Licensor's Products. In case of doubt the Licensor's opinion shall prevail.

## 7. GRANT OF LIMITED REDISTRIBUTION LICENCE

- 7.1 Any of the licences specified in sections 5.2 to 5.4 shall also include a limited, non-exclusive, non-transferable right to redistribute the Software as part of the Licensee's Product (s) to the customers of the Licensee, all subject to the terms, conditions and limitations specified hereunder (the **'Limited Redistribution Licence'**). The Limited Redistribution Licence is granted free of charge. 7.2 To avoid any misunderstanding, the rights granted to the Licensee under the

Limited Redistribution Licence are limited only to the extent specified hereunder and does not include other rights that the Licensee may acquire under the separate Redistribution Licence Agreement, which the Licensee may conclude with the Licensor.

7.3 The Limited Redistribution Licence shall be subject to the following terms, conditions and limitations:

- (a) the scope of the Limited Redistribution Licence includes solely the right of the Licensee (i) to implement the Software into a Licensee's Product and (ii) to allow the end customer to copy the Software as part of the Licensee's Product;
- (b) the Software may not be sold by the Licensee to its customers separately and independently from the Licensee's Product;
- (c) the Software may not be sold by the Licensee to its customers within the Licensee's Product if the Licensee's Product is of a competitive nature towards any product of the Licensor, or if the Software may be substituted by the Licensee's Product; in case of doubt about the competitive nature of the Licensee's Product, the Licensor's opinion shall prevail.
- (d) unless otherwise agreed between the Licensor and the Licensee, the Licensee may not supply to its customers any means by which its customers could incorporate the Software into their own product;
- (e) no other rights than those explicitly stated in this Section 7 are granted to the Licensee under this Limited Redistribution Licence; and
- (f) the Software shall be redistributed in whole, not in part; if the Software is unpackaged into several files, all files present in the original package must be redistributed without modification and in their original relative location, i.e. all files must be present if the unpacked Software is to be redistributed;
- (g) the Licensee may redistribute the Software pursuant to the Limited Redistribution Licence granted hereunder only together with the cryptographic Licence Key delivered to the Licensee on Licensee's request by the Licensor and associated with the Licensee's Product. The Licensor shall be entitled to withhold such request by the Licensee or to revoke the delivered cryptographic Licence Key, i.e. to disable the use of the Software within the Licensee's Product, at its own discretion for any reason whatsoever or without any reason at any time during the term of the Licence. The Licensee acknowledges this right of the Licensor and, simultaneously, acknowledges the option to conclude the standard Redistribution Licence Agreement with the Licensor in order to acquire more rights regarding the redistribution of the Software.
- (h) The Licensor shall be entitled to terminate the Limited Redistribution Licence at any time at its sole discretion.



- (i) The Licensee shall not be entitled to grant the licence to use the Software within the Licensee's Product to its customers. The licence to use the Software by the end customer of the Licensee is granted solely by the Licensor as the Anonymous Licence.
- (j) the Licensee may not disable, during the installation or the execution of the Licensee's Product, any feature of the Licensor's Product including, without limitation, licence auditing.

7.3. The Licensee agrees that the download of the Licensee's Product is considered an explicit consent with Automatic Licence Auditing from the end customer of Licensee using of the Licensee's Product on the basis of the Section 7 of the Agreement.

## 8. VOID.

## 9. PROVIDING OF SUPPORT SERVICES

9.1 The Licensor may provide the Support Services to the Licensee, all subject to the terms, conditions and limitations specified hereunder. Subject to purchase by the Licensee of any of the Licence from the Licensor under this Agreement, the Licensor shall automatically provide to the Licensee in relation to such purchased Licence Support Services (Maintenance Subscription) specified in Section 9.3 hereof for the period of 1 year following the purchase of the Licence (the '**Initial Period**'). There is no specific fee for the Support Services (Maintenance Subscription) specified in Section 9.3 provided during the Initial Period. However, after the expiry of the Initial Period, the Licensor is no more obligated to provide any Support Services to the Licensee, unless the Licensee purchases the Support Services specified below from the Licensor and pays the applicable fees for such Support Services. After the Initial Period, the Licensee may purchase various types of Support Services, as they are specified in Sections 9.3 (the '**Support Services**'). The Support Services to be provided hereunder shall be solely the type of the Support Services specified in the respective Certificate of Licences and Services issued by the Licensor and delivered to the Licensee. The Support Services provided hereunder may be used by the Licensee solely for the Software delivered under this Agreement and for no other software.

