

# Reseller Agreement

Posit Software, PBC

Last Updated: November 2, 2022

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

This Reseller Agreement (the "**Reseller Agreement**") is between the applicable reseller ("**you**" or "**Reseller**"), and Posit Software, PBC ("Posit") (formerly known as RStudio, PBC). If you are agreeing to this Reseller Agreement not as an individual but on behalf of your company, then "Reseller" or "you" means your company, and you are binding your company to this Reseller Agreement.

This Reseller Agreement permits you to resell subscriptions to Posit products and services (the "**Products and Services**") listed on the Order (as defined below in Section 1) entered into by you and Posit for a particular end user.

This Reseller Agreement is a separate agreement from the agreements that Posit has with its end users of the Products and Services which can be found at the following links (the "**Product Agreements**"):

1. Posit End User License Agreement: <https://posit.co/about/eula/>
2. Posit Service Terms of Use: <https://posit.co/about/posit-service-terms-of-use/>
3. Posit Technical Account Management Program Terms of Service: <https://pos.it/TAM-terms-of-service>
4. Posit Academy Terms of Service: <https://pos.it/academy-learning-services-agreement>

***This Reseller Agreement does not have to be signed in order to be binding. You indicate your assent to the terms by clicking on the "I agree" (or similar button) that is presented to you at the time of your order.***

### **1. Order Requirements.**

To the extent that we make Products and Services available for resale, you may order such Products and Services for resale to end users by following the directions set forth on our website (currently at [www.posit.co](http://www.posit.co)). You must provide all of the requested information including, without limitation, the identity of the end user, the end user's business and email addresses, and the specific Products and Services to be resold in the order ("**Order**"). All such information must be accurate and complete and must reflect bona fide orders you have received from end users.

### **2. Limited Right to Resell.**

Subject to this Reseller Agreement, we grant you a one-time, non-exclusive, non-transferable right to resell the Products and Services specified in the Order to the end user specified in the Order, solely for use by such end user in accordance with the applicable Product Agreement. This right to resell does not apply to any other end user or any other Product or Service (including without limitation any sale to any related party, organization or affiliate, or to any subsequent, additional or renewal sale to the same party).

### **3. Enforcement of End User Agreement.**

3.1. **End User Terms.** All use of the Products and Services by end users is subject to the applicable Product Agreement, and you may not purport to impose any other terms pertaining to their use of the Products and Services. You are responsible for ensuring that each end user enters into the Product Agreement, and an order for the Products and Services which includes all limitations on users and other quantity restrictions applicable to the end user's order set forth in the Order (the "**Restrictions**"), in a manner that is legally binding upon the end user. This may require you to (a)

notify each end user that the Products and Services are subject to the Product Agreements and that by placing an order with Reseller the end user agrees to the Product Agreements with Posit, (b) include either a copy of or link to the Product Agreements in each quotation and order form you issue to the end user, and (c) obtain from each end user written confirmation of acceptance of the Product Agreements prior to the earlier to occur of acceptance of the order by Reseller or delivery of the applicable Product or Service. You must provide evidence of such acceptance by the end user to Posit upon request. If an end user requests any modifications to the Product Agreements, you shall promptly notify Posit and Posit shall, in its sole discretion, negotiate the terms of the Product Agreements directly with the end user and, subject to the end user's execution of negotiated Product Agreements with Posit, you may resell the Products and Services to such end user and references to the Product Agreements for that end user shall be deemed to mean the negotiated versions of such Product Agreements. For the avoidance of doubt, Reseller is not permitted to, and shall not, negotiate the terms of the Product Agreements with end users or enter into any side letters or other arrangements purporting to amend or supplement the terms of the Product Agreements.

3.2. **Enforcement Cooperation.** You agree to immediately notify us of any known or suspected breach of the Product Agreements, or other unauthorized use of the Products or Services, and to assist us in the enforcement of the terms of the Product Agreements.

#### **4. Identification as Reseller.**

Subject to this Reseller Agreement, you are permitted to identify yourself as a Posit "Reseller" solely in connection with your resale of the Products and Services. You may not use any Posit trademark, logo or service mark ("**Marks**") except as permitted by Posit's Trademark Guidelines at <https://posit.co/about/trademark-guidelines/>. All goodwill arising from your use of Marks inures to the benefit of Posit.

#### **5. Payment and Delivery.**

5.1. **Fees.** Your non-refundable, non-cancelable payment to Posit is due when you submit your Order unless otherwise set forth in the Order and in any event no later than forty-five (45) days from your receipt of a Posit invoice. In the event that you have not made payments satisfactory to Posit for previous transactions, Posit reserves the right to require prepayment or other payment arrangements satisfactory to Posit going forward. All amounts payable by you shall be paid in full without set-off, deduction or other withholding of any amount. You are solely responsible for collecting payment from your end user customers. Late payment or nonpayment by any end user to you shall not delay or excuse payment by you to Posit hereunder.

