

Posit Managed Care Agreement

Posit Software, PBC

Last Updated: November 2, 2022

This MANAGED CARE AGREEMENT (this “**Agreement**”) is between the applicable Service Provider (“**you**” or “**Service Provider**”), and Posit Software, PBC (“**Posit**”) (formerly known as RStudio, PBC). If you are agreeing to this Agreement not as an individual but on behalf of your company, then “Service Provider” or “you” means your company, and you are binding your company to this Distributor Agreement.

**** IMPORTANT - PLEASE READ CAREFULLY BEFORE YOU SUBMIT AN ORDER FOR PURCHASE OR RESALE ****

WHEREAS, Service Provider is in the business of providing managed care services to its customers, including without limitation licensing and hosting software on a software as a service basis as requested by such customers; WHEREAS, Service Provider’s customer (the “**Service Provider Customer**”) has requested that Service Provider license and host Posit Software for the Service Provider Customer’s exclusive benefit; and WHEREAS, Posit has agreed to license Posit Software to Service Provider solely for such Service Provider Customer’s benefit and subject to all terms and conditions of this Agreement. NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Posit and Service Provider agree as follows:

1. DEFINITIONS. The following terms shall have the following meanings.

1.1 Affiliate. Means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes hereof, means (a) the legal power to direct or cause the direction of the general management and policies of an entity whether directly or indirectly and whether through the ownership of voting securities, by contract, or otherwise, or (b) the beneficial ownership, whether direct or indirect, of fifty percent (50%) or more of the voting securities or other ownership interest or other comparable equity interests of an entity.

1.2 Designated Location. Service Provider’s location designated on Exhibit A attached hereto where Service Provider shall be entitled to install and host the Software for the sole and exclusive benefit of the Service Provider Customer.

1.3 Documentation. Means the published and generally available instructions for Software installation, use, and administration set forth at <https://docs.rstudio.com>, as updated from time to time to reflect Updates, and the Software License Descriptions.

1.4 EULA. Means the End User License Agreement applicable to the Software set forth at <https://posit.co/about/eula/>, as updated from time to time, provided, that for Software

that is subject to a then-current EULA, such updates will not take effect until the renewal of the Subscription Term for such Software.

1.5 Intellectual Property Rights. Means patents, trademarks, copyrights, trade secrets, and any other intellectual and intangible property rights, including all registrations and applications for such rights, and all continuations, continuations in part, divisional applications, and renewals of any of the foregoing now existing or hereafter created.

1.6 Managed Care Services. Means the Service Provider's installation and hosting of the Software for the exclusive benefit of the Service Provider Customer.

1.7 Open Source Software. Any open source, community or other free code or libraries of any type, including, without limitation, any code which is made generally available on the Internet without charge or which meets the definition of "open source" or "free," as defined by the Open Source Initiative or Free Software Foundation, respectively, or is licensed under any license agreement approved by either such entity (such as, for example purposes only, the GNU GPL, Mozilla or Apache license).

1.8 Order Form. Means Posit's order form which is separately executed by Service Provider and Posit and which lists the Software ordered by Service Provider to provide Managed Care Services to the Service Provider Customer, the name and contact information of the Service Provider Customer, the annual subscription fees payable for such Software, the Subscription Term, the Software License Descriptions, and any additional terms and conditions agreed to by the parties. All Order Forms, executed by the parties and their respective Affiliates, are incorporated herein by reference. The initial Order Form is attached hereto as Exhibit B.

1.9 Posit Support Program. Means Posit's Support Program for the Software at <https://posit.co/about/support-agreement/>, as the same may be updated from time to time by Posit in its discretion; provided, that any updates will not take effect with respect to a subscription to the Software until renewal of the Subscription Term for such Software.

1.10 Posit Support Services. Means the technical support services for the Software made generally commercially available by Posit to its customers pursuant to and as described in the Posit Support Program.

1.11 Service Provider Support Services. The support and maintenance services provided by Service Provider to the Service Provider Customer with respect to the Software.

1.12 Software License Descriptions. Means the license entitlements applicable to the Software set forth at <https://posit.co/about/software-license-descriptions/>, as updated from time to time, provided, that for Software that is subject to a then-current Subscription Term, such updates will not take effect until the renewal of the Subscription Term for such Software.

1.13 Software. The object code version of Posit's proprietary software set forth on an Order Form, together with the object code versions of any Updates.