9.2 In the event that the Licensee acquired new Licences or Support Services as the result of an electronic order to which the Licensee was not eligible pursuant to the Price List, the Licensor has the option, at its sole discretion, to (i) cancel the Licences and Support Services included in this order and to refund a minimum of 85% of the amount paid for this order, or (ii) modify the parameters of the Support Services (such as the duration) so that they comply to the rules of the Price List.

9.3 '**Maintenance Subscription**' shall mean the Support Services based on the following principles.

- (a) **‘Software Updates’**: Subject to the terms and conditions hereof, the Licensee shall have the right to receive new versions of the Software from the Licensor (including maintenance releases and new major versions, if any such releases are issued by the Licensor).
- (b) **‘Support Requests’**: The Licensee shall have the right to send to the Licensor questions relating to the Software to get personalised help. The questions shall be delivered as specified by the Licensor on the website <https://www.postsharp.net/>. The Licensor shall handle such questions with priority and make all reasonable effort to react to delivered questions within a reasonable time. The number of Support Cases is limited to the maximum extent as specified in the respective Certificate of Licences and Services and can be extended by the acquisition, as a separate purchase, of new Support Cases. Support Cases must be consumed one year after the date of their acquisition. The Licensor is entitled, at its sole discretion, to divide a Support Case in multiple Support Cases.

9.4 Void.

9.5 Unless otherwise specified in the respective Certificate of Licences and Services, the Licensor will not provide Support Services relating to problems or issues arising out of or from:

- (a) issues that could be resolved by upgrading the Software;
- (b) the use or modification of a Software in a manner for which the Software is not intended to be used or modified or at variance with the conditions of this Agreement;
- (c) third party products or technologies and their effects on or interactions with a Software, except Supported Platforms and tools, unless the issue is related to a defect or limitation of the Supported Platform;
- (d) damage to the media on which the Software is provided, or to the computer on which a Software is installed;
- (e) use of application programming interfaces of the Software that are undocumented or reserved for internal use by the Licensor, including the library *PostSharp.Compiler.Engine.dll*.

9.6 Void.

## 10. VOID.

## 11. LICENCE FEES AND PAYMENTS

11.1 The Licensee shall pay to the Licensor, as a consideration for the Licence granted hereunder, the licence fees in accordance with the then current Price List of the Licensor applicable to the respective type of the purchased licence, unless otherwise agreed mutually between the parties. The Licensee shall pay to the Licensor, as a consideration for the Support Services granted

hereunder, the fees in accordance with the then current Price List of the Licensor applicable to the respective type of the Support Services, unless otherwise agreed mutually between the parties. The immediately preceding sentence shall not apply to the Support Services provided during the Initial Period of the Licence as specified in second sentence of section 9.1 hereof. The Licensee is entitled to use the Software and Support Services only following the payment of the respective licence fees (the Licensee will receive from the Licensor or from the authorised reseller the specific Licence Key, enabling the Licensee to use the Software, upon payment of the applicable licence fee), unless otherwise agreed with the Licensor. The then current Price List is located on the Licensor's website at <https://www.postsharp.net/> or will be provided to the Licensee otherwise, as the case may be.

