

Posit Service Terms of Use

Posit Software, PBC

Last Updated: November 2, 2022

These Terms of Use govern your access to and use of Posit ShinyApps.io, Posit.Cloud, the Posit Connect publishing service hosted on <https://bookdown.org/connect/>, the Posit Package Manager service found at <https://packagemanager.rstudio.com>, Quarto Pub at <https://quartopub.com/>, and the Posit Team Evaluation service found at your personalized URL ending in eval.rstudio.com (collectively the “**Posit Service**”). These Terms of Use limit Posit’s liability and obligations to you, impose certain obligations on you, allow Posit to suspend or terminate your access to and use of the Posit Service, and provide you with other important information with respect to the provision and use of the Posit Service. The Posit Service enables users to upload and share applications and create analyses that have been built using Posit’s proprietary software programs, and, with respect to Posit Package Manager, discover, access, download and use third party packages for the R programming language.

You agree that by signing up to use the Posit Service and registering as a user or by using the Posit Service (in each case, you are a “**User**”), you are entering into a legally binding agreement with Posit Software, PBC in Boston, Massachusetts, USA (“**we**,” “**us**,” “**our**,” and “**Posit**”) (formerly known as RStudio, PBC). IF YOU RESPOND BY CLICKING ON THE “LOG IN”, “SIGN UP”, “I AGREE”, “I ACCEPT” OR SIMILAR BUTTON TO WHICH THIS AGREEMENT IS LINKED, REFERENCED OR OTHERWISE ATTACHED, YOU ACKNOWLEDGE AND AGREE THAT (i) IF YOU ARE USING THE POSIT SERVICE ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (“**COMPANY**”), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS AND (ii) YOU HAVE READ AND UNDERSTAND THESE TERMS OF USE AND ARE AGREEING THAT YOU AND COMPANY WILL BE BOUND BY THESE TERMS OF USE. IF YOU ARE NOT AUTHORIZED TO BIND THE COMPANY TO THIS AGREEMENT OR DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT CLICK ON THE “LOG IN”, “SIGN UP”, “I AGREE”, “I ACCEPT” OR SIMILAR BUTTON, DO NOT CONCLUDE THE SIGN UP OR REGISTRATION PROCESS, AND DO NOT USE THE POSIT SERVICE.

Posit may update these Terms of Use from time to time, to, among other things, reflect changes to the Posit Service. We will notify you of changes to these Terms of Use by posting an updated version at <https://posit.co/about/posit-service-terms-of-use> and will revise the “Last Updated” date above. We encourage you to periodically review these Terms of Use to be informed with respect to your and Posit’s rights and obligations with respect to the Posit Service. Using the Posit Service after a notice of changes has been sent to you or published on the Posit Service shall constitute consent to the changed terms and practices.

By agreeing to these Terms of Use, you are also agreeing to our website terms of use located at <https://posit.co/about/website-terms-and-conditions-of-use/>, our Acceptable Use Policy located at <https://posit.co/about/acceptable-use-policy/> and our Privacy Policy located at <https://posit.co/about/privacy-policy/>. Please review these additional terms and conditions carefully.

Right to Use the Posit Service. On the condition that you comply with all your obligations under this Agreement, we grant you a limited, revocable, nonexclusive, nonassignable, nonsublicenseable right to access, through a generally available web browser or mobile device or application (but not through scraping, spidering, crawling or other technology or software used to access data without the express written consent of Posit) and use the Posit Service in accordance with these Terms of Use, the Acceptable Use Policy and any usage limitations applicable to the Posit Service plan to which You have subscribed. Any other use of the Posit Service is strictly prohibited and a violation of the Terms of Use. We reserve all rights not expressly granted in this Agreement.

You understand that we use third-party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service. You understand that the technical processing and transmission of the Posit Service, including Your Applications, your analyses and any data or information you provide or store in the Posit Service or any application made available via the Posit Service, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

Availability of the Posit Service; Eligibility to Use the Posit Service. You have the right to access and use the Posit Service as it exists on any given day and Posit has no other obligation with respect to updating, improving, maintaining, or making available the Posit Service. Further, Posit reserves the right, any time and from time to time, to update, modify, revise, replace, refuse access to, suspend or discontinue the Posit Service, temporarily or permanently, partially or entirely, with or without notice. All of these changes shall be effective upon their posting on our website or by direct communication to you unless otherwise noted. Posit shall not be liable to you or to any third-party for any update, modification, revision, replacement, price change, suspension, refusal of access or discontinuance of the Posit Service or any of Your Applications, analyses, data or information.

To be eligible to use the Posit Service, you must meet the following criteria and represent and warrant that you: (1) are 13 years of age or older; (2) are a human - accounts registered by "bots" or other automated methods are not permitted unless authorized or enabled by Posit; (3) are not currently restricted from the Posit Service; (4) are not a competitor of Posit or are not using the Services for reasons that are in competition with Posit; (5) have full power and authority to enter into this Agreement and doing so will not violate any other agreement to which you are a party; (6) will not violate any rights of Posit, including intellectual property rights such as copyright or trademark rights; (7) will comply with the Terms of Use and Acceptable Use Policy, as

each may be amended from time to time, as well as comply with Posit's website terms of use referenced above; and (8) agree to provide at your cost all equipment, software, and internet access necessary to use the Posit Service.

Sign Up and Registration. To use the Posit Service, you must complete the sign up process and register as a User. You agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the sign up process and registration form ("User Data") and (b) maintain and promptly update the User Data to keep it accurate and current. If you provide any information that is inaccurate or not current, or Posit has reasonable grounds to suspect that such information is inaccurate or not current, Posit has the right to suspend or terminate your account and refuse any and all current or future use of the Posit Service. Your login may only be used by one person - a single login shared by multiple people is not permitted. You may create separate logins for as many people as your plan allows.

Account Security. You are responsible for safeguarding the password that you use to access the Posit Service. You agree to: (1) keep your account password secure and confidential; and (2) not permit others to use your account. Further, you are responsible for any activities or actions under your account or anything that happens through your account, whether or not you have authorized such activities or actions, until you disable your account or prove that your account security was compromised due to no fault of your own. You will immediately notify Posit of any unauthorized use of your account. You acknowledge that if you wish to protect your transmission of data and/or files to Posit, it is your responsibility to use a secure encrypted connection to communicate with and/or utilize the Posit Service.

"Your Application(s)" as used in this Agreement means a computer program independently developed by you (or on your behalf) and/or deployed by you using the Posit Service, including computer programs which you permit other Posit Service Users or the general public to access and use in accordance with the license terms applicable to Your Application. You agree to make any license terms applicable to Your Application available to Users of Your Application by linking or otherwise prominently displaying such terms to Users when they first access or use Your Application.

By using the Posit Service, you represent and warrant that (i) you are in compliance with these Terms of Use, (ii) you own or otherwise have all rights and permissions necessary to submit to Posit and the Posit Service Your Applications and any analyses, data, or other information that you submit to the Posit Service and to share and license the right to access and use Your Application to Users, as applicable, and (iii) Your Application and any analyses, data, or other information that you submit to the Posit Service does not violate, misappropriate or infringe the intellectual property rights of any third party and is not in violation of any contractual restrictions or other third party rights. If you have any doubts about whether you have the legal right to submit, share or license Your Applications and any analyses, data, or other information, you should not submit Your Applications or any analyses, data, or other information that you submit to the Posit Service. You may remove Your Application from the Posit Service at any time or if the Posit Service does not include a feature that permits you to remove Your

Application, you may request that Posit remove Your Application at any time by contacting Posit support at support@posit.co.

Posit does not claim ownership of Your Application; however, you hereby grant Posit a worldwide, perpetual, irrevocable, royalty-free, fully paid up, transferable and non-exclusive license, as applicable, to (i) access, use, copy, adapt, publicly perform and publicly display Your Application and any analyses, data, or other information that you submit to the Posit Service in connection with providing the Posit Service to you and your Users and (ii) with your permission, to internally access, copy and use Your Application to review the underlying source code of Your Application for purposes of assisting you with de-bugging your Application. You acknowledge and agree that the rights granted in (i) may be exercised by Posit's third party hosting provider in connection with their provision of hosting services to make the Posit Service available to you and your Users.

If you choose to, you can share Your Applications, and any analyses, data, or other information that you submit to the Posit Service, with the general public, or with specific individuals or Users you select to the extent the Posit Service supports such functionality. If you decide to share Your Application, and/or any analyses, data, or other information that you submit to the Posit Service, you are giving certain legal rights, as explained below, to those individuals who you have given access. Posit has no responsibility to enforce or police, or aid you in enforcing or policing, the terms of the license(s) or permission(s) you have chosen to offer. POSIT IS NOT RESPONSIBLE FOR MISUSE OR MISAPPROPRIATION OF YOUR APPLICATIONS AND /OR ANY ANALYSES, DATA, OR OTHER INFORMATION THAT YOU SUBMIT TO THE POSIT SERVICE BY THIRD PARTIES.

Posit reserves the right to remove and/or disable any of Your Applications and any analyses, data, or other information that you submit to the Posit Service, with or without notice, if deemed by Posit to be contrary to the Terms of Use or Acceptable Use Policy. For avoidance of doubt, Posit has no obligation to store, maintain or provide you a copy of any of Your Applications and any analyses, data, or other information submitted to the Posit Service and any of Your Applications and any analyses, data, or other information that you submit are at your own risk of loss.

Your Use of Applications Made Available Via the Posit Service. If you access or use any of the applications which are submitted or otherwise made available by other Users or by Posit through the Posit Service, including without limitation any R, Python or similar packages made accessible or available through Posit Package Manager, you acknowledge and agree that your use of such applications is subject to any license terms, terms of use or other permissions granted by the licensor of the application and you agree to comply with such terms. You further acknowledge and agree that Posit does not have any obligation to monitor applications uploaded by Users and disclaims all responsibility and liability for your use of applications made available to you through the Posit Service, including without limitation the accuracy, completeness, appropriateness, legality, security, availability, or applicability of the applications and you hereby waive any and all legal or equitable rights or remedies you have or may have

against Posit with respect to the applications that you may download, share, access or use.

If you choose to upload data to an application you are using via the Posit Service, you acknowledge and agree you are giving certain legal rights to the licensor of the application to process and otherwise use your data. Please carefully review any license terms accompanying any application to which you submit your data for the legal rights which you are giving the application licensor. Further, Posit does not claim ownership of your data; however, you hereby grant Posit a worldwide, perpetual, irrevocable, royalty-free, fully paid up, transferable and non-exclusive license, as applicable, to (and to permit its third party hosting provider to) use and copy your data in connection with making your data available to the application (and the licensor of such application) to which you have submitted your data. You acknowledge and agree that even if you remove your data from the Posit Service, your data may have been downloaded by, and remain accessible to, the licensors of those applications to which you submitted your data. Accordingly, do not submit data which you desire to remain confidential or which you wish to limit the right to access or use. You should never submit to the Posit Service any data which consists of personally identifiable information, credit card information, or protected health information, as such terms are defined by relevant laws, rules, and regulations. POSIT IS NOT RESPONSIBLE FOR THE CONFIDENTIALITY, AVAILABILITY, SECURITY, LOSS, MISUSE OR MISAPPROPRIATION OF ANY DATA YOU SUBMIT TO THE POSIT SERVICE OR ANY APPLICATION MADE AVAILABLE VIA THE POSIT SERVICE.

Types of Accounts; Price Changes; Payments; Refunds; Upgrading or Downgrading Your Plan. Posit allows you to use the Posit Service, without charge, as is set forth under the free plan entitlements applicable to the Posit Service (the “Free Plan”). You acknowledge and agree that with respect to the Free Plan, Posit’s branding will appear with Your Applications or analyses. One person may not maintain more than one free account for each Posit Service.

Posit also offers paid plans under which you would be entitled to additional features and capabilities, subject to your payment of the applicable fees to Posit when you place your order for a paid plan as set forth at <https://posit.cloud/plans/> or <https://www.shinyapps.io/> (a “Paid Plan”). The Posit branding will not appear in Your Applications or analyses under a Paid Plan and Paid Plans may have additional features and functionality which are not available to you under the Free Plan as described in the plan entitlements applicable to your plan.

All fees for Paid Plans are exclusive of all Taxes. “Taxes” means any sales, use, GST, value-added, withholding, or similar taxes, customs, and any customs duties, charges, fees or levies, whether domestic or foreign, excluding taxes based on the income, employees or property of Posit. You are responsible for payment of all Taxes unless you provide Posit with a tax exemption certificate. If you are required by applicable law to withhold any Taxes from your payment, the fees payable by you will be increased as necessary so that after making any required withholdings, Posit receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such withholdings been made.

If Posit is required to collect and remit Taxes pursuant to applicable laws, Posit will include the Taxes payable by you on your invoice or on your receipt for your online order, as applicable. The amount of the Taxes will be calculated based on applicable laws. You acknowledge that the taxation of online transactions is continually evolving and that Posit continues to monitor and update its taxation policies as those laws change. You agree to pay any Taxes that Posit is required to collect and remit pursuant to applicable laws.

ALL PAID PLAN PURCHASES ARE FINAL AND NO REFUND WILL BE GIVEN FOR UNUSED PORTIONS OF YOUR INITIAL OR ANY RENEWAL PAID PLAN SUBSCRIPTION PERIOD.

If you upgrade from the Free Plan to any Paid Plan, we will immediately bill you using the credit card you have provided.

For monthly payment plans, the Posit Service is billed in advance on a monthly basis and is non-refundable. For annual payment plans, the Posit Service is billed in advance on an annual basis and is non-refundable. UNLESS OTHERWISE PROVIDED IN YOUR ORDER WITH POSIT, ALL PAID PLANS WILL AUTOMATICALLY RENEW FOR SUCCESSIVE MONTHLY OR ANNUAL PERIODS, AS APPLICABLE, UNLESS YOU CANCEL YOUR ACCOUNT PRIOR TO THE RENEWAL DATE.

The Posit Service will prorate subscription changes. If a subscription is upgraded or downgraded during a period, the prorated additional charges will be invoiced and charged immediately. Any prorated credits will be applied to future invoices. For subscription changes between different intervals, the billing cycle will be reset when the subscription is changed. Note that if we charge for the new plan, and that payment fails, the plan change will not go into effect.

Prices of all Paid Plans are subject to change upon 30 days notice from us; provided, however, that, if you are currently a Paid Plan subscriber, we will honor your existing Paid Plan price for the greater of the remainder of your subscription period or 90 days from the date of our notice. Such notice may be provided at any time by posting the changes to the Posit website for the Posit Service or as otherwise provided under the Notifications and Service Messages section below.

You are solely responsible for properly cancelling your account. You may cancel or downgrade your Paid Plan account by visiting your “**Account**” page and selecting “**Downgrade**” or “**Cancel**”. Cancellation of a Paid Plan will downgrade your account to the Free Plan. The cancellation or downgrade of a Paid Plan will go into effect immediately. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds, cancellation refunds, or refunds for months unused with an open account. In order to treat everyone equally, no exceptions will be made. Cancellation of your Free Plan will result in the deletion of all information and data from your account and such information and data cannot be recovered after cancellation of your Free Plan.

Posit, in its sole discretion, has the right to suspend or terminate your account and refuse any and all current or future use of the Posit Service, or any other Posit Service,

for any reason at any time. Such termination of the Posit Service will result in the deactivation or deletion of your account or your access to your account, and the deletion of all information and data in your account. Posit reserves the right to refuse service to anyone for any reason at any time.

Notifications and Service Messages. For purposes of service messages and notices about the Posit Service to you, you agree that Posit may notify you via the email address associated with your account, even if we have other contact information. You also agree that Posit may communicate with you through your Posit account or through other means including email, mobile number, telephone, or delivery services including the US Postal Service. You acknowledge and agree that we shall have no liability associated with or arising from your failure to maintain accurate contact or other information, including, but not limited to, your failure to receive critical information about the Posit Service.

Restrictions on Use. You must comply with all applicable laws, rules, regulations and guidelines, and you further agree not to do any of the following:

- Post, publish or transmit any data, information, files, text, graphics, or other material that: (i) is false or misleading; (ii) is defamatory; (iii) invades another's privacy; (iv) is obscene, pornographic, or offensive; (v) promotes bigotry, racism, hatred or harm against any individual or group; (vi) infringes, violates or misappropriates another's rights, including any intellectual property rights; or (vii) violates, or encourages any conduct that would violate, any applicable law, rule or regulation (including those with respect to privacy and/or data security) or would give rise to civil liability;
- Access, tamper with, or use non-public areas of the Posit Service or Posit's or its third party hosting providers' computer systems;
- Attempt to probe, scan, or test the vulnerability of any system or network or breach any security or authentication measures;
- Attempt to access or search the Posit Service with any engine, software, tool, agent, device or mechanism other than the software and/or search agents provided by Posit or other generally available third-party web browsers (such as Microsoft Internet Explorer or Mozilla Firefox), including but not limited to browser automation tools;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Posit Service;
- Interfere with, or attempt to interfere with the Posit Service or the access of any user, host or network, including, without limitation, sending a virus or other malicious code, overloading, flooding, or spamming the Posit Service; or plant malware on Posit's computer systems, those systems of Posit's providers, or otherwise use the Posit Service to attempt to distribute malware or other malicious code;
- Use the Posit Service in any illegal or unlawful manner or for any illegal or unlawful purpose;
- Perform any act which is intended to harm Posit or the Posit Service; or
- Impersonate or misrepresent your affiliation with any person or entity.

Posit has the right to investigate and prosecute violations of any of the above, including intellectual property rights infringement and security concerns, to the fullest extent of the law and may involve and cooperate with law enforcement authorities in prosecuting those who violate these Terms of Use.

Posit Intellectual Property Rights. All right, title, and interest in and to the Posit Service is and will remain the exclusive property of Posit and its licensors, including all Intellectual Property Rights (as defined below) therein, even if Posit incorporates any of your Feedback (as defined below) into subsequent versions. The Posit Service is protected by copyright, trademark, and other laws of both the United States and foreign countries. Except as expressly permitted in these Terms of Use, you may not reproduce, modify or prepare derivative works based upon, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Posit Service.

All feedback, comments, and suggestions for improvements that you provide to Posit, in any form, and the results, metrics, analysis and statistics resulting from access to and use of the Posit Service and applications and content made available via the Posit Service (collectively, the “**Feedback**”) will be the sole and exclusive property of Posit. You hereby irrevocably transfer and assign to Posit all of your right, title, and interest in and to all of your Feedback, including all worldwide patent rights (including patent applications and disclosures), copyright rights, trade secret rights, and other intellectual property rights (collectively, the “**Intellectual Property Rights**”) therein. At Posit’s request and expense, you will execute documents and take such further acts as Posit may reasonably request to assist Posit in acquiring, perfecting and maintaining its Intellectual Property Rights and other legal protections for your Feedback. You will not earn or acquire any rights or licenses in the Posit Service or in any Posit Intellectual Property Rights on account of these Terms of Use or your use of the Posit Service.

The foregoing intellectual property rights provisions shall survive any termination or expiration of these Terms of Use.

Digital Millennium Copyright Act Compliance. You will only upload, post, submit or otherwise transmit data and/or files: (i) that you have the lawful right to use, copy, distribute, transmit, or display; or (ii) that does not infringe the intellectual property rights or violate the privacy rights of any third party (including, without limitation, copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity). Posit has adopted and implemented a policy that permits the deletion of files that violate this policy, and will terminate the accounts of Users who repeatedly infringe or are believed to be or are charged with repeatedly infringing the rights of copyright holders. Please see Posit’s DMCA Policy located at <https://posit.co/about/dmca-policy> for additional information.

Misuse of the Services. If you violate any of these Terms of Use or the Acceptable Use Policy, your permission to use the Posit Service will automatically terminate and Posit may disable your account. Posit reserves the right to revoke your access to and use of the Posit Service at any time, with or without cause, and with or without notice.

DISCLAIMER OF WARRANTY. The Posit Service, including without limitation all applications, all content and information provided therein or thereby, are provided

“AS-IS” and without warranty. Your access to and use of the Posit Service is at your own risk. Posit disclaims all liability for and is not responsible for any harm to your computer system, loss or corruption of data, or other harm that results from your access to or use of the Posit Service or any software applications or data made available through the Posit Service.

WITHOUT LIMITING THE FOREGOING, POSIT EXPLICITLY DISCLAIMS ANY AND ALL WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT OF THIRD PARTY RIGHTS AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. YOU ACKNOWLEDGE THAT USE OF THE POSIT SERVICE MAY RESULT IN UNEXPECTED RESULTS, LOSS OR CORRUPTION OF DATA OR COMMUNICATIONS, PROJECT DELAYS, OTHER UNPREDICTABLE DAMAGE OR LOSS, OR EXPOSURE OF YOUR APPLICATIONS OR YOUR INFORMATION OR DATA TO UNINTENDED THIRD PARTIES.

POSIT MAKES NO WARRANTY THAT THE POSIT SERVICE WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS OR THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE POSIT SERVICE WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN THE POSIT SERVICE WILL BE CORRECTED.

POSIT MAKES NO WARRANTY REGARDING THE QUALITY OR LEGALITY OF ANY SOFTWARE APPLICATIONS OR INFORMATION OR DATA OBTAINED OR USED THROUGH THE POSIT SERVICE, OR THAT ANY OF THE FOREGOING WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS OR THAT THE RESULTS THAT MAY BE OBTAINED FROM YOUR USE OF THE FOREGOING WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN THE FOREGOING WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM POSIT OR THROUGH THE POSIT WEBSITE OR SERVICE, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

SOME COUNTRIES AND JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED TERMS IN CONTRACTS WITH CONSUMERS AND AS A RESULT THE CONTENTS OF THIS SECTION MAY NOT APPLY TO YOU.

The foregoing disclaimers shall survive any termination or expiration of these Terms of Use.

Your Indemnity. You agree to defend (at Posit’s request), indemnify, and hold Posit, its officers, directors, employees, agents, users, and third party providers harmless from and against any claims, demands, suits, proceedings, investigations, damages, losses, costs, expenses and any and all other liabilities, including, without limitation, reasonable attorneys’ fees, expenses and costs, arising out of or in any way connected with: (i) your access to or use of the Posit Service and any activity in which you engage through the Posit Service; (ii) your failure to comply with the Terms of Use; (iii) your violation, misappropriation or infringement of any third party right, including without limitation any

intellectual property right, including but not limited to right of attribution, publicity, confidentiality, property or privacy right; (iv) your violation of any law, rule or regulation, including without limitation privacy and data security laws; or (v) any claim that Your Application or any analyses, data, or other information that you submit to the Posit Service or a User's use of Your Application or any analyses, data, or other information that you submit to the Posit Service, caused damage to or harmed a User or third party, including without limitation claims that Your Application or any analyses, data, or other information that you submit to the Posit Service infringes, violates or misappropriates the rights of another.

Limitation of Liability. IN NO EVENT WILL POSIT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, GOODWILL, DATA, REVENUE, BUSINESS OR PROFITS OR OTHER PECUNIARY DAMAGES) ARISING OUT OF OR IN CONNECTION WITH THE POSIT SERVICE AND/OR SOFTWARE APPLICATIONS, DATA, AND INFORMATION MADE AVAILABLE THROUGH THE POSIT SERVICE, INCLUDING WITHOUT LIMITATION RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE POSIT SERVICE OR ANY SOFTWARE APPLICATIONS, ANALYSES, DATA, AND INFORMATION MADE AVAILABLE THROUGH THE POSIT SERVICE; (II) ANY ERROR OR DEFECT IN THE POSIT SERVICE OR SOFTWARE APPLICATIONS MADE AVAILABLE THROUGH THE POSIT SERVICE; (III) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE POSIT SERVICE; (IV) UNAUTHORIZED ACCESS TO, USE OF OR ALTERATION OF YOUR TRANSMISSIONS OR DATA OR FOR ANY LOSS OF DATA; (V) STATEMENTS OR CONDUCT OF ANY USER OR THIRD-PARTY ON THE POSIT SERVICE; (VI) OR ANY OTHER MATTER RELATING TO THE POSIT SERVICE OR THE SOFTWARE APPLICATIONS, DATA, AND INFORMATION MADE AVAILABLE THROUGH THE POSIT SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, OR ANY OTHER LEGAL THEORY, WHETHER OR NOT POSIT HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

YOU SPECIFICALLY ACKNOWLEDGE THAT POSIT IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE, INFRINGING, HARMFUL, OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, POSIT WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY APPLICATIONS OR OTHER DATA OR INFORMATION UPLOADED ONTO OR DOWNLOADED OR THROUGH THE SERVICE, OR IF YOUR APPLICATIONS, DATA OR INFORMATION IS LOST, CORRUPTED OR EXPOSED TO UNINTENDED THIRD PARTIES.

YOU AGREE THAT THE TOTAL AGGREGATE LIABILITY OF POSIT TO YOU FOR ANY AND ALL CLAIMS ARISING FROM THE USE OF THE POSIT SERVICE, AND ANY APPLICATIONS, ANALYSES, CONTENT OR DATA MADE AVAILABLE THROUGH THE POSIT SERVICE, IS LIMITED TO THE GREATER OF (X) THE TOTAL AMOUNT PAID BY YOU TO POSIT FOR THE USE OF THE POSIT SERVICE TO WHICH THE CLAIM RELATES IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE AND (Y) ONE HUNDRED (\$100) U.S. DOLLARS.

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN POSIT AND YOU.

The foregoing limitation of liability shall:

- Apply regardless of whether (1) you base your claim on contract, tort, statute or any other legal theory, (2) we knew or should have known about the possibility of such damages, or (3) the limited remedies provided in this section fail of their essential purpose; and
- Not apply to any damage that Posit may cause you intentionally or knowingly in violation of the Terms of Use or applicable laws, rules, regulations or guidelines, or as otherwise mandated by applicable law that cannot be disclaimed from in this Agreement.

The foregoing limitation of liability shall survive any termination or expiration of these Terms of Use.

Governing Law and Arbitration. Except for any disputes relating to intellectual property rights, obligations or any infringement claims, any disputes with Posit arising out of or relating to the Agreement (“**Disputes**”) shall be governed by the law of the Commonwealth of Massachusetts regardless of your country of origin or where you access the Posit Service, and notwithstanding of any conflicts of law principles and the United Nations Convention for the International Sale of Goods.

Any Disputes shall be resolved by final and binding arbitration under the rules and auspices of the American Arbitration Association, to be held in Boston, Massachusetts, in English, with a written decision stating and legal reasoning issued by the arbitrator(s) at either party’s request, and with arbitration costs and reasonable documented attorneys’ costs of both parties to be borne by the party that ultimately loses.

Notwithstanding the foregoing, either party may obtain injunctive relief (preliminary or permanent) and orders to compel arbitration or enforce arbitral awards in any court of competent jurisdiction.

If you are involved in a Dispute as a consumer without any commercial interests related to the Dispute, we will agree to conduct arbitration proceedings in a major City in your State if travel to Boston would constitute an undue burden for you, and we will advance any arbitration fees that exceed what you would have had to pay for court proceedings (if you substantiate and represent to us in a written statement what court proceedings

would have cost) provided that you shall refund such amounts if we ultimately prevail in the arbitration.

You acknowledge and agree that any claim or dispute arising out of these Terms of Use or your use of the Posit Service must be brought by you within one year from the date the cause of action first accrued.

The foregoing provision shall survive any termination or expiration of these Terms of Use.

General Terms. Severability. If any provision of the Terms of Use is found by a court of competent jurisdiction or arbitrator to be illegal, void, or unenforceable, the unenforceable provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to effect the intention of the provision; and if a court or arbitrator finds the modified provision invalid, illegal, void or unenforceable, the validity, legality and enforceability of the remaining provisions of these Terms of Use will not be affected in any way.

Notices. We may post notices to you at <https://posit.co> or within the Posit Service. You may contact us via email at legal@posit.co. Any notices that you provide without compliance with this section on notices shall have no legal effect.

Entire Agreement. You agree that the Terms of Use and all policies, terms, and other documents referenced herein or applicable to your use of the Posit Service constitute the entire, complete and exclusive agreement between you and us regarding the Posit Service and supersede all prior and contemporaneous agreements and understandings, whether written or oral, or whether established by custom, practice, policy or precedent, with respect to the subject matter hereof. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by you in relation to the Posit Service shall be of no effect and all such terms or conditions shall be null and void. You acknowledge and agree that your 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 Posit Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other Posit services or applications or third-party content or third party software.

No Informal Waivers, Agreements or Representations. Our failure to act with respect to a breach of this Agreement by you or others does not waive our right to act with respect to that breach or subsequent similar or other breaches.

No Injunctive Relief. In no event shall you seek or be entitled to rescission, injunctive or other equitable relief, or to enjoin or restrain the operation of the Posit Service.

Assignment and Delegation. You may not assign or delegate any rights or obligations under these Terms of Use without our consent. Any purported assignment and delegation shall be ineffective. We may freely assign or delegate all rights and obligations under the Agreement, fully or partially without notice to you.

Export Control. Your use of the Posit Service, including our software, is subject to export and re-export control laws and regulations, including the United States Export Administration Regulations (“EAR”) maintained by the United States Department of Commerce and sanctions programs maintained by the Treasury Department’s Office of Foreign Assets Control. You shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any software or service to any end-user without obtaining the required authorizations from the appropriate government authorities. You also warrant that you are not prohibited from receiving US origin products, including services or software.

U.S. Government Users. The Posit Service and its documentation is a “Commercial item,” “Commercial computer software” and “Computer software documentation” as defined by the Federal Acquisition Regulations (“FAR”) and Defense Federal Acquisition Regulations Supplement (“DFARS”). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the right to use the Posit Service and its documentation subject to the terms of this Agreement.

The foregoing General Terms shall survive any termination or expiration of these Terms of Use.