1.14 Subscription Term. Means the period of time set forth on the Order Form during which Service Provider is licensed to install and host the Software for the Service Provider Customer in accordance with this Agreement and the Order Form and which period of time commences on the Subscription Start Date.

1.15 Subscription Start Date. Means the date a license key to activate the Software is provided to Service Provider.

1.16 Updates. Modifications, corrections, upgrades and enhancements to the Software that Posit generally provides to its customers as part of Technical Support. Updates do not include any products that are marketed and priced separately by Posit.

1.17 User. An individual who is authorized by the Service Provider Customer to use the Software, who has been given access credentials to access and use the Software, and for which Service Provider has paid the applicable license fees. A User may include but is not limited to a Service Provider Customers' employees and those of its consultants and contractors (including without limitation Service Provider) who are bound by enforceable terms at least as protective of the Software and the Posit Confidential Information as the EULA and Software License Descriptions.

2. LICENSE GRANT; RESTRICTIONS.

2.1 License Grant; License Keys.

a. License Grant. License Grant. Subject to all terms and conditions set forth in this Agreement, the Software License Descriptions, and the applicable Order Form, Posit grants Service Provider a limited, worldwide, nonexclusive, royalty-free license (without right of sublicense) during the Subscription Term to (i) install and host the Software for the exclusive benefit of the Service Provider Customer in connection with providing Managed Care Services to the Service Provider Customer and (ii) grant the Service Provider Customer and its Users the right to access and use the Software as hosted by the Service Provider during the Subscription Term, solely for the Service Provider Customer's own business purposes and subject to compliance with the EULA; in each of (i) and (ii) solely in accordance with the Documentation and subject to the license limitations and entitlements set forth in the applicable Order Form and the Software License Descriptions. Notwithstanding anything to the contrary herein, Service Provider may make a reasonable number of copies of the Software for the sole purpose of backing-up and archiving the Software; provided, that any such copies may not be used in a live production environment unless Service Provider has ordered a subscription for a High Availability Server or an Execution Server (as such terms are defined in the Software License Descriptions) pursuant to an Order Form. Further, unless Service Provider has purchased a subscription to Staging Software (as such term is defined in the Software License Descriptions), neither Service Provider nor the Service Provider Customer may use copies of the Software for purposes of testing changes to its computing environment or testing applications, scripts, or documents before deploying them. All copies of the Software are subject to this Agreement and must contain the same titles, trademarks, and copyrights as the original. Service Provider is responsible for the compliance of its Service Provider Customer and their Users with the terms and conditions of the EULA, including compliance with the Documentation and Software

License Descriptions. For the avoidance of doubt, Service Provider is not permitted to use any Software for its own benefit. For the avoidance of doubt, Service Provider Customers shall have no right to use the Software other than as part of the Managed Care Services.

b. License Keys. Posit requires the use of a license key (a “License Key”) for Service Provider to activate the Software. Service Provider shall not distribute or otherwise make available a License Key except with respect to the Service Provider Customer for which Service Provider has submitted an Order Form and agreed to pay the applicable license fees. Any use or distribution of a License Key other than as expressly permitted in this Section 2.1(b) is expressly prohibited and will be deemed to be a material breach of this Agreement. Service Provider agrees not to (and will not allow any third party to) take any steps to interfere with, circumvent or defeat any License Keys.

c. Delivery. Delivery of the Software shall be made by electronic means and such delivery shall be deemed to have been made as of the Subscription Start Date.

2.2 Restrictions. Service Provider agrees that Service Provider will not (and will not allow any third party to and will require that its Service Provider Customer and its Users do not): (i) use the Software other than in accordance with the Documentation, the Software License Descriptions and this Agreement, (ii) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of any portion of the Software that is provided to Service Provider in object code form (unless, and only to the extent, permitted by law for purposes of achieving interoperability after first requesting that Posit provide services at Posit’s then current rates to achieve interoperability) or attempt to modify, alter, or circumvent the license control and protection mechanisms within the Software, (iii) modify, adapt, translate or create derivative works of the Software or Documentation, (iv) bundle, incorporate or embed the Software, in whole or in part, with or into another product or other computer software code, (v) use the Software in a service bureau or application service provider environment, in a commercial time share arrangement, or for purposes of providing services to a third party other than in connection with providing the Managed Care Services to the Service Provider Customer, (vi) copy the Software other than to create a reasonable number of back-up copies solely for disaster recovery purposes, (vii) transfer, distribute, make publicly available, resell, rent, lease, sublicense or loan the Software or permit any other third party to use the Software except as expressly permitted in 2.1(a) with respect to the provision of Managed Care Services to the Service Provider Customer, (viii) use the Software on any computer that Service Provider does not own or control or operate (including for such purpose the hardware of a third party hosting providers that hosts the Software for Service Provider, such as Amazon Web Services), (ix) use the Software in contravention to any applicable laws or government regulations; or (x) remove any trademarks or proprietary notices from the Software or the Documentation for the Software.