5.2. **Delivery.** Upon receipt of payment, we will deliver any applicable license keys, access credentials and other information necessary for end users to download and use, or otherwise access and use, the Products and Services subscribed to in the Order, directly to the delivery contact specified in the Order in accordance with our standard delivery procedures. If we deliver the license keys or access credentials to you, you agree that you will, in turn, deliver them directly to the end user specified in the Order, and not to use or access the Products or Services in any way. You must either delete all license keys and/or access credentials promptly thereafter or maintain them in confidence. You agree not to (and will not allow any third party to) take any steps to interfere with or defeat any license keys or access credentials.

5.3. **Taxes.** Payments made by you under this Reseller Agreement exclude any taxes or duties payable in respect of the Products and Services in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Posit, you must pay to Posit the amount of such taxes or duties in addition to any fees owed under this Reseller Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to Posit any such exemption information, and Posit will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

5.4. **End User Pricing and Payment; Refunds.** You will independently set your own pricing to each end user. You bear all risk of non-payment by end users, and you are solely responsible for all of your costs and expenses. You may not terminate an Order or receive any refunds due to non-payment by an end user. If Posit provides any refund to an end user under our standard return policy, Posit, at its option, will refund the applicable amounts either directly to the end user or to you for distribution to

the end user. You agree to cooperate with Posit in connection with any such refund.

## **6. Feedback.**

If you provide any feedback, comments, suggestions, ideas, description of processes, or other information to us about or in connection with the Products and Services, our other products, solutions, or services, or our Reseller program, including without limitation any ideas, concepts, know-how or techniques contained therein ("**Feedback**"), then you grant us a worldwide, royalty-free, fully-paid up, non-exclusive, perpetual, transferable and irrevocable (with right of sublicense) license to use, copy, modify, create derivative works of, and otherwise exploit the Feedback for any purpose, without any compensation to you or any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed your Confidential Information, and nothing in this Reseller Agreement (including without limitation Section 12 (Confidentiality)) limits Posit's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

## **7. No Use Rights; Reserved Rights.**

Only the end user customer of the Products and Services (and its authorized users) may use the Products and Services. You are not permitted to use any Products or Services resold under this Reseller Agreement for your own benefit. To the extent that you nevertheless gain any access to the Products and Services, all terms and conditions of the Product Agreements apply to you. Notwithstanding anything to the contrary contained in this Reseller Agreement, except for the limited resale right in Section 2 above, Posit and its suppliers have and will retain all rights, title and interest (including without limitation all patent, copyright, trademark, trade secret and other intellectual property rights) in and to all products, services, software, service descriptions, documentation, user manuals, tools, content, photos, videos, works of authorship, processes, methodologies and all other technology comprising, used in or used to provide the Products and Services ("**Posit Technology**"), and all copies, modifications and derivative works thereof, including without limitation all intellectual property rights therein and thereto and as may incorporate Feedback. You acknowledge that you are obtaining only a limited right to resell the Products and Services and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Reseller Agreement or otherwise.

## **8. Reseller Obligations and Liability.**

8.1. **End User Relationships; Business Practices.** You agree not to represent yourself as an agent or employee of Posit and agree that we will have primary control over any end user communication regarding the Products and Services once you submit an Order. You will not make any representations regarding Posit, on Posit's behalf, or about any Products and Services. You agree not to engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to Posit or its products and agree to comply with all applicable federal, state and local laws and regulations while operating under this Reseller Agreement, including without limitation the U.S. Foreign Corrupt Practices Act and any similar laws or regulations in any applicable jurisdiction. You further agree to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain end users. Without limiting the generality of the foregoing, you acknowledge and agree 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 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

8.2. **Indemnity.** You are fully responsible for all liabilities and expenses of any type whatsoever that may arise on account of your resale of Products and Services. You will indemnify, hold harmless and (at Posit's option) defend Posit from and against any claims, demands, suits, proceedings, investigations, actions, losses, costs, expenses, settlement amounts, fines, penalties, damages and any and all other liabilities, including without limitation reasonable attorneys' fees, arising from or relating to: (a) any breach or alleged by you of any term of this Reseller Agreement, (b) the issuance by you of any warranty or representation regarding Posit or its Products and Services not specified in the End User Agreement, or (c) any of your other acts or omissions in connection with the marketing or resale of the Products and Services under this Reseller Agreement.

## **9. Termination.**

9.1. **Termination.** We may terminate this Reseller Agreement if you materially breach any

provision in this Reseller Agreement and fail to cure such breach within five (5) days of written notice of such breach. In addition, either party may terminate this Reseller Agreement for any reason or no reason upon thirty (30) days' written notice to the other party. Posit may also terminate this Reseller Agreement immediately upon notice to you if (a) it ceases to offer the current reseller program or (b) it reasonably believes that continuing hereunder could result in business or legal liability for Posit or otherwise harm Posit or its end users.

