

# Website Terms and Conditions of Use

Posit Software, PBC

***Last Updated: November 2, 2022***

## **1. Acceptance of Terms and Conditions of Use.**

These Website Terms and Conditions of Use (the “Terms of Use”) apply to the Posit Software, PBC (“Posit”) (formerly known as RStudio, PBC) web site located at <https://posit.co>, and all associated sites linked to <https://posit.co> by Posit, its subsidiaries and affiliates (collectively, the “Site”). The Site is the property of Posit and its licensors. **BY USING THE SITE, YOU AGREE TO THESE TERMS OF USE; IF YOU DO NOT AGREE, DO NOT USE THE SITE.**

Posit reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms of Use, at any time. It is your responsibility to check these Terms of Use periodically for changes. Your continued use of the Site following the posting of changes will mean that you accept and agree to the changes. As long as you comply with these Terms of Use and the Posit Acceptable Use Policy at <https://posit.co/about/acceptable-use-policy/>, Posit grants you a personal, non-exclusive, non-transferable, limited privilege to enter and use the Site.

## **2. Content.**

All text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, music, artwork and computer code (collectively, “Content”), including but not limited to the design, structure, selection, coordination, expression, “look and feel” and arrangement of such Content, contained on the Site is owned, controlled or licensed by or to Posit, and is protected by trade dress, copyright, patent and trademark laws, and various other intellectual property rights and unfair competition laws.

Except as expressly provided in these Terms of Use, no part of the Site and no Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed in any way (including “mirroring”) to any other computer, server, Web site or other medium for publication or distribution or for any commercial enterprise, without Posit’s express prior written consent.

You may use information on Posit products and services (such as data sheets, knowledge base articles, and similar materials) purposely made available by Posit for downloading from the Site, provided that you (1) not remove any proprietary notice language in all copies of such documents, (2) use such information only for your personal, non-commercial informational purpose and do not copy or post such information on any networked computer or broadcast it in any media, (3) make no modifications to any such information, and (4) not make any additional representations or warranties relating to such documents.

### **3. Your Use of the Site.**

Posit's Acceptable Use Policy applies to use of this Site, and its terms are made a part of these Terms of Use by this reference. To view Posit's Acceptable Use Policy, please visit <https://posit.co/about/acceptable-use-policy/>.

### **4. Purchases; Other Terms and Conditions**

Additional terms and conditions may apply to purchases of goods or services, downloads of software, and to specific portions or features of the Site, including community forums, contests, promotions or other similar features, all of which terms are made a part of these Terms of Use by this reference, such as and including without limitation [EULA](#), [Posit Service Terms of Use](#), [Individual Contributor Agreement](#), and [Corporate Contributor Agreement](#).

You agree to abide by such other terms and conditions, including where applicable representing that you are of sufficient legal age to purchase, use or participate in such service or feature. If there is a conflict between these Terms of Use and the terms posted for or applicable to a specific portion of the Site or for any service offered on or through the Site, the latter terms shall control with respect to your use of that portion of the Site or the specific service.

Posit's obligations, if any, with regard to its products and services are governed solely by the agreements pursuant to which they are provided, and nothing on this Site should be construed to alter such agreements.

Posit may make changes to any products or services offered on the Site, or to the applicable prices for any such products or services, at any time, without notice. The materials on the Site with respect to products and services may be out of date, and Posit makes no commitment to update the materials on the Site with respect to such products and services.

To the extent Posit makes available third party applications, products, software, services, data, content or resources or other third party goods or services on the Site or links to third party websites, Posit does so for your convenience and makes no representations or warranties with respect to any of the foregoing, all of which is provided "as is" and without warranty. Posit disclaims all liability arising from your download or use of the foregoing. Such third party materials may be subject to additional terms and conditions and licenses between you and the third party. For example, R Packages made available by Posit on the Site may consist of third party open source software and are subject to the open source license listed with such packages or otherwise accompanying the packages. YOU AGREE THAT IN NO EVENT WILL WE BE LIABLE TO YOU IN CONNECTION WITH THE WEBSITES, CONTENT, APPLICATIONS, PACKAGES, COMPONENTS, SERVICES, DATA, CONTENT, RESOURCES, MATERIALS OR PRACTICES OF ANY THIRD PARTY.

### **5. Communications.**

Except for any disclosure by you for technical support purposes, or as specified in our Privacy Policy, all communications from you to Posit will be considered non-confidential

and non-proprietary. You agree that any and all comments, information, feedback and ideas regarding Posit, its products or services, that you communicate to Posit (“Feedback”) will be deemed, at the time of communication to Posit, the property of Posit, and Posit shall be entitled to full rights of ownership, including without limitation, unrestricted right to use or disclose such Feedback in any form, medium or technology now known or later developed, and for any purpose, commercial or otherwise, without compensation to you.

You are solely responsible for the content of your communications and their legality under all laws and regulations. You agree not to use this Site to distribute, link to or solicit content that is defamatory, harassing, unlawful, libelous, harmful to minors, threatening, obscene, false, misleading, or infringing a third party intellectual or privacy rights.