2.3 Virtualization Technology; Third Party Hosting Provider. The Software may be installed within a virtual (or otherwise emulated) hardware system so long as the use of the Software meets the terms of the Software License Descriptions and these virtual

machines are run on hardware Service Provider owns, leases or otherwise controls (including for such purpose the hardware of a third party hosting provider that hosts the Software for Service Provider, such as Amazon Web Services). Virtualization technology may not be used to circumvent licensing terms or restrictions. Service Provider is responsible for any breach of this Agreement or unauthorized use of the Software by its third party hosting provider.

2.4 Laws; Export.

a. Generally. Service Provider represents and warrants that it will maintain all applicable licenses and registrations in all jurisdictions as applicable to its provision of the Managed Care Services to the service Provider Customer.

b. Anti-corruption. Service Provider agrees to comply with all applicable federal, state and local laws and regulations in exercising its rights and fulfilling its obligations under this Agreement, including without limitation the U.S. Foreign Corrupt Practices Act and the UK Bribery Act.

c. Export. Service Provider may not export the Software into, or permit the use of the Software in, any country prohibited by the United States Export Administration Act and the regulations thereunder. Service Provider acknowledges that the release of software, technology, or data to a non-US person within the United States or elsewhere abroad is deemed to be an export to the non-U.S. person's home country or countries. Service Provider acknowledges that the export of any Software is subject to export controls and agrees that the Software, and the direct or indirect product thereof, will not be exported (or re-exported from a country of installation), directly or indirectly, unless Service Provider obtain all necessary licenses from the U.S. Department of Commerce or other applicable agency or governmental body as required under applicable law or Service Provider qualifies for exemptions or exceptions. Service Provider shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Software, including without limitation the International Traffic in Arms Regulations (ITAR), 22 CFR 120 – 130, the Export Administration Regulations (EAR), 15 CFR 730 – 799, and the Foreign Assets Control Regulations (FACR), 31 CFR 500 – 599. Without limiting the foregoing, (i) Service Provider represents that neither Service Provider nor the Service Provider Customer are named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Service Provider shall not use, and shall not permit the Service Provider Customer or its Users to access or use, the Software in violation of any U.S. export embargo, prohibition or restriction. Service Provider acknowledges and agrees that the Software is prohibited for export or re-export to Cuba, North Korea, Iran, Libya, Syria and Sudan or to any person or entity on the U.S. Department of Commerce Denied Persons List, Entity List, or Unverified List, U.S. State Department's Nonproliferation Sanctions List, or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time.

2.5 Updates; Discontinuance. Posit will make Updates for the Software available to Service Provider when they become generally commercially available for all Posit customers entitled to Support Services. Service Provider is responsible for installing

each Update within one year after the Update is made available unless a shorter period of time is required by Posit when the Update is provided. Posit may cease support of any older version of the Software in accordance with the Posit Support Program. Service Provider acknowledges that the Software may change and that future versions of the Software may be incompatible with prior versions of the Software. Service Provider acknowledges that Posit may stop (permanently or temporarily) providing the Software (or any features within the Software) to Service Provider in Posit's sole discretion without prior notice, although Posit will endeavor to provide at least twelve (12) months prior notice.

2.6 Third Party Software. Service Provider acknowledges that certain third party software incorporated in the Software requires that Posit provide copyright notices and/or additional terms and conditions to the end user, which copyright notices and additional terms and conditions may be accessed by Service Provider at <https://www.rstudio.com/about/opensourcelicenses/> and are made a part of, and are incorporated by reference into this Agreement. Use, reproduction and distribution of those components of the Software that are licensed under an open source software license are governed solely by the terms of that open source software license and not this Agreement.