9.2. **Effect of Termination.** You expressly agree that Posit will have no obligation or liability to you resulting from termination or expiration of this Reseller Agreement in accordance with its terms. Upon termination or expiration of this Reseller Agreement: (a) you must immediately cease identifying yourself as an Posit Reseller and using Posit Marks in connection with your resale activities hereunder, (b) you must destroy all Confidential Information in your possession and certify destruction (unless we request that you return such materials to us) and (c) Sections 5 (Payment and Delivery) (but only with respect to Orders completed during the Term), 6 (Feedback) and 7 (No Use Rights; Reserved Rights) through 14 (General) will survive. Notwithstanding any termination or expiration of this Reseller Agreement all Product Agreements with end users for the subscriptions to the Products and Services which are in compliance with this Agreement shall survive for the subscription term set forth in the applicable Order. Posit shall have no liability to you and you expressly waive any liability of Posit, as a result of termination or expiration of this Reseller 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.

## **10. Changes to Agreement.**

From time to time, we may modify this Reseller Agreement and/or our Product Agreements. The version of this Reseller Agreement and Product Agreements in place at the time you submit each Order is the version that will govern such Order. We will use reasonable efforts to notify you of these changes through communications through our website or other forms of communication, but we also suggest that you bookmark this Reseller Agreement and the Product Agreements and read them periodically.

## **11. Confidentiality.**

Except as otherwise set forth in this Reseller Agreement, each party agrees that all software code, software applications, content, videos, photos, works of authorship, know-how, methodologies, technology, inventions, and any other business, technical and financial information it obtains or accesses (as "**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Posit Technology and any performance information relating to the Products and Services shall be deemed Confidential Information of Posit without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause irreparable harm for which money damages alone would not be a sufficient remedy, and therefore that upon any such disclosure or threatened disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief, without the necessity of posting a bond or other security, in addition to whatever other remedies it might have at law.

## **12. DISCLAIMER OF WARRANTIES.**

For the avoidance of doubt, any and all commitments, indemnities and other terms and conditions offered by Posit with respect to use of the Products and Services are made directly by Posit to the end user in accordance with the Product Agreements and do not extend to you as a Reseller. Posit and its licensors make NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, TO

YOU THE RESELLER, AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

### **13. LIMITATION OF LIABILITY.**

13.1. **Waiver of Consequential Damages.** TO THE FULLEST EXTENT ALLOWED BY LAW, NEITHER POSIT NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF GOODWILL, LOSS OF BUSINESS, LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR THE COSTS TO COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF SUCH DAMAGES WERE REASONABLY FORSEEABLE.

13.2. **Liability Cap.** TO THE FULLEST EXTENT ALLOWED BY LAW, POSIT'S AND ITS THIRD-PARTY SUPPLIERS' ENTIRE LIABILITY UNDER THIS RESELLER AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY RESELLER TO POSIT IN RESPECT OF THE ORDER THAT IS THE SUBJECT OF THE CAUSE OF ACTION IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

### **14. Dispute Resolution; Governing Law; Anti-Bribery**

14.1. **Dispute Resolution; Arbitration.** In the event of any controversy or claim arising out of or relating to this Reseller Agreement, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach a settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Reseller Agreement shall proceed to binding arbitration under the American Arbitration Association (AAA) Rules. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in Boston, Massachusetts. All negotiations and arbitration proceedings pursuant to this Section 14.1 will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.

14.2. **Governing Law; Jurisdiction.** This Reseller Agreement will be governed by and construed in accordance with the applicable laws of the Commonwealth of Massachusetts, USA, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions of Section 14.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in Boston, Massachusetts, USA, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Boston, Massachusetts, USA, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party.

14.3. **Injunctive Relief; Enforcement.** Notwithstanding the provisions of this Section 14, nothing in this Reseller 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.

14.4. **Exclusion of UN Convention and UCITA.** The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Reseller Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Reseller Agreement regardless of when or where adopted.

14.5. **Anti-Bribery.** In conformity with the United States Foreign Corrupt Practices Act and the UK Bribery Act and with Posit's corporate policies regarding foreign business practices, you and your employees and agents will not directly or indirectly make and offer payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist Posit in obtaining, retaining, or directing any such business.

**15. Government End Users.**

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 Reseller 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.

**16. General.**

This Reseller Agreement is the entire agreement between you and Posit relating to the resale of Products and Services as described in this Reseller Agreement and supersedes all prior and contemporaneous oral or written communications, proposals and representations with respect to the Products and Services or any other subject matter covered by this Reseller Agreement. 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 Products and Services resold by you to your end users hereunder shall be of no effect and all such terms or conditions shall be null and void. If any provision of this Reseller Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. This Reseller Agreement may not be modified or amended except as described in Section 10 (Changes to Agreement) or otherwise with the written agreement of Posit (which may be withheld in its complete discretion without any requirement to provide reasons). As used herein, "including" (and its variants) means "including without limitation" (and its variants). No failure or delay by the injured party to this Reseller Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. The parties are independent contractors. This Reseller Agreement shall not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give one party the express or implied right, power or authority to create any duty or obligation of the other party. 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. You agree that Posit may use your name and may disclose that you are a reseller of Posit in Posit advertising, press, promotion and similar public disclosures. You also hereby grant Posit a non-exclusive, revocable license during the term of this Agreement to list your name and display your logo in the "reseller" or similar section of Posit's website.