

# LICENSE AND SUPPORT SERVICES AGREEMENT FOR POSTSHARP AND METALAMA

Version: September 1<sup>st</sup>, 2023. Applies to PostSharp 2024.0, Metalama 2023.4 and later.

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## TERMS AND CONDITIONS

### 1. PARTIES

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- 1.2 '**Licensee**' means the legal entity or individual specified in the respective **Order**, as defined below. For editions of the Software that are available at no cost and used without explicit Order, Licensee means the legal entity or the individual using the free Software edition.

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**‘Support Services’** means the services specified in Section 7 of this Agreement.

**‘License’** means the license granted hereunder by the Licensor to the Licensee in the extent and subject to the terms and conditions hereof.

**‘Ordered License Type’** means either the Free License, as defined in 5.7, or the type of license specified in the Order.

**‘Subscription’** means (a) a License to use any Software Version released during a specific period (the ‘Subscription Period’) under the terms of the Ordered License Type and (b) a license to use Support Services during the Subscription Period. The duration of the Subscription Period is specified in the Order.

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**‘Price List’** means a document specified in Section 8.1 of this Agreement.

**‘Support Case’** means any unique and indivisible problem experienced by the Licensee in the use of the Software and for which Support Services are requested.

**‘Supported Platform’** means any platform on which a specific Software Version is designed to run according to Documentation.

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## 5. TYPES OF LICENSES AND DELIVERY

- 5.1 The Licensee may purchase various licenses. This Agreement applies to any and all licenses to Software that the Licensee purchases. The type of license which the Licensee purchases shall be specified in the Order and are listed below.
- 5.2 '**Business License**' (formerly 'Per-Developer Subscription', 'Commercial License' or 'Per-User Subscription') shall mean a license based on a limitation on the number of daily unique Authorized Users. The Business License is ruled by the following principles:
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  - b) The number of Authorized Users shall not exceed the entitlements specified in the Order. Licensor will send Licensee a notice in the event they have exceeded the number of Authorized Users and will be notified in writing that it must purchase additional Authorized Users. In the event License continues to exceed the number of Authorized Users, and does not purchase a license for additional Authorized Users within 30 days of Licensor's written notice, Licensor may thereafter suspend or terminate Licensee's license, without liability to Licensee.
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The Price List may stipulate different prices for companies of different sizes, where the size is specified as a maximal number of employees. This number shall be interpreted as the number of full-time equivalent employees and freelancers working for the company. The maximum number of employees will be specified in the Order. Licensor must qualify the price category at the time of placing the Order or renewing the Subscription.

- 5.5 '**Academic License**' shall mean a license designed for students, teachers, professors, universities, schools, or other physical or legal entities specialized in education or research (whether free or for profit), and is based on the same principles as the Company License with the following restrictions:

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

(c) The Licensee with an Academic License shall not be entitled to make Support Requests defined in section 7.2.

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

5.6 **‘Evaluation License’** shall mean, in relation to any of the licenses granted under this Agreement, license 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 limited period of time specified in the Order. The access to the Software will be provided as specified in relation to each specific license 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 License does not allow for general commercial use of the product by the Licensee, such as development of production software. The Evaluation License shall be non-transferable.

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6.2 Licensor may emit certain cryptographic keys that may be embedded in third-party projects using or extending the Software (**‘Project License Keys’**). Project License Keys allow Licensee to use the Software in conjunction with these third-party libraries even if the Software features required to build these third-party libraries are not covered by the Ordered License Type. Unless specified otherwise in a contract binding Licensor with the author of the third-party projects, Licensor retains the right to revoke the Project License Key at any time and at its own discretion, for instance in situations where the third-party library no longer respects the terms and conditions under which the Project License Key was emitted.

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7.1 Subject to purchase by the Licensee of a Subscription, the Licensor shall provide Support Services specified in Section 7.2 for the Subscription Period. The Support Services to be provided hereunder shall be solely the type of the Support Services specified in the respective Order. The Support Services provided hereunder may be used by the Licensee solely for the Software delivered under this Agreement and for no other software.

7.2 Support Services are available to Licensee during the Subscription Period based on the following principles:

- (a) **‘Software Updates’**: the Licensee will receive new Software Versions from the Licensor including maintenance releases and new major versions, if any such releases are issued by the Licensor during the Subscription Period. The license granted to any Software Version, for the granted License Type, will be perpetual.
- (b) **‘Support Requests’**: Licensee may send Licensor questions relating to the Software to get personalized help. The questions shall only be delivered as specified by the Licensor on the website <https://www.postsharp.net/support>. If Licensee purchased **Professional Technical Support**, as mentioned in the Order, Licensor shall handle such questions with priority and make all reasonable efforts to react to delivered questions within a reasonable time. Licensor has no such obligation for **Standard Technical Support**, and, in this case, will address Support Requests on a benevolent basis and based on availability.
- (c) Licensor is entitled, at its sole discretion, to divide a Support Case into multiple Support Cases.