2.7 Non-Exclusive. The parties acknowledge and agree that the relationship established herein is nonexclusive, and either party may, subject to any restrictions or other obligations set forth herein (such as restrictions regarding rights in intellectual property), engage, or otherwise enter relationship(s) with third parties similar to the relationship established hereunder. Notwithstanding the foregoing, Service Provider acknowledges and agrees that it shall provide written notice to Posit if Service Provider offers, promotes, markets or otherwise sells to the Service Provider Customer products, services or solutions that are competitive with the Software during the Term.

3. OBLIGATIONS OF SERVICE PROVIDER.

3.1 License Agreement for Service Provider Customer. Service Provider shall secure the Service Provider Customer's consent to a license agreement (each, a "License Agreement") which is consistent with, and at least as protective of the Software and Posit's rights, as the EULA. The License Agreement may be written or may be executed via a "click-through" method. Service Provider will use commercially reasonable efforts to enforce the License Agreement against the Service Provider Customer and assist Posit in enforcing its Intellectual Property Rights. In addition to the foregoing, if Service Provider learns that the Service Provider Customer has breached any such provision, Service Provider will make commercially reasonable efforts to notify Posit and will terminate the Service Provider Customer's access to and use of the Software.

3.2 No Additional Representations or Warranties. Service Provider shall not (i) make any representations, warranties, or other statements regarding the Software to any third party other than those consistent with the Documentation, Service Level Descriptions and EULA, (ii) engage in any deceptive, misleading, illegal, or unethical practices or (iii)

make any disparaging, false or misleading representations with regard to Posit or the Software.

3.3 Support Services. Service Provider shall be solely responsible to provide Support Services to Service Provider Customer. Posit shall have no direct interaction with Service Provider Customer with regard to support services. Posit shall provide Posit Support Services to Service Provider in accordance with the Posit Support Program.

4. FEES; PAYMENT.

4.1 Fees. Service Provider will enter into an order form in Posit's standard format (each an "**Order Form**") with Posit with respect to the license of the Software, which Order Form will set forth the fees payable by Service Provider to Posit for the license to Software.

4.2 Payment. Service Provider will pay all Posit invoices in U.S. Dollars within thirty (30) days from the date of Posit's invoice. All fees are nonrefundable. Any payment that is not paid when due shall be subject to a late payment charge at the rate of 1.5% for each month or part of a month (or, if lower, the highest rate permitted by applicable law) for any period during which the amount due shall remain unpaid. All undisputed amounts payable by Service Provider shall be paid in full without set-off, deduction or other withholding of any amount. Service Provider is solely responsible for collecting payment from the Service Provider Customer. Late payment or nonpayment by the Service Provider Customer shall not delay or excuse payment by Service Provider to Posit hereunder. Service Provider may not terminate an Order Form or receive any refunds due to non-payment by the Service Provider Customer.

4.3 Taxes. All amounts payable by Service Provider under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties assessed, in connection with payments that Service Provider makes to Posit under this Agreement, by any governmental or taxing authority, except for taxes payable on Posit's net income. Service Provider agrees to pay any of the foregoing taxes and charges or to reimburse Posit for any taxes and charges that Posit has paid on Service Provider's behalf with interest at the rate of 1.5% for each month or part of a month (or, if lower, the highest rate permitted by applicable law).

4.4 Audit. At Posit's written request, and not more than once every twelve (12) months (or more frequently if a previous violation has taken place but only to confirm the violation has been corrected and not to exceed more than twice per calendar year), you will certify to Posit that you and your Users are in compliance with this Agreement and the Documentation. Further, not more than once every twelve (12) months (or more frequently if a previous violation has taken place but only to confirm the violation has been corrected and not to exceed more than twice per calendar year), Posit may engage an independent accountant, at Posit's sole expense, and upon reasonable notice and during normal business hours, to inspect the records and facilities of Service Provider related to its activities under this Agreement. If, upon performing such audit, it is determined that Service Provider has underpaid Posit by an amount greater than five percent (5%) of the fees due Posit in the period being audited, Service Provider will bear all reasonable expenses and costs of such audit in addition to its obligation to

make full payment under this Section 4. Further, the parties shall cooperate in good faith to implement any necessary auditing tools and enable the effective auditing by Posit of the use of the Software by the Service Provider Customer.

4.5 End User Pricing. Service Provider will independently set its own pricing with respect to the Service Provider Customer. Service Provider is solely responsible for all of its costs and expenses incurred in connection with the provision of Managed Care Services to the Service Provider Customer.

