

# POSTSHARP LICENSE AND SUPPORT SERVICES AGREEMENT

Version: April 11<sup>th</sup>, 2025.

Applies to PostSharp 2025.1 and later, Metalama 2025.1 and later.

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- 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 10. 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 10 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.
- 14.4 If the Licensor files for bankruptcy, enters liquidation, or ceases to maintain the Software for a period of 18 months without transferring maintenance responsibilities to a successor entity or making alternative maintenance arrangements, and the Licensee has an active Source Code Subscription at the time of such an event, the license granted under this Agreement shall automatically convert into a Global License.

#### **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. This right shall become effective 30 days after the Licensee first enters this Agreement, unless the Licensee opts out as described in Section 15.2.
- 15.2 The Licensee may opt out of the Licensor's use of its name, trade name, and logo for marketing purposes at any time by providing written notice to the Licensor. Such notice shall take effect within 30 days from receipt by the Licensor and shall not apply retroactively to previously published materials.

## **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 Entitlement Page; 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 the 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 Quote, the Entitlement Page, 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 doubt 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

## Appendix 1

### NON-DISCLOSURE AND NON-COMPETING AGREEMENT

Effective Date: \_\_\_\_\_ (the “Effective Date”)

This Non-Disclosure and Non-Competing Agreement (“**NDA/NCA**”) is entered into by and between:

1. **SharpCrafters s.r.o.**, doing business as “PostSharp” or “PostSharp Technologies,” having its registered office at Prague 5, nám. 11. října 1307/2, Postal Code 150 00, the Czech Republic (hereinafter the “**Licensor**”); and
2. \_\_\_\_\_, a company or individual with a principal place of business at \_\_\_\_\_ (hereinafter the “**Licensee**”);

(each a “Party” and collectively the “Parties”).

**WHEREAS**, the Parties have entered into a License and Support Services Agreement (the “Master Agreement”), under which the Licensor grants the Licensee certain rights to use and access the Software (as defined in the Master Agreement) and, under specified conditions, grants the Licensee limited access to the Source Code of the Software;

**WHEREAS**, the Licensor wishes to protect its Confidential Information, including but not limited to Source Code and other proprietary data, from unauthorized disclosure, use, or competition-related conduct;

**NOW, THEREFORE**, in consideration of the mutual covenants herein, and intending to be legally bound, the Parties agree as follows:

#### 1. DEFINITIONS

- 1.1 **Confidential Information**: Shall have the meaning assigned in the Master Agreement and shall, for purposes of this NDA/NCA, be supplemented to include explicitly include any and all Source Code the Licensor provides to the Licensee under this Agreement.
- 1.2 **Source Code**: The human-readable form of computer software that the Licensor provides to the Licensee pursuant to the Master Agreement, including modifications and derivative works thereof, as more fully defined in the Master Agreement.

#### 2. NON-DISCLOSURE OBLIGATIONS

- 2.1 **Use and Disclosure**. The Licensee shall (i) use the Confidential Information and Source Code exclusively for the purposes authorized in the Master Agreement; and (ii) not disclose, publish, or disseminate the Confidential Information or Source Code to any third party other than permitted affiliates, agents, or contractors that have a need to know such information in connection with the Licensee’s authorized use, and who have executed written non-disclosure agreements no less restrictive than this NDA/NCA.
- 2.2 **Standard of Care**. The Licensee shall take all reasonable measures to prevent unauthorized use or disclosure of the Confidential Information and Source Code, at least as protective as the measures the Licensee uses to protect its own information of similar sensitivity, and in no event less than a reasonable standard of care.
- 2.3 **Return or Destruction**. Upon (i) the termination or expiration of the Master Agreement, or (ii) the Licensor’s request, the Licensee shall immediately cease any and all use of the Confidential Information and Source Code and shall promptly return or securely destroy all copies or embodiments of the Confidential Information and Source Code, except as otherwise required to be retained by law. Licensee shall certify its compliance with the foregoing obligation upon the Licensor’s request.

- 2.4 **Exclusions.** Confidential Information does not include information that: (a) is or becomes publicly available without breach of this NDA/NCA; (b) was lawfully known to the Licensee without an obligation to keep it confidential; or (c) is independently developed by the Licensee without reference to, reliance upon, or use of the Confidential Information.

### 3. NON-COMPETITION

- 3.1 **Non-Competition.** The Licensee shall not use the Confidential Information and/or Source Code to create or assist in the creation of a competing product or service that is substantially similar to or otherwise competes with the Licensors' Software.

### 4. TERM AND TERMINATION

- 4.1 **Term.** This NDA/NCA becomes effective as of the Effective Date and shall remain in effect for as long as the Master Agreement is in effect, plus any additional periods specified herein or mandated by law.
- 4.2 **Survival.** The obligations of non-disclosure (Section 2) shall survive the termination or expiration of this NDA/NCA for so long as the Confidential Information qualifies as a trade secret under applicable law, or for five (5) years from the date of such termination or expiration, whichever is longer.

### 5. REMEDIES

- 5.1 **Injunctive Relief.** The Licensee acknowledges that a breach of this NDA/NCA by the Licensee may cause the Licensors irreparable harm that cannot be fully remedied by monetary damages. Accordingly, the Licensors may seek injunctive relief in addition to any other remedies available at law or in equity.

### 6. MISCELLANEOUS

- 6.1 **Entire Agreement.** This NDA/NCA supplements the Master Agreement solely with respect to matters concerning the protection of Confidential Information, Source Code, and the restrictions in Section 3. It supersedes any prior oral or written understandings on these points.
- 6.2 **Governing Law.** This NDA/NCA shall be governed by, and construed in accordance with, the law specified in the Master Agreement.
- 6.3 **Severability.** If any provision of this NDA/NCA is held to be invalid or unenforceable, all other provisions will remain in full force and effect.
- 6.4 **Counterparts.** This NDA/NCA may be executed in counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have caused this NDA/NCA to be executed by their duly authorized representatives as of the Effective Date.

**Licensor: SharpCrafters s.r.o.**

Signature: \_\_\_\_\_  
Name & Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Licensee:** \_\_\_\_\_

Signature: \_\_\_\_\_  
Name & Title: \_\_\_\_\_  
Date: \_\_\_\_\_