## **6. Access to Password Protected or Secured Areas; Privacy.**

Access to and use of password protected or secured areas of this Site is restricted to authorized users only and certain features or services offered on or through the Site may require you to open an account (including setting up a Posit ID and password). You are entirely responsible for maintaining the confidentiality of your account information, including your password, and for any and all activity that occurs under your account. You agree to notify Posit immediately of any unauthorized use of your account or password, or any other breach of security. However, you may be held liable for losses incurred by Posit or any other user of or visitor to the Site due to someone else using your Posit ID, password or account. You will not misuse or share your username or password, misrepresent your identity or your affiliation with an entity, impersonate any person or entity, or misstate the origin of any Content you are exposed to through this Site.

Posit’s Privacy Policy applies to use of this Site, and its terms are made a part of these Terms of Use by this reference. To view Posit’s Privacy Policy, please visit <https://posit.co/about/privacy-policy/>. Additionally, by using the Site, you acknowledge and agree that Internet transmissions are never completely private or secure. You understand that any message or information you send to the Site may be read or intercepted by others, even if there is a special notice that a particular transmission (for example, credit card information) is encrypted.

## **7. Monitoring.**

Posit reserves the right to review your communications on this Site to determine whether you comply with these Terms of Use and any other applicable policies or terms and conditions of Posit applicable to your use of the Site. Posit will not have any liability or responsibility for the content of any communications you post to this Site, or for any errors or violations of any laws or regulations by you. Posit will comply with any court order in disclosing the identity of any person posting communications on this Site. It is advisable that you review our Privacy Statement before posting any such communications.

## **8. Links to Other Sites.**

This Site may link to other third party sites which are not under the control of Posit. Posit is not responsible for the content of any linked site or any link contained in a linked site. Posit reserves the right to terminate any link at any time. Posit may provide links from this Site to other sites as a convenience to you and in no way should this be interpreted as an endorsement of any company, content or products to which it links. If you decide to access any of the third party sites linked to this Site, you do this entirely at your own risk. Please note that when you conduct transactions with other companies providing content via this Site, you will also be subject to their privacy policies. Posit **DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, TO ANY SUCH LINKED SITES, INCLUDING BUT NOT LIMITED TO ANY TERMS AS TO THE ACCURACY, OWNERSHIP, VALIDITY OR LEGALITY OF ANY CONTENT OF A LINKED SITE.**

## **9. Trademarks.**

The trademarks, service marks and logos of Posit used through the Site (“Trademarks”) are the property of Posit. You have no right to use any such Trademarks, and nothing contained in this Site or the Terms of Use grants any right to use (by implication, waiver, estoppel or otherwise) any Trademarks without the prior written permission of Posit or as permitted in our Trademark Guidelines at <https://posit.co/about/trademark-guidelines/>.

## **10. Indemnification.**

You agree to indemnify, defend and hold Posit, its officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries and affiliates, harmless from and against any demands, loss, liability, claims or expenses (including attorneys’ fees) arising out of, based on or in connection with your access and/or use of this Site

## **11. Limitation of Liability.**

EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT WILL POSIT BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, EVEN IF POSIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF, NOTWITHSTANDING THE OTHER PROVISIONS OF THESE TERMS OF USE, POSIT IS FOUND TO BE LIABLE TO YOU FOR ANY DAMAGE OR LOSS WHICH ARISES OUT OF OR IS IN ANY WAY CONNECTED WITH YOUR USE OF THE SITE OR ANY CONTENT, POSIT’S LIABILITY SHALL IN NO EVENT EXCEED THE GREATER OF (1) THE TOTAL OF ANY SUBSCRIPTION OR SIMILAR FEES WITH RESPECT TO ANY SERVICE OR FEATURE OF OR ON THE SITE PAID IN THE SIX MONTHS PRIOR TO THE DATE OF THE INITIAL CLAIM MADE AGAINST POSIT (BUT NOT INCLUDING THE PURCHASE PRICE FOR ANY POSIT PRODUCTS), OR (2) US\$100.00. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF LIABILITY, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.

## **12. Disclaimer.**

POSIT DOES NOT PROMISE THAT THE SITE OR ANY CONTENT, SERVICE OR FEATURE OF THE SITE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ANY DEFECTS WILL BE CORRECTED, OR THAT YOUR USE OF THE SITE WILL PROVIDE SPECIFIC RESULTS. THE SITE AND ITS CONTENT ARE DELIVERED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. ALL INFORMATION PROVIDED ON THE SITE IS SUBJECT TO CHANGE WITHOUT NOTICE. POSIT CANNOT ENSURE THAT ANY FILES OR OTHER DATA YOU DOWNLOAD FROM THE SITE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES. POSIT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. POSIT DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE SITE AND/OR ANY POSIT SERVICES. YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF THE SITE AND ANY LINKED SITES. YOUR SOLE REMEDY AGAINST POSIT FOR DISSATISFACTION WITH THE SITE OR ANY CONTENT IS TO STOP USING THE SITE OR ANY SUCH CONTENT. THIS LIMITATION OF RELIEF IS AN ESSENTIAL PART OF THE BARGAIN BETWEEN THE PARTIES.

The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.

Posit reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Site, or any portion of the Site, for any reason; (2) to modify or change the Site, or any portion of the Site, and any applicable policies or terms; and (3) to interrupt the operation of the Site, or any portion of the Site, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

### **13. Violations of these Terms of Use**

Posit may disclose any information we have about you (including your identity) if we determine that such disclosure is necessary in connection with any investigation or complaint regarding your use of the Site, or to identify, contact or bring legal action against someone who may be causing injury to or interference with (either intentionally or unintentionally) Posit's rights or property, or the rights or property of visitors to or users of the Site, including Posit customers. Posit reserves the right at all times to disclose any information that Posit deems necessary to comply with any applicable law, regulation, legal process or governmental request. Posit also may disclose your information when Posit determines that applicable law requires or permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

You acknowledge and agree that Posit may preserve any transmittal or communication by you with Posit through the Site or any service offered on or through the Site, and

may also disclose such data if required to do so by law or Posit determines that such preservation or disclosure is reasonably necessary to (1) comply with legal process, (2) enforce these Terms of Use, (3) respond to claims that any such data violates the rights of others, or (4) protect the rights, property or personal safety of Posit, its employees, users of or visitors to the Site, and the public.

You agree that Posit may, in its sole discretion and without prior notice, terminate your access to the Site and/or block your future access to the Site if we determine that you have violated these Terms of Use or other agreements or guidelines which may be associated with your use of the Site. You also agree that any violation by you of these Terms of Use will constitute an unlawful and unfair business practice, and will cause irreparable harm to Posit, for which monetary damages would be inadequate, and you consent to Posit obtaining any injunctive or equitable relief that Posit deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies Posit may have at law or in equity.

You agree that Posit may, in its sole discretion and without prior notice, terminate your access to the Site, for cause, which includes (but is not limited to) (1) requests by law enforcement or other government agencies, (2) a request by you (self-initiated account deletions), (3) discontinuance or material modification of the Site or any service offered on or through the Site, or (4) unexpected technical issues or problems.

If Posit does take any legal action against you as a result of your violation of these Terms of Use, Posit will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted to Posit. You agree that Posit will not be liable to you or to any third party for termination of your access to the Site as a result of any violation of these Terms of Use.

#### **14. Export Restrictions.**

The United States export control laws and regulations, including the Export Administration Regulations of the U.S. Department of Commerce, and other applicable laws and regulations apply to this Site which prohibit the export or re-export of content, products, services, and technology to certain countries and persons. You agree to comply with all export laws, regulations and restrictions of the United States and any foreign agency or authority and assume sole responsibility for any such unauthorized exportation.

#### **15. Applicable Laws.**

All matters relating to your access and use of Site shall be governed by the federal laws of the United States and the laws of The Commonwealth of Massachusetts, without regard to its conflicts of laws provisions. You agree to the personal jurisdiction and venue in the federal and state courts located in Boston, Massachusetts, and waive any objection to such jurisdiction or venue. Any claim under these Terms of Use must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred. No recovery may be sought or received for damages other than out-of-pocket expenses, except that the prevailing party will be entitled to costs and attorneys' fees. In the event of any controversy or dispute between Posit and you

arising out of or in connection with your use of the Site, the parties shall attempt, promptly and in good faith, to resolve any such dispute. If we are unable to resolve any such dispute within a reasonable time (not to exceed thirty (30) days), then either party may submit such controversy or dispute to mediation. If the dispute cannot be resolved through mediation, then the parties shall be free to pursue any right or remedy available to them under applicable law.

## **16. General.**

Although the Site is accessible worldwide, not all features, products or services discussed, referenced, provided or offered through or on the Site are available to all persons or in all geographic locations, or appropriate or available for use outside the United States. Posit reserves the right to limit, in its sole discretion, the provision and quantity of any feature, product or service to any person or geographic area. Any offer for any feature, product or service made on the Site is void where prohibited. If you choose to access the Site from outside the United States, you do so on your own initiative and you are solely responsible for complying with applicable local laws.

If any of the provisions of these Terms of Use are held by a court or other tribunal of competent jurisdiction to be void or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these Terms of Use, so that these Terms of Use shall remain in full force and effect. These Terms of Use and any other applicable Posit policies and terms and conditions applicable to you constitute the entire agreement between you and Posit with regard to your use of the Site, and any and all other written or oral agreements or understandings previously existing between you and Posit with respect to such use are hereby superseded and cancelled. Posit will not accept any counter-offers to these Terms of Use, and all such offers are hereby categorically rejected. Posit's failure to insist on or enforce strict performance of these Terms of Use shall not be construed as a waiver by Posit of any provision or any right it has to enforce these Terms of Use, nor shall any course of conduct between Posit and you or any other party be deemed to modify any provision of these Terms of Use. These Terms of Use shall not be interpreted or construed to confer any rights or remedies on any third parties.

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