

Posit Software, PBC Services Agreement

Technical Account Management, User and Admin Training and Implementation and Guided Onboarding Services

This Services Agreement, including all Order Forms, and all documents linked to therein (collectively, this "Agreement") is between you ("you") and Posit Software, PBC, ("Posit") and governs Posit's provision of Services to you whether ordered directly from Posit or indirectly through a Posit authorized reseller or distributor (a "Reseller"). This Agreement is effective between you and Posit as of the Effective Date (as defined below). Your execution of an Order Form constitutes a binding noncancelable commitment to order the Services set forth in the Order Form pursuant to this Services Agreement and the Order Form.

*** IMPORTANT - PLEASE READ CAREFULLY BEFORE YOU USE POSIT SERVICES ***

By clicking on the "accept" button at the end of this document or by otherwise using the Services, you acknowledge that you have read the Agreement, understand it and agree to be bound by its terms and conditions. If you are not willing to be bound by the terms of the Agreement, do *not* use the Services.

If you are using the Services in your capacity as an employee or agent of a company or organization, then any references to "you" in the Agreement shall refer to such entity and not to you in your personal capacity. You warrant that you are authorized to legally bind the company or organization on whose behalf you are agreeing to this Agreement and/or accessing the Services.

1. Definitions.

- 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. "Effective Date" means the date of the first Order Form you enter into with Posit (or a Posit authorized reseller or distributor) under this Services Agreement, which is the date of last signature if signed manually or the date the order is placed if you ordered online using Posit's electronic Order Form.
- 1.3. "Order Form" means Posit's order form for Services which (a) if a signed document, is separately executed by you and Posit or (b) if an online order, both of which list the Services ordered by you, the annual subscription fees payable for such Services, the Subscription Term, and any additional terms and conditions agreed to by the parties. If you purchase the Services from a Posit authorized reseller or distributor, "Order Form" refers to the order or other agreement between you and the reseller or distributor from whom you've purchased the Services (a "Reseller Order"); provided, that this Services Agreement will apply in the event of any conflict between this Services Agreement and the Reseller Order and no additional terms in the Reseller Order Form shall apply to or be binding upon Posit.
- 1.4. "Project Plan" means a document describing the Implementation and Configuration Services to be provided by Posit to Customer, and will include the obligations of the parties in connection with the provision of such Services.
- 1.5. "Subscription Fees" means the fees payable for the Services and set forth in an Order Form.
- 1.6. "Subscription Term" means the period of time set forth on the Order Form during which you are subscribed to Services and which period of time commences on the Effective Date.
- 1.7. "Services" means any of the following services as ordered by you pursuant to an Order Form:
 - Technical Account Management Services ("TAM Services"): Posit's technical account management service offering as described herein and in the applicable Order Form.
 - Administrator Training: Posit's administrator training offering as described in the applicable Order Form for the number of Users set forth in the Order Form.
 - Posit Team User Training: Posit's User training offering as described in the applicable Order Form for the number of Users set forth in the Order Form.
 - Implementation and Configuration Services: Posit's software installation services as described in the applicable Order Form (and/or an accompanying Project Plan).
 - Guided Onboarding Services: Posit's structured, collaborative, guided software installation service as described in the

applicable Order Form.