- 11.2 The Price List shall constitute an integral part of any and all of this Agreement. The Licensor reserves the right to change, modify and amend the Price List at any time at its sole discretion, which amendments shall become effective as of the date set forth in the Price List in respect of each such amendment.
- 11.3 For each payment due to the Licensor under this Agreement, an invoice signed by the authorised representative of the Licensor or by an authorised reseller of the Licensor shall be issued in accordance with the applicable tax regulations. The invoice shall be payable within thirty (30) days after the day of its issuance and the fees shall be paid to the account of the Licensor or of an authorised reseller of the Licensor, as specified in the respective invoice, unless agreed otherwise.
- 11.4 Should the Licensee fail to pay the fee within the above-stated period, the Licensee shall be obliged to pay to the Licensor the delay interest at the rate applicable by law and/or the Licensor may terminate this Agreement with immediate effect by written notice delivered to the Licensee. The Licensee will reimburse the Licensor for any reasonable legal fees and other costs and expenses incurred by the Licensor in collecting past due amounts.
- 11.5 The prices on the Price List are without any VAT or similar taxes. Any such taxes will be added to the price.
- 11.6 All payments to be made by the Licensee to the Licensor under this Agreement shall be made free and clear of and without deduction for or on account of tax unless the Licensee is required by law to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Licensee in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after making the required deduction or withholding, the Licensor (or the authorised reseller, as the case may be) receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

## **12. INFRINGEMENT OF RIGHTS OF THIRD PARTIES**

- 12.1 In the event that the Software is held or believed by the Licensor to infringe third party copyright or patent rights, or the Licensee's use of the Software is enjoined, the Licensor will have the option, at its expense, to (i) modify the Software to cause it to become non-infringing; (ii) obtain for the Licensee a licence to continue using the Software; (iii) substitute the Software with other Software reasonably suitable to the Licensee, or (iv) if none of the foregoing remedies are commercially feasible, in Licensor's sole but reasonable determination, terminate the Licence for the infringing Software and refund any licence fees paid for the Software, prorated over a three-year term from the date of purchase of such infringing Software.
- 12.2 The Licensor will have no liability for any claim of infringement based on (i) code contained within the Software which was not created by the Licensor; (ii) use of a superseded or altered release of the Software, except for such alteration(s) or modification(s) which have been made by the Licensor or under the Licensor's direction, if such infringement would have been avoided by the use of a current, unaltered release of the Software that the Licensor provides to the Licensee, or (iii) the combination, operation, or (iv) use of any Software furnished under this Agreement with programs or data not furnished by the Licensor if such infringement would have been avoided by the use of the Software without such programs or data.
- 12.3 The Software includes functionality that enables producing source code from the original binary code of third-party programs, and modifying binary code of Third Party Software. Licensee acknowledges that binary code and source code of Third Party Software might be protected by copyright and trademark rights. Before using the Software against Third Party Software, Licensee should make sure that decompilation or modification of binary code is not prohibited by the applicable Licence agreement (except to the extent that Licensee may be expressly permitted under applicable law) or that Licensee has obtained permission to decompile or modify the binary code from the copyright owner. Licensor disclaims any liability for Licensee's use of the Software against Third Party Software in violation of applicable laws.
- 12.4 This Section states the Licensor's entire liability for copyright and patent infringement.
- 12.5 The Licensee shall indemnify the Licensor for damages, costs, loss (including expenses and attorney's fees) and damages of any kind resulting from its breach of its obligation under Section 10 of this Agreement.

### **13. NO WARRANTY**

- 13.1 The Software is provided to the Licensee 'as is' and without any warranties. The Licensor makes no warranty as to the use or performance of the Software. To the maximum extent permitted by applicable law, the Licensor, and its suppliers and resellers, disclaim all other warranties and conditions, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, with regard to the Software, and the provision of or failure to provide Support Services.

- 13.2 The Software is not intended for use in the operation of nuclear facilities, aircraft navigation, communication systems, air traffic control machines or other activities in which the failure of the Software to attain a desired result could lead to death, personal injury, or severe physical or environmental damage.
- 13.3 The Licensor shall not be liable in any manner whatsoever for the results obtained through the use of the Software and Support Services. Persons using the Software are responsible for the supervision, management and control of the Software. This responsibility includes, but is not limited to, the determination of appropriate uses for the Software and the selection of the Software and other programs to achieve intended results. Persons using the Software are also responsible for establishing the adequacy of independent procedures for testing the reliability and accuracy of any program output, including all items designed by using the Software.

