## 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 Licensor’s 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 Licensor irreparable harm that cannot be fully remedied by monetary damages. Accordingly, the Licensor 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: Gael Fraiteur, Director  Date: | **Licensee:**  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name & Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |