

## Podium Terms of Service

Last Updated: June 2, 2021

Podium.com (<https://www.podium.com/>), including all of its related applications, dashboards or platforms (individually and collectively, the "Website"), is owned and operated by Podium Corporation, Inc. ("Podium", "we" or "us"). By using, installing or accessing the Website or Services (as defined below), by signing or clicking to accept these terms or any Subscription Documentation (as defined below) referencing these terms, you agree to be bound by the following terms and conditions including Podium's Privacy Policy (together, these "Terms", or this "Agreement").

If you are using a Podium Service on behalf of a company or other entity, then "Client" or "you" means that entity, and you are binding that entity to this Agreement. You represent and warrant that you have the legal power and authority to enter into this Agreement and that, if the Client is an entity, this Agreement is entered into by an employee or agent with all necessary authority to bind that entity to this Agreement.

This Agreement includes and hereby incorporates by reference any Subscription Documentation executed between you and Podium, as well as any policies or exhibits linked to or referenced herein. If you have entered into a separate written agreement with Podium concerning specific Services, the terms of such agreement control if there is any conflict between the terms of such agreement and these Terms. Please note that we may modify this Agreement as described in Section 16.8 below.

### 1. DEFINITIONS.

1.1. "Business Associate Agreement" (hereinafter "BAA") means a written agreement between a covered entity and a business associate containing the elements specified at 45 CFR 164.504(e).

1.2. "Confidential Information" means code, inventions, know-how, product plans, technical and financial, business, operational, or other information exchanged under this Agreement or learned during the performance of this Agreement, or that is identified as confidential at the time of disclosure or should reasonably be considered confidential based on the circumstances surrounding the disclosure and the nature of the information disclosed.

1.3. "HIPAA" means the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d through d-8, as amended from time to time, and the requirements of any regulations promulgated under either the HITECH Act or HIPAA, including, without limitation, the federal privacy regulations as contained in 45 C.F.R. Parts 160 and 164, the federal security standards as contained in 45 C.F.R. Parts 160 and 162, and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160, all as may be amended from time to time.

1.4. "Protected Health Information" (hereinafter "PHI") has the same meaning as that term is defined in HIPAA.

1.5. "Territory" means the United States, Canada, and Australia, unless otherwise expressly set forth in Client's Subscription Documentation.

Other terms are defined in other Sections of this Agreement.

## 2. SERVICES.

2.1. Services. Podium provides a proprietary multi-product platform that includes without limitation reputation management tools ("Reviews" and "Feedback"), messaging and communication tools ("Inbox," "Webchat," "Videochat," "Teamchat," "Automations," "Voice," and "Campaigns"), payment processing ("Payments"), certain Free Access Subscription or Beta Releases (as defined below), and any other services Podium may offer from time to time (together with the Website, the "Service(s)"). Client will, from time to time, enter into a proposal, quote, services/purchase agreement, order form, statement of work, or otherwise click to accept or agree to an online registration form, which references this Agreement ("Subscription Documentation") and details the Services ordered from Podium and, if applicable, the usage limits or other scope of use descriptions for the Services (including without limitation any usage or volume limits, numerical limits on Authorized Users, and descriptions of product feature levels) (the "Scope of Use"). Client may be provided the option to purchase certain Services as part of a package or bundle offer (each, a "Bundle"), as detailed in the applicable Subscription Documentation. Podium has no obligation to provide any services or perform any tasks not specifically set forth in this Agreement, including any applicable Subscription Documentation.

2.2. Alteration of Subscription Documentation. Any amendments or modification to any existing Subscription Documentation must be agreed to in writing by the parties. Podium has no obligation to perform any Services under the amended Subscription Documentation until the parties have agreed to the effect of such changes on the applicable Fees.

2.3. Modification of the Services. Podium reserves the right to modify or discontinue the Services at any time (including by limiting or discontinuing certain features of the Services), or to alter the offering of the Services (including by adding, limiting or discontinuing certain Bundle offers) temporarily or permanently. Podium also reserves the right to replace certain Services and Bundles with functionally equivalent Services or Bundles, at its sole discretion. In the event Podium makes any modification or alteration to the Services or the offering thereof that has a material adverse effect on the functionality of the Services ordered under your Subscription Documentation, Client may terminate this Agreement and receive a pro-rated refund of pre-paid unused Fees for the remainder of Client's Subscription Term (as defined below).

2.4. Additional Terms. Client's use of certain Services may be subject to additional terms, policies, rules, or guidelines applicable to the Services or certain features of the Services that we may post on or link to from the Services (the "Additional Terms"). For example, if you elect to use Podium Payments, your use is subject to the Podium Payment Terms (currently available at <https://www.podium.com/payments-terms-and-conditions/>). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.

## 3. USE RIGHTS; RESTRICTIONS.

3.1. Use of Services. Subject to all terms and conditions of this Agreement, including any Additional Terms, Podium grants Client a non-exclusive, non-transferable, non-sublicensable, revocable, limited right and license during the applicable Subscription Term and within the Territory (to the extent available in the Territory) to: (a) install and use an object code copy of any mobile application associated with the Services; and (b) access and use the Services, designated on Client's Subscription Documentation solely for Client's internal business purposes, but only in accordance with this

Agreement, Podium's Acceptable Use Policy ("Acceptable Use Policy") (currently available at <https://www.podium.com/acceptable-use-policy/>), the applicable Subscription Documentation, and all applicable Scope of Use descriptions. Although the Services may be accessible worldwide, Podium makes no representation that the Services are appropriate or available for use in locations outside the Territory (or that all products or features of the Services are available throughout the Territory). Furthermore, accessing the Services from territories where their content or use is illegal is prohibited. Those who choose to access the Services from other locations do so at their own initiative and are responsible for compliance with local laws and any costs associated with access or use outside the Territory. You may not use or export the Services in violation of U.S. export laws and regulations.

3.2. Account Registration. Client will register for a Podium account in order to access or receive the Services. Account information must be accurate, current and complete, and will be governed by Podium's Privacy Policy (currently available at <https://www.podium.com/privacypolicy>) as may be amended from time to time. Client agrees to keep its account information up to date so that Podium may send notices, statements and other information by email or through Client's account. By using or accessing the Website, Client agrees and consents to Podium's use of cookies in accordance with the terms of Podium's Privacy Policy. You are solely responsible for all use of the Services account. Podium will not be liable for any loss or damage arising from unauthorized use of Client's account.

3.3. Eligibility and Use by Others. By agreeing to these Terms, Client warrants that it and its employees and contractors whom Client has authorized to access the Services on its behalf ("Authorized Users"): (a) are over 18 years old; (b) have not previously been suspended or removed from the Services; and (c) will comply with all applicable laws when using the Services. Client may permit its Authorized Users to use the Services provided their use is for Client's benefit only and remains in compliance with this Agreement. Authorized Users are and will be subject to the applicable terms and conditions of this Agreement which may be communicated by posting to the Website or on a click-through basis to Authorized Users upon access to the Services and/or Website.

3.4. Responsibility for Authorized Users. Client will be responsible and liable for all Authorized Users' use and access and their compliance with the terms and conditions herein. Client will be solely responsible for authorizing and creating user IDs, passwords and other access credentials for Authorized Users. Client is solely responsible for determining its Authorized Users and restricting and/or terminating the rights of such users during the Subscription Term, as Client deems appropriate. Provided, however, Podium may, in its sole discretion, suspend any Authorized User's access to the Services. Client is solely responsible for ensuring that any user IDs, passwords and other access credentials (such as API tokens) for the Services are kept strictly confidential and not shared with any unauthorized person. Additionally, Client is solely responsible for complying, and ensuring its Authorized Users comply, with all laws applicable to Client. Client will be solely responsible for any and all actions taken using its and its Authorized Users' accounts, passwords or access credentials. Client must notify Podium within twenty-four (24) hours of any breach of security or unauthorized use of its account. Use by all Authorized Users in aggregate will count towards any applicable Scope of Use restrictions.

3.5. Use by Customers. Any person that is a client, customer, or patient of Client, or that is a potential client, customer or patient of Client ("Customer(s)") who accesses and/or uses the Services, including via Client's website, are subject to the Acceptable Use Policy and such other terms as may be provided by

Podium from time to time, which includes Podium's right to remove or disable access to any Customer or content or resource that violates the Acceptable Use Policy.

3.6. General Restrictions. Client must not (and must not allow any third party to): (a) rent, lease, copy, transfer, sublicense or provide access to the Podium Technology (as defined below) to a third party (except Authorized Users as specifically authorized above); (b) incorporate the Podium Technology (or any portion thereof) into, or use it with or to provide, any site, product or service; (c) use the Podium Technology (or any portion thereof) for time-sharing purposes or for a third party's benefit; (d) publicly disseminate information regarding the performance of the Podium Technology (which is deemed Podium's Confidential Information); (e) modify or create a derivative work of the Podium Technology or any portion thereof; (f) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Podium Technology or Services, except to the extent expressly permitted by applicable law and then only upon advance notice to Podium; (g) break or circumvent any security measures or rate limits for Services; (h) distribute any portion of the Podium Technology other than as specifically permitted above; (i) use the Service in violation of the Acceptable Use Policy; or (j) remove or obscure any proprietary or other notices contained in the Podium Technology including in any reports or output obtained from the Podium Technology.

3.7. Beta Releases and Free Access Subscriptions. Subject to Client's compliance with the terms of this Agreement, Podium may provide Client with certain Services for free or on a trial basis (a "Free Access Subscription") or with "alpha", "beta" or other early-stage Services, integrations or features ("Beta Releases") for the Subscription Term set forth in the applicable Subscription Documentation (if applicable). This Section and any relevant Additional Terms will apply to any Free Access Subscription or Beta Release (even if a Beta Release is provided for a fee or counts towards Client's Scope of Use allocations) and supersedes any contrary provision in this Agreement. For the avoidance of doubt, Section 6 (Availability of Services; Support) will not apply to any Free Access Subscription or Beta Releases. Podium may use good faith efforts in its discretion to assist Client with Free Access Subscriptions or Beta Releases. Without limiting the other disclaimers and limitations in this Agreement, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, CLIENT AGREES THAT ANY FREE ACCESS SUBSCRIPTION OR BETA RELEASE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY, SUPPORT, MAINTENANCE, STORAGE, SLA OR INDEMNITY OBLIGATIONS OF ANY KIND. WITH RESPECT TO BETA RELEASES, CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT BETA RELEASES MAY NOT BE COMPLETE OR FULLY FUNCTIONAL AND MAY CONTAIN BUGS, ERRORS, OMISSIONS AND OTHER PROBLEMS FOR WHICH PODIUM WILL NOT BE RESPONSIBLE. ACCORDINGLY, ANY USE OF A BETA RELEASE IS AT CLIENT'S SOLE RISK. You may choose to use Beta Releases in your sole discretion. Podium makes no guarantees or promises with respect to the continued availability of any Free Access Subscriptions or Beta Releases or that future versions of a Beta Release will be released or will be available under the same commercial or other terms. Podium may discontinue Beta Releases at any time, in our sole discretion, and decide not to make a Beta Releases generally available. Notwithstanding anything to the contrary herein, Podium may terminate Client's right to use any Free Access Subscription or Beta Release at any time for any reason or no reason in Podium's sole discretion, without liability.

#### 4. CLIENT DATA.

4.1. Rights in Client Data. As between the parties, Client retains all right, title and interest (including any intellectual property rights) in and to any text, images or other content and data that Client selects or submits for use or incorporation with the Services (including without limitation, chat and message logs, Customer Data, PHI or any Third-Party Content) ("Client Data"). "Customer Data" means data related to the identity, characteristics and activities of Customers, collected or submitted to the Services by Client or captured by the Services. To the extent Client is a Covered Entity or a Business Associate, as those terms are defined in HIPAA, "Client Data" also includes PHI. "Third-Party Content" means content, data or other materials that Client provides to the Podium Services from its third-party data providers, including through Third-Party Products (as defined below) used by Client. Client hereby grants Podium a non-exclusive, worldwide, royalty-free right and license to collect, use, copy, store, transmit, modify and create derivative works of the Client Data solely to the extent necessary to provide the Services and related services to Client and as otherwise provided herein. Client further instructs Podium to use and disclose Client Data and Customer Data as necessary to (a) provide the Services consistent with this Agreement and Podium's Privacy Policy, including detecting, investigating, and preventing security incidents, spam, fraud, or unlawful use of the Services, and (b) respond to Client's inquiries or any technical problems and ensure the Services are working properly.

4.2. Aggregate/Anonymous Data. Client agrees that Podium will have the right to generate usage data from Client use of the Services and may aggregate anonymized Client Data ("Aggregate/Anonymous Data"). Notwithstanding anything to the contrary herein, the parties agree that Aggregate/Anonymous Data is Podium Technology, which Podium may use for any business purpose during or after the term of this Agreement (including without limitation to develop and improve Podium's products and services and to create and distribute reports and other materials). Podium will not distribute Aggregate/Anonymous Data in a manner that personally identifies Client or its Customers, or that would otherwise violate applicable laws. If Client and Podium have entered into a BAA, Podium will use the Aggregate/Anonymous Data only in conformity with the terms of such agreement.

4.3. Monitoring. Client understands and agrees that Podium, and any third-party platform(s) Client uses or accesses in connection with the Services, may monitor and analyze Client Data or Customer Data (including but not limited to reviews, surveys, messages, chats, etc.) to improve the Website, Services or third-party platform; to improve Client's experience using the Website, Services or third-party platform; to customize and communicate informational or product offerings and promotions to Client; to ensure compliance with the Acceptable Use Policy (including taking corrective action permitted therein); and/or to make the Website, Services, or third-party platform more helpful or useful to Client and other users.

4.4. Security. Podium agrees to maintain physical, technical and organizational measures designed, in its discretion, to secure its systems from unauthorized access, use or disclosure. If Client is a Covered Entity or Business Associate, as defined in HIPAA, Podium and Client agree to the terms of Podium's BAA (currently available at <https://www.podium.com/business-associate-agreement/>), which may be amended from time to time, and to secure and utilize PHI in accordance with the BAA. Podium takes no responsibility and assumes no liability for any Client Data other than its express security obligations in this Section.

4.5. Storage. Podium does not provide an archiving service. During the Subscription Term, Client acknowledges that Podium may delete Client Data no longer in active use. Except for requirements that

are included in any BAA entered into between Podium and Client, Podium expressly disclaims all other obligations with respect to storage.

## 5. CLIENT OBLIGATIONS.

5.1. Warranty. Client warrants and represents that it is in full compliance with all applicable state, federal, and international laws, rules and regulations and that Client will not use the Services in a manner that would violate or cause Podium to violate any obligation with respect to any such laws, rules or regulations, or amendments thereto, including but not limited to the Federal Trade Commission's Telemarketing Sales Rule, the Telephone Consumer Protection Act of 1991, the Health Insurance Portability and Accountability Act of 1996, the Gramm-Leach-Bliley Act of 1999, the CAN-SPAM Act, Do Not Call rules and prohibitions, and Canada's Anti-Spam Legislation ("CASL"). Client also warrants and represents that: (a) Client has sole ownership of any Client Data it provides to Podium, or otherwise has legal rights to provide such Client Data, and Client Data and Podium's use thereof will not violate third-party rights, including intellectual property, privacy and publicity rights; (b) Podium's possession and/or use of the Client Data on Client's behalf in connection with the Services, as contemplated hereunder, will not violate any contract, statute, or regulation; (c) any Client Data Client and/or Client's authorized representative(s) submit for publication on an online review or ratings website as a provider of goods or services will be true and accurate, and will only concern Client or the goods and/or services that Client provides; (d) Client is authorized to provide Podium with any Customer, Client or Authorized User information it provides in connection with the Services, including any personally identifying information; and (e) Client and/or Client's authorized representative(s) will only use the Services for interaction with actual Customers. If Client receives any take-down requests or infringement notices related to Client Data or its use of Third-Party Products, it will promptly stop using these items with the Services and notify Podium immediately. Additionally, if an integration is included in the Services Client orders, Client grants Podium the right to access Client's Information or CRM system directly or through a third-party service for the purposes of fulfilling Podium's obligations under this Agreement, and Client warrants that Client is not restricted by law or applicable agreement from granting Podium such right. Podium will not be held liable for any consequences of false and/or inaccurate content published to an online review or ratings website through Podium by Client or its Authorized Users.