5. INTELLECTUAL PROPERTY RIGHTS.

5.1 Ownership. The Software and the Documentation, and all derivative works thereof, as well as all Intellectual Property Rights therein, shall at all times remain the sole property of Posit. Service Provider shall have no right, title, or interest in the Software, Documentation or any proprietary materials and/or information contained in or used in connection therewith, except as expressly set forth herein, and may not use the Software, Documentation or any proprietary materials and/or information contained in or used in connection therewith except as expressly set forth herein. All rights in the Software and Documentation not expressly granted to Service Provider hereunder are reserved to Posit and its licensors. There are no implied rights.

5.2 Acknowledgment of Proprietary Materials. Service Provider hereby acknowledges that the Software and Documentation are protected by the copyright laws of United States and other countries and that the Software and Documentation embody valuable confidential and trade secret information of Posit, the development of which required the expenditure of considerable time and money by Posit. Service Provider hereby agrees to hold any trade secrets or other confidential information embodied in the Software and Documentation, together with any other confidential information and data made available to it by Posit and indicated as “confidential” at the time of disclosure, in confidence and agrees not to use, copy, or disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized herein. At Posit’s written request, Service Provider will provide written verification by a duly authorized officer of Service Provider that Service Provider has not, to such person’s knowledge after due inquiry, permitted, and such person is not then aware, of copying, use or dissemination of the Software or Documentation other than as permitted by this Agreement.

5.3 Proprietary Markings. Service Provider hereby agrees to ensure that all copyright, trademark and other proprietary notices of Posit affixed to or displayed on the Software and Documentation will not be removed or modified.

5.4 Feedback. Service Provider may, from time to time, make known to Posit suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to Posit with respect to the Software (collectively, “Suggestions”). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, Posit shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology,

enhancement, documentation or other development (“Improvement”) incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to Service Provider or any other person or entity.

6. SOFTWARE WARRANTY; DISCLAIMER.

6.1 Software Warranty. Posit warrants that, at all times during a Subscription Term (i) the unmodified Software will perform substantially in accordance with the Documentation, (ii) any Support Services will be provided in a professional manner, with reasonable skill and care and in conformance with generally accepted software industry standards, (iii) as of the Subscription Start Date, the Software has been scanned using the most recent version of a leading commercially available virus scanning program designed to detect and remediate known viruses and other harmful and malicious code. Service Provider’s sole and exclusive remedy for any breach of the foregoing warranties shall be for Posit, at its option and expense, either (a) provide remedial services necessary to enable the Software or Support Services to conform to the warranty, or (b) replace any defective Software or media. If neither of the foregoing options is commercially feasible within a reasonable period of time, upon return of the affected Software to Posit (or written certification to Posit signed by an officer of Service Provider that the Software and all copies of the Software have been deinstalled and irretrievably destroyed), Posit will refund all prepaid fees for the unused remainder of the applicable Subscription Term following the date of termination for the affected Software and this Agreement and any associated Order Forms for the affected Software will immediately terminate without further action of the parties. Posit’s warranty obligations will only extend to errors that (i) are not attributable to the combination, integration or bundling of the Software with Service Provider’s or any third party’s software, hardware or other products, (ii) can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by Posit or with its written approval or in accordance with the Documentation, and (iii) are not the result of the failure to use the Software in accordance with its Documentation or other misuse. Service Provider will use commercially reasonable efforts to notify Posit promptly in writing of any breach of warranty. Service Provider will provide Posit with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Service Provider’s sole and exclusive remedies and Posit’s sole liability for breach of the above warranty.

6.2 OTHER THAN AS SET FORTH IN THIS SECTION 6.1, POSIT MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO SERVICE PROVIDER OR SERVICE PROVIDER CUSTOMER, AND POSIT DISCLAIMS ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. POSIT DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE, SECURE, ACCURATE, RELIABLE, OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS,

AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. POSIT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY POSIT, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY.