#### **14. LIMITATION OF LIABILITY**

- 14.1 The Licensor's entire liability for all claims or damages arising out of or related to this Agreement, shall be limited to and shall not exceed, in the aggregate for all claims, actions and causes of action of every kind and nature; the amount paid to the Licensor under this Agreement for the specific item that caused the damage or that is the subject matter of, or is directly related to, the cause of action. The parties hereby expressly agree that the amount referenced in the immediately preceding sentence represents the amount of foreseeable damages. The copyright infringement claims are covered solely by Section 12. In no event will the measure of damages payable by the Licensor include, nor will Licensor be liable for, any amounts for loss of income, loss of data, loss of profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if the Licensor has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed.

#### **15. NON-DISCLOSURE OBLIGATIONS**

- 15.1 During the term of this Agreement, the parties may disclose certain Confidential Information to each other in the performance of their rights and obligations under this Agreement. Without the prior written authorisation of the disclosing party, the receiving party shall not use or copy any Confidential Information for any purpose other than as specifically authorised by this Agreement, and shall not transfer or disclose any Confidential Information to any person, except for the purposes of performing its obligations and exercising its rights in accordance with this Agreement to the necessary extent. The receiving party shall take steps necessary or appropriate to protect Confidential Information against unauthorised disclosure or use, including, without limitation, ensuring that each of its employees with access to Confidential Information is aware of and complies with the non-disclosure obligations set out in this Section. The receiving party shall promptly notify the disclosing party of any unauthorised disclosure or use of any Confidential

Information that comes to the receiving party's attention, and shall take all action that the disclosing party reasonably requests to prevent any further unauthorised use or disclosure of it. Each party expressly acknowledges and agrees that, except as specifically provided in this Agreement, at no time shall it acquire or retain, or appropriate for its own use, any right, title or interest in or to any Confidential Information of the other party.

- 15.2 The obligations set out in Section 15.1 shall not apply to the extent, that any Confidential Information (i) becomes generally available to the public through no fault of the receiving party; (ii) is or has been disclosed to the receiving party, directly or indirectly, by any person that is under no obligation of non-disclosure to the disclosing party or an affiliate of the disclosing party; or (iii) is required to be disclosed under any applicable law, rule, regulation or governmental order.
- 15.3 Notwithstanding the termination of this Agreement, each party shall continue to abide by the terms of the non-disclosure obligations with respect to Confidential Information as set out in this Section and indemnification as set out in Section 15.2 hereof.

## **16. TERMINATION**

- 16.1 If either party materially defaults in the performance of any of its duties or obligations under this Agreement and fails to proceed within fifteen (15) days after written notice thereof to commence curing the default and thereafter to proceed with reasonable diligence to substantially cure the default, the other party may, by giving written notice thereof, terminate this Agreement effective immediately. However, this provision does not apply to a default in payments to the Licensor by the Licensee (no cure period is provided for such a breach and the Licensor may terminate this Agreement effective immediately).
- 16.2 Except as may be prohibited by Czech bankruptcy laws, in the event of either party's insolvency or inability to pay debts as they become due, voluntary or involuntary bankruptcy proceedings by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may terminate this Agreement by written notice.
- 16.3 All rights granted will cease upon any termination of this Agreement. Within fifteen (15) days after termination of the licence rights granted herein or this Agreement for any reason, the Licensee will destroy the original and all copies of the Software in all forms, and will certify to the Licensor in writing that such obligation has been fulfilled.
- 16.4 Immediately upon occurrence of: (i) declaration of Licensor's bankruptcy by the court, or (ii) the filing by the Licensor of a voluntary petition in bankruptcy, or (iii) the filing against the Licensor of an involuntary petition in bankruptcy that is not dismissed by the court within 60 days of such a filing, any of the licences specified in Sections 5.2 to 5.5 of this Agreement shall automatically *ipso jure* change into the Global Licence.

## **17. MARKETING**

17.1 Unless agreed otherwise, the Licensee agrees to be identified as a customer of the Licensor and that the Licensor may refer to the Licensee by name, trade name and trademark, if applicable, and may briefly describe the Licensee's business in the Licensor's marketing materials, on the Licensor's website, in public or legal documents. The Licensee hereby grants to the Licensor a licence to use the Licensee's name and any of the Licensee's trade names and trademarks solely pursuant to this Marketing Section.