2. **Services; Subscription Term.** During a Subscription Term and subject to your payment of the Subscription Fees, Posit will provide the Services purchased by you. For the avoidance of doubt, software development services are not included as part of Services. Posit personnel do not require access to your computer systems or networks or to your data and you agree that you will not provide Posit personnel with such access. Either party may terminate an Order Form and the associated Subscription Term if the other party breaches this Agreement and/or the Order Form and fails to cure the breach within thirty (30) days of receipt of written notice describing the breach in reasonable detail. Each Order Form and the associated Subscription Term will renew only upon mutual written agreement of the parties; provided, notwithstanding the foregoing, that each Order Form and the associated Subscription Term for TAM Services will automatically renew without further action of the Parties for successive twelve (12) month periods. This Agreement shall continue in full force and effect until all Order Forms and Subscription Terms for Services have terminated.
3. **Fees and Payments.** You shall pay Posit the Subscription Fees, charges and other amounts specified in an Order Form within forty-five (45) days from your receipt of Posit's invoice for such fees. If your internal procedures require that an invoice be submitted against a purchase order before payment can be made, you are responsible for issuing such purchase order to Posit and your failure to do so will not extend or obviate your responsibilities to pay all fees, charges and other amounts in accordance with the Agreement and the Order Form. All Subscription Fees are exclusive of taxes and are payable in United States dollars and are nonrefundable. You shall be responsible for all taxes levied on any transaction under the Agreement, excluding any taxes based on Posit's net income, employees, or property. If you purchased the Services from a Posit authorized reseller or distributor, the foregoing terms shall not apply to you and you shall pay the reseller or distributor in accordance with the payment terms in your Order Form with the reseller or distributor.
4. **Confidentiality.** During the term of the Agreement, each party agrees not to disclose the other party's Confidential Information without the other party's prior written consent. "Confidential Information" includes, without limitation: (a) all intellectual property; (b) financial and business information (including pricing); and (c) any other information designated in writing by the disclosing party as "Confidential." Confidential Information does not include (w) information that has become publicly known through no breach by you or Posit of these confidentiality obligations; (x) information that is independently and lawfully developed or obtained without access to Confidential Information, as evidenced in writing; (y) information required to be disclosed by law; or (z) the fact that you are a customer of Posit.
5. **Limited Warranty.** Posit represents that the Services will be provided in a professional manner by personnel who are skilled and experienced with Posit software products and consistent with generally accepted industry standards. Your sole and exclusive remedy, and Posit's entire liability, for Posit's breach of the foregoing warranty is that Posit will, at its option and at no cost to you, reperform the nonconforming Services. You agree to provide Posit with reasonable assistance in remedying any noncompliance. EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, THE SERVICES ARE PROVIDED "AS IS" AND POSIT DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. No oral or written information or advice given by Posit, its resellers, dealers, distributors, agents, representatives, subcontractors or employees shall create any warranty or in any way increase any warranty provided herein.
6. **LIMITATION OF LIABILITY.** EXCEPT FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, COVER, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF USE, LOSS OF CORRUPTION OF DATA, INABILITY TO ACCESS OR USE EQUIPMENT, SOFTWARE OR DATA, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE AGREEMENT OR THE USE OF, OR INABILITY TO USE, POSIT SOFTWARE PRODUCTS, OR BASED ON ANY THEORY OF LIABILITY INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER THE AGREEMENT FOR ANY CAUSE WHATSOEVER WILL NOT EXCEED THE AMOUNT PAID TO POSIT FOR THE SERVICES WHICH ARE THE SUBJECT OF THE CLAIM IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.
7. **General.**
 - 7.1. Governing Law; Jurisdiction. The Agreement shall be governed by the internal laws of the Commonwealth of Massachusetts, U.S.A., without giving effect to principles of conflict of laws. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the state or federal courts sitting in the Commonwealth of Massachusetts to resolve any disputes arising under the Agreement. **To the fullest extent permitted, each party waives the right to trial by jury in any legal proceeding arising out of or relating to the Agreement or the transactions contemplated hereby.**
 - 7.2. Assignment and Subcontracting. Neither party may assign any of its rights or obligations hereunder, whether by operation of

law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, (i) Posit may use subcontractors to provide the Services, provided that Posit will be responsible for the compliance of its subcontractors with this Agreement and (ii) either party may assign the Agreement in its entirety without consent of the other party, to its Affiliate or to its successor in a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, stock, or business to which the Agreement relates. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 7.3. Entire Agreement; No Third Party Beneficiaries. The Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, whether oral or written. Any amendment to the Agreement shall be in writing and executed by a duly authorized representative of each party. Any varying or additional terms contained in a purchase order or other written notification or document issued by you in relation to the subject matter of the Agreement shall be of no effect and all such terms or conditions shall be null and void. The parties agree that there are no third-party beneficiaries to the Agreement.
- 7.4. Independent Contractors. Posit is performing the Services as an independent contractor. Neither party shall be deemed to be an employee, agent, or other legal representative of the other party for any purpose whatsoever or have the right or authority to assume or otherwise create any obligation or responsibility, express or implied, on behalf of the other party or to bind the other party in any manner whatsoever.
- 7.5. Severability; Waiver. If any provision of the 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 the Agreement will remain in full force and effect. A waiver by either party of any term or condition of the Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. The failure or delay of a party to exercise any of its rights under the Agreement or upon any breach of the Agreement shall not be deemed a waiver of those rights or of the breach. No Reseller or Posit dealer or agent is authorized to make any amendment to the Agreement.
- 7.6. Notices. Notices must be in English, in writing, and will be deemed given upon receipt, after being sent using a method that provides for positive confirmation of delivery to the physical address or email address set forth in the Order Form, including without limitation through automated receipt or by electronic log.
- 7.7. Effect of Termination. Termination of the Agreement shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve you of your obligation to pay all undisputed Subscription Fees, without right of refund. Sections 1, 3, 4, 6 and 7 shall survive any expiration or termination of the Agreement.
- 7.8. Intellectual Property. Posit and its licensors retain ownership of all right, title, and interest in and to the Services including without limitation all intellectual property rights therein and thereto, but expressly excluding your Confidential Information. Posit reserves all rights not specifically granted in the Agreement. You and you Users may, from time to time, voluntarily make known to Posit suggestions, enhancement requests, techniques, know-how, comments, feedback, or other input to Posit with respect to Posit products and services (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 you or any other person or entity.
- 7.9. Counterparts; Electronic Signatures. The Agreement (including any Order Form) may be executed in counterparts, which taken together shall form one legal instrument. A manually or electronically signed copy of the Agreement (or 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 Order Form).