7. INDEMNIFICATION.

7.1 Indemnification by Posit. Posit agrees to defend (at its expense) Service Provider from and against any and all third party claims asserted against Service Provider that the unmodified Software when used in accordance with its Documentation, infringes any Intellectual Property Rights of a third party under U.S. law or the laws of a country party to the Berne Convention (each an "IP Claim") and shall pay all damages finally awarded by a court of competent jurisdiction or agreed to by Posit in settlement with respect to such IP Claims; provided that, Service Provider (i) promptly notifies Posit in writing of a potential IP Claim (provided that the failure to provide such notice shall not limit Service Provider's right to indemnification hereunder except to the extent that Posit is prejudiced by such failure); (ii) provides Posit a copy of all information received by Service Provider with respect to the IP Claim; and (iii) allows Posit to control the defense and settlement of the IP Claim or action, including the selection of attorneys. Service Provider shall have the right to participate in the settlement or defense of any such claim or action at its own expense. Neither party shall settle any claim without the other party's prior written consent which will not be unreasonably withheld or delayed.

Should the Software become, or in Posit's opinion be likely to become, the subject of an IP Claim, Posit shall, at its option and expense either: (i) procure for Service Provider the right to continue to use the infringing Software, or (ii) replace or modify the infringing Software to make its use non-infringing without loss of substantial functionality. Notwithstanding the foregoing, if Posit, in its sole discretion, determines that neither of such options is commercially practical, Posit, at its option, may terminate this Agreement and refund to Service Provider any pre-paid fees paid by the Service Provider for the infringing Software for the unexpired portion of the remaining term.

Posit shall have no liability or obligation to Service Provider under this Section 7.1 to the extent that the claim is based on (i) an allegation that does not state with specificity that the Software is the basis of the claim; (ii) the use or combination of the Software or any part thereof with software, hardware, or other materials not developed by Posit if the Software or use thereof would not infringe without such combination; (iii) modification of the Software by a party other than Posit or its authorized contractors, provided a claim would not have occurred but for such modifications; (iv) Service Provider's Services or Applications; (v) an allegation of infringement or misappropriation deriving from "R", packages developed for "R", or other open source software, (vi) an allegation made against Service Provider prior to the execution of this Agreement, (vii) use of any version of the Software other than the most current version or Service Provider continuing the allegedly infringing activities after being informed in writing of modifications that would have avoided the alleged infringement and such modifications have been provided to Service Provider by Posit free of charge; or (viii) Service Provider's or the Service Provider Customers' use of the Software which is not materially in accordance with the terms of this Agreement, the Software License

Descriptions or the Documentation. This Section 7.1 states Posit's sole liability and obligation and Service Provider's sole and exclusive remedy for infringement or misappropriation of any intellectual or proprietary rights of any third party.

7.2 Indemnification by Service Provider. Service Provider shall defend, indemnify and hold Posit and its officers, directors, and employees harmless from and against any claims, suits, actions, demands, investigations, costs, losses, damages, expenses (including reasonable attorney's fees and expenses) and any and all other liabilities arising out of or related to: (a) any breach by Service Provider of Sections 2 or 3.2; (b) any claim arising from the Service Provider's provision of the Managed Care Services; (c) any claims made by Service Provider Customers arising from Service Provider Service or Service Provider's representatives' acts, omissions, negligence or willful misconduct; (d) the negligence or willful misconduct of Service Provider; or (e) other acts or omissions of Service Provider in connection with the marketing or resale of the Software under this Agreement provided that, Posit (i) promptly notifies Service Provider in writing of a potential claim (provided that the failure to provide such notice shall not limit Posit's right to indemnification hereunder except to the extent that Service Provider is prejudiced by such failure); (ii) provides Service Provider a copy of all information received by Posit with respect to the claim; and (iii) allows Service Provider to control the defense and settlement of the claim, including the selection of attorneys. Posit shall have the right to participate in the settlement or defense of any such claim or action at its own expense. Neither party shall settle any claim without the other party's prior written consent which will not be unreasonably withheld or delayed.

8. LIMITATION OF LIABILITY.

8.1 EXCEPT FOR A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 9, SERVICE PROVIDER'S NONPAYMENT OF UNDISPUTED AMOUNTS DUE, OR SERVICE PROVIDER'S BREACH OF ITS OBLIGATIONS UNDER SECTIONS 2 OR 3.2, TO THE MAXIMUM EXTENT PERMITTED BY LAW IN NO EVENT SHALL EITHER PARTY OR POSIT'S LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOSS OF PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE, LOSS OR CORRUPTION OF DATA, PROCUREMENT OF SUBSTITUTE GOODS, FAILURE OF SECURITY MECHANISMS, THE COSTS TO COVER, BUSINESS INTERRUPTION OR THE LIKE) ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR OTHERWISE ARISING OUT OF THIS AGREEMENT AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.

