**License and sUPPORT ServiceS Agreement for PostSharp AND METALAMA**

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

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# TERMS AND CONDITIONS

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(d) damage to the media on which the Software is provided, or to the computer on which the Software is installed;

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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.

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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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9.4 It is expressly agreed that the Source Code may in no event be used by the Licensee, neither in any other way, nor for any other purpose than specified in Sections 9.2 and 9.3 respectively, as the case may be. In particular, the following limitations shall apply:

(a) Licensor shall retain all rights, title and interest in and to all corrections, modifications and derivative works of the Source Code created by the Licensee, including all copyrights subsisting therein, to the extent such corrections, modifications or derivative works contain copyrightable code or expression derived from the Source Code.

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# 12. LIMITATION OF LIABILTY

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.