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- (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 the Software is installed;
- (e) use of low-level application programming interfaces of the Software including any library whose name starts with ‘PostSharp.Compiler’, ‘Metalama.Compiler’, ‘Metalama.Framework.Sdk’, ‘Microsoft.CodeAnalysis’.
- (f) use of works which are not Licensor Software;
- (g) use of different binaries than the one provided by Licensor (i.e. Licensor does not support builds done by the Licensee from the source code);

- (h) excessive issuance of Support Requests by Licensee, where 'Excessive' is defined as cases where the Licensor has devoted more than one hour of support time for every 250 USD spent by the Licensee on the total Order, excluding the time spent to fix bugs identified by Licensor, if any.
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- (j) repeated issuance of Support Requests which indicate the Licensee has not reviewed the FAQ, Documentation and samples posted by the Licensor on the support site;
- (k) attempt to build the Software from its source code, except if a Source Code Subscription was purchased.

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- 8.2 The Price List shall constitute an integral part 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.
- 8.3 For each payment due to the Licensor under this Agreement, an invoice 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 authorized reseller of the Licensor, as specified in the respective invoice.
- 8.4 Should the Licensee fail to pay the fee within the above-stated period, the Licensee shall after the due date be obliged to pay to the Licensor daily interest at the maximum rate allowable 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.
- 8.5 The prices on the Price List are without any VAT or similar taxes. Any such taxes will be added to the price.
- 8.6 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 authorized 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.

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- 9.2 Licensee is being granted the limited, non-exclusive and non-transferable license to use the source code solely for the purpose of (i) troubleshooting problems arising with the normal use of the Software and (ii) performing a security audit of the Software. Unless Licensee purchased a Source Code Subscription, Licensee is not entitled, in particular, to compile or modify the Source Code.
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  - (c) Licensor shall not make modified copies of the Source Code available outside its organization.

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- 10.4 This Section states the Licensor's entire liability for copyright and patent infringement.
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- 11.3 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.

## **12. LIMITATION OF LIABILITY**

- 12.1 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 24 calendar months preceding the claim or damage. The parties hereby expressly agree that the amount referenced in the immediately preceding sentence represents the amount of foreseeable damages. The copyright and patent infringement claims are covered solely by Section 11. 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.

## **13. NON-DISCLOSURE OBLIGATIONS**

- 13.1 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 authorization of the disclosing party, the receiving party shall not use or copy any Confidential Information for any purpose other than

as specifically authorized 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 unauthorized disclosure or use, including, without limitation, ensuring that each of its personnel and any Authorized Users 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 unauthorized 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 unauthorized 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.

- 13.2 The obligations set out in Section 13.1 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.
- 13.3 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 13.2 hereof.

#### **14. TERMINATION**

- 14.1 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).
- 14.2 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.
- 14.3 All rights granted will cease upon any termination of this Agreement. Within fifteen (15) days after termination of the license 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.

#### **15. MARKETING**

- 15.1 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 license to use the Licensee's name and any of the Licensee's trade names and trademarks solely pursuant to this Marketing Section.

## **16. NOTICES**

- 16.1 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 Order; or to such other address as either party may specify by written notice to the other.

## **17. GENERAL**

- 17.1 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.
- 17.2 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.
- 17.3 Except for Site License and Global License pursuant to this Agreement, and except when neither Automatic License Audit nor License Server is used, 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 (Devices) 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 authorized 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.
- 17.4 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.
- 17.5 This Agreement, the relevant Order, 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.
- 17.6 The Software includes functionality that when utilized by Licensee may enable temporary access to sensitive data such as passwords or credit card numbers in diagnostic logs and audit servers ("Diagnostic Data"). Licensee does not monitor the content processed by the Software and Licensor is responsible for properly configuring the Software to manage Diagnostic Data and obtaining any required consents to provide access to the Diagnostic Data and disclaims any liability for Licensee's use of the Software in violation of applicable security and privacy laws.
- 17.7 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.

- 17.8 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.
- 17.9 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.
- 17.10 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. 1693 of the Civil Code (disproportionate shortening) nor S. 1696 of the Civil Code (usury) shall be applied hereto.
- 17.11 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 nearest to where the Licensor is registered, e.g. the Prague Commerce Tribunal.