8.2 EXCEPT FOR A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 9, SERVICE PROVIDER'S NONPAYMENT OF UNDISPUTED AMOUNTS DUE, SERVICE PROVIDER'S BREACH OF ITS

OBLIGATIONS UNDER SECTIONS 2 OR 3.2, OR A PARTY'S INDEMNIFICATION OBLIGATIONS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S AND POSIT'S LICENSORS' TOTAL AGGREGATE LIABILITY, IN CONTRACT, TORT OR OTHERWISE, FOR ALL CLAIMS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY OF THE SOFTWARE SHALL NOT EXCEED THE FEES PAID BY SERVICE PROVIDER TO POSIT UNDER THE ORDER FORM UNDER WHICH THE CAUSE OF ACTION AROSE IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

8.3 Notwithstanding the foregoing, Posit's total aggregate liability for its indemnification obligations pursuant to Section 7.1 shall be limited to the greater of (x) three times the fees paid by Service Provider to Posit in the twelve months immediately preceding the date the cause of action arose and (y) \$100,000.

8.4 The Limited Warranty and Limitation of Liability set forth in this Agreement are fundamental elements of the basis of the agreement between Posit and Service Provider. Posit and its suppliers would not be able to provide the Software on an economic basis without such limitations. The foregoing limitation shall apply even if the non-breaching party's remedies under this Agreement fail of their essential purpose. Some jurisdictions do not allow limitation on duration or the exclusion of an implied warranty, so the limitations herein may not apply. Neither party shall be responsible or liable for any loss, damage or inconvenience suffered by the other or by any third person, to the extent that such loss, damage or inconvenience is caused by the failure of the other party to comply with its obligations under this Agreement.

9. CONFIDENTIALITY.

9.1 Confidential Information. "Confidential Information" means: (i) the Software and any accompanying Documentation; (ii) any business, financial or technical information of either party communicated to the other in connection with this Agreement, including but not limited to any information relating to such party's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, provided that the disclosing party has marked or labeled the documents or materials containing such information as "Confidential" and/or "Proprietary" or, if the Confidential Information is disclosed orally or in other intangible form, the disclosing party states, before or during such disclosure, what portion thereof is deemed by the disclosing party to be confidential.

9.2 Exceptions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the

disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

9.3 Obligations. Each party will maintain the Confidential Information of the other party in strict confidence and will exercise due care with respect to the handling and protection of such Confidential Information, consistent with its own policies concerning protection of its own Confidential Information of like importance (but in no event less than reasonable care). Each party will use and disclose the Confidential Information of the other party only as expressly permitted herein, and will disclose such Confidential Information only to its employees and consultants as is reasonably required in connection with the exercise of its rights and obligations under this Agreement. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the Posit customers (including end users of the Software), the Software and the terms and pricing of this Agreement are the Confidential Information of Posit. Any such disclosure by the receiving party of the Confidential Information of the disclosing party, will, in no way, be deemed to change, affect or diminish the confidential and proprietary status of such Confidential Information. The obligations of the parties set forth in this Section 10 shall survive the termination or expiration of this Agreement.

9.4 Injunctive Relief. If the receiving party discloses or uses (or threatens to disclose or use) any Confidential Information in breach of this Section 10, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

10. TERM AND TERMINATION.

10.1 Term. The initial term of this Agreement shall be from the Effective Date until the second anniversary thereof unless earlier terminated in accordance with the terms of this Section 10 ("Initial Term"). Upon the conclusion of the Initial Term, and on each anniversary thereof, this Agreement shall be automatically renewed for additional one-year terms (each, an "Additional Term" and together with the Initial Term, the "Term") unless either party provides written notice to other not less than six months prior to the end of the then-current term that it does not wish to renew.

10.2 Termination. **** This Agreement may be terminated (a) in the case of Posit, if Service Provider fails to pay any amount due hereunder within ten (10) business days after written demand by Posit for payment thereof, (b) by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, (c) by mutual written agreement of the parties, (d) by either party if the other party materially breaches this Agreement and fails to cure such breach to such party's reasonable satisfaction within thirty (30) days following receipt of written notice thereof, or (e) in the case of Posit, if Service Provider or its business is merged with or acquired by a competitor of Posit. Any termination of**

this Agreement shall be without prejudice to any other rights or remedies available under this Agreement or at law.