## **18. NOTICES**

18.1 All notices required by or relating to this Agreement will be in writing and will be sent by mail to the Licensor at the address set forth on the first page of this Agreement; to the Licensee by mail or in electronic form to the address set forth in the relevant Certificate of Licences and Services; or to such other address as either party may specify by written notice to the other.

## **19. GENERAL**

19.1 The Licensor reserves the right at any time to cease the support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

19.2 The Licensee shall notify Licensor in writing, without undue delay, of any changes in the data contained in this Agreement or any other arrangement between the Licensor and the Licensee, or any changes affecting the Licensee's identity or legal status, or any significant facts and changes that relate to or might have a substantial impact upon its transactions or business relationship with the Licensor or the Licensee's ability to fulfil its obligations towards the Licensor or of which the Licensor could reasonably be expected to want to be informed, and shall submit documents evidencing such changes and other information as the Licensor may reasonably request. Any change shall become effective against and binding on the Licensor on the business day following receipt of such notification, notwithstanding any information contained in any public register. The Licensee is responsible for any loss or damage incurred by the Licensor or the Licensee arising out of the failure of the Licensee to duly and promptly notify the Licensor of such changes.

19.3 Except for Site Licence and Global Licence pursuant to this Agreement, the Licensee will at all times maintain records specifically identifying the Software licensed under this Agreement, the location of each copy thereof, and the location and identity of the workstations and servers (Clients) on which the Software is installed. The Licensor may, during regular business hours and upon reasonable advance notice, conduct an audit to determine the Licensee's compliance with the terms and conditions of this Agreement. The Licensee will permit the Licensor or its authorised agents to access the Licensee's facilities, workstations and servers, and otherwise cooperate fully with the Licensor in any such investigation and will take all commercially reasonable actions to

assist the Licensor in accurately determining the Licensee's compliance with the terms and conditions of this Agreement. The Licensor has a right to implement tools in the Software which will enable the Licensor to monitor compliance of the Licensee with this Agreement which will be served for automatic licence auditing by the Licensor according to the Section 5.10 of this Agreement.

- 19.4 Neither party will be liable for any delay in or failure to perform any of its non-monetary obligations under this Agreement if due to any cause or condition beyond their reasonable control, whether foreseeable or not.
- 19.5 This Agreement, the relevant Certificate of Licences and Services, the then current Price List and the then current Specifications of the Software, and possibly also other arrangements related to the Software agreed between the parties in writing, as the case may be, constitute the entire agreement between the parties concerning the Software. Any reference to Licensee's terms and conditions or any other general terms and conditions included in Licensee's order or in any other communication shall in no event apply to the contractual relationship between the parties hereto and shall have no legal effect.
- 19.6 Nothing in this Agreement shall create a partnership or a corporation between the parties, nor deem either party the agent of the other party for any purpose.
- 19.7 If any provision of this Agreement is or becomes invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement. The parties are committed to cooperate on replacing the invalid or unenforceable provision with a valid and enforceable one which will achieve the same economic result (to the maximum extent legally possible) as the provision which is or has become invalid or unenforceable.
- 19.8 If the wording or sense of any provision of this Agreement implies that the obligation(s) stipulated therein shall last after the termination of the Agreement, the parties are obliged to comply with such obligation(s) after the termination of the Agreement. In particular, the parties are obliged to protect the Confidential Information and its confidential character even after the termination of the Agreement.
- 19.9. For the avoidance of any doubts the parties explicitly confirm they are business entities and enter in the Agreement as businesses and therefore neither the provisions of S. 1793 of the Civil Code (disproportionate shortening) nor S. 1796 of the Civil Code (usury) shall be applied hereto.
- 19.10 This Agreement is governed by and shall be construed in accordance with the laws of the Czech Republic without regard to the conflict of law principles thereof. Any dispute, controversy or claim arising out of or in connection with this Agreement shall be settled by the courts of the Czech Republic. In accordance with Section 89a of Act No. 99/1963 Coll., the Czech Civil Procedure Code, the parties hereby agree that the competent court shall be the general court of the Licensor.