10.4 Effect of Termination. Upon expiration or termination of this Agreement, all licenses and Service Provider's rights hereunder shall cease as of the date of such expiration or termination and Service Provider shall immediately cease to represent itself as a provider of solutions from Posit; provided, however, that if Posit has not terminated this Agreement pursuant to 10.2, Service Provider shall have the right to continue to exercise its rights and licenses under this Agreement to provide the Bundled Service for those Service Provider Customers who were Service Provider Customers as of the effective date of the termination or expiration, for the remaining duration of such Service Provider Customer's agreement with Service Provider but not to exceed twelve months from the effective date of the termination or expiration, subject to Service Provider's payment of all applicable license fees pursuant to Exhibit A, and this Agreement shall remain in full force and effect during such period. Sections 1, 4, 5, 7, 8, 9, 10 and 11 shall survive any termination or expiration of this Agreement.

10.5 No Continuing Rights. Service Provider warrants and acknowledges that it does not now have, nor shall have after termination or expiration, any continuing interest or rights to the good will, assets or proceeds of Posit, and that Posit's sole responsibilities and liabilities are as set forth herein. Posit's right to terminate is absolute, and Service Provider acknowledges it has considered the term of this Agreement and the termination provisions in making expenditures of money and time in preparing for the performance of this Agreement and has further considered the possible loss or damage on account of the loss of prospective profits or anticipated sales or on account of expenditures, investments, leases, property improvements or commitments in connection with the good will or business of Service Provider resulting from the ending of this Agreement. Posit shall have no liability to Service Provider, and Service Provider expressly waives any liability of Posit, as a result of termination or expiration of this Agreement in accordance with its terms, including without limitation claims relating to loss of profit, goodwill, advertising costs, termination of employees, employees' salaries, unrecovered expenditures, investments, inventory purchases, leases, property improvements, or any other items.

11. MISCELLANEOUS.

11.1 Notices. Except as otherwise set forth herein, all notices shall be in writing and deemed given (i) upon delivery, if delivered in person or by prepaid telegraph, (ii) five (5) business days after mailing if sent registered mail, return receipt requested, or (iii) the next business day after sending, if sent by commercial overnight courier (unless returned undelivered or the courier reports a later delivery). Notices shall be addressed to each party at its address set forth above, or such other address as the recipient may have specified by earlier notice to the sender.

11.2 Assignment; Successors. This Agreement shall not be assigned by either party without the advance written consent of the other party; provided, however that either party may assign this Agreement without consent to its successor in a merger, acquisition or other change of control, including without limitation any sale of all or

substantially all of a party's assets or stock or business to which this Agreement relates. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns. Any assignment in contravention of this section shall be void and of no effect.

11.3 Entire Agreement; Headings; Counterparts. This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. This Agreement may be amended only by a written agreement executed by a duly authorized representative of each party. Service Provider agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by Service Provider in relation to the Software licensed hereunder shall be of no effect and all such terms or conditions shall be null and void. Service Provider acknowledges and agrees that its agreement hereunder is not contingent upon the delivery of any future functionality or features not specified herein or dependent upon any oral or written, public or private comments made by Posit with respect to future functionality or features for the Software. Headings used in this Agreement are for reference only and shall not be deemed a part of this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. A manually or electronically signed copy of this Agreement and any Order Form delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of the Agreement or the Order Form.

11.4 Amendments. No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each party. The term "Agreement", as used herein, includes any exhibits, schedules or other attachments hereto and all future written amendments, modifications, or supplements made in accordance herewith.

11.5 Waiver; Severability. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

11.6 Independent Contractors. Each party's relationship to the other is that of an independent contractor, and neither party is an agent or partner of the other. Neither party will have, and will not represent to any third party that it has, any authority to act on behalf of the other.

11.7 Governing Law; Jurisdiction. This Agreement shall be deemed to have been made in The Commonwealth of Massachusetts, and shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts, exclusive of its rules governing choice of law and conflict of laws. The parties expressly

stipulate to jurisdiction in the Superior Court of the County of Suffolk, Boston, Massachusetts, or the United States District Court for the District of Massachusetts, as appropriate. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods and the parties expressly disclaim the applicability of same. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted. Nothing in this Agreement shall prevent either party from seeking equitable or injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

11.8 Government Service Provider Customers. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited.

11.9 Construction. This Agreement may be executed in counterparts (including counterparts delivered by facsimile or other electronic means), which taken together shall form one legal instrument. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iii) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (iv) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.