5.2. Customer Consent; Intended Use of the Services. Client understands and agrees that the Services are intended to allow Client to send electronic communication, including but not limited to text messages, only to Client's own current Customers who have consented to the receipt of such communications and are provided with necessary notices in accordance with applicable law and regulations. Client also understands and agrees that the Services are intended primarily to be used to send transactional and/or informational messages, not advertisements, marketing, telemarketing, or promotional messages, as such are defined in applicable laws, rules, and regulations (hereinafter, collectively "Marketing"), and that Client may use the Services to send Marketing messages only via Podium Campaigns. Accordingly, Client will for the duration of the Subscription Term: (a) provide all required disclosures to Customers and obtain all required consents and/or authorizations from Customers, based on applicable laws, prior to utilizing the Services; (b) obtain all necessary rights, releases and consents to allow Client Data to be collected, used and disclosed in the manner contemplated by this Agreement and to grant Podium the rights herein; and (c) send Marketing messages through Podium only via Podium Campaigns and only in compliance with all local, state, national and international laws, regulations and industry-specific best practices, including but not

limited to Do Not Call rules and prohibitions. Client agrees and acknowledges that Client is solely responsible for its compliance with applicable law and regulations and must not rely on the Services for any such compliance. Use of the Services does not guarantee compliance with applicable law or regulation and Podium expressly disclaims any liability for Client's non-compliance. Podium reserves the right to suspend or terminate Client's access to the Services or the messaging feature if Podium believes, in its discretion, that Client has violated this Section 5.

## 6. AVAILABILITY OF SERVICES; SUPPORT.

6.1. Availability. Subject to the terms of this Agreement and any scheduled maintenance and unavailability caused by: (a) actions or omissions of Client; (b) failures, errors or defects in the facilities, hardware, software or network of Client; or (c) circumstances that constitute a force majeure event or that are beyond Podium's reasonable control, the Services will be available for access via the Website 99.0% of the time during of the applicable Subscription Term. Client's sole remedy and Podium's sole liability for failure to meet the aforementioned availability shall be support in accordance with Section 6.2.

6.2. Support. Podium makes available web-based support through the Website. Additional support services may be available to Client subject to payment of applicable fees (if any), as specified in any applicable Subscription Documentation. Any support services are subject to this Agreement and Podium's applicable support policies. Podium may also provide onboarding, deployment and other services under this Agreement. The scope, pricing and other terms for these additional services will be set forth in the applicable Subscription Documentation. Podium's ability to deliver the Services will depend on Client's reasonable and timely cooperation and the accuracy and completeness of any information from Client needed to deliver the Services.

## 7. FEES AND PAYMENT.

7.1. Fees. Unless otherwise specified on the applicable Subscription Documentation, the Services are provided on an ongoing, per license subscription-basis including automatically recurring payments for periodic charges, according to the terms and conditions referenced in the Subscription Documentation ("Subscription"). Client agrees to pay to Podium the fees for the Subscription to the Services or any Bundle ("Subscription Fees") and any additional fees (if applicable), all as set forth in the applicable Subscription Documentation (collectively, the "Fees"). Except as otherwise specified in the applicable Subscription documentation, unless Client terminates a Free Access Subscription prior to the lapse of the Free Access Subscription term, such Services will convert to a paid Subscription and Client agrees to pay Podium the applicable Subscription Fees according to the terms of this Agreement. Unless otherwise specified in the applicable Subscription Documentation, payment for all Fees is due within thirty (30) days of the invoice date.

7.2. Payment of Fees. Unless otherwise specified in the applicable Subscription Documentation, all Subscription Fees will be paid annually in advance, though overage fees (if any) may be charged in arrears, and all references to currency set forth herein will mean U.S. dollars, with all payments hereunder to be made in U.S. dollars. Subscription Fees are non-refundable and non-creditable, except as expressly set forth in Sections 2.3 (Modification of the Services) and 8.3 (Termination for Cause). If the payment method selected on the applicable Subscription Documentation is credit card, ACH, or direct debit, Client authorizes Podium to charge the Subscription Fees automatically, on an auto-renew

basis on your Subscription Start Date (as defined below) for each subsequent Subscription Term. For the avoidance of doubt, all additional Subscription Fees for additional Services accessed by Client will be billed when the Service is first accessed by Client and automatically, on an auto-review basis on Client's existing Subscription Start Date. The Subscription will continue unless and until you or Podium terminate your Subscription in accordance with Section 8. You must cancel your Subscription before it renews in order to avoid billing of the next periodic Subscription Fees to your account. If Client elects to pay by credit card, then you are responsible for both (a) enabling auto-recharge on your account and (b) ensuring that your account has a sufficient positive balance to cover all Fees when due. Should Podium be unable to process/receive the Fees when due and owing, payment shall be considered overdue. Podium shall have the right to charge interest on all overdue amounts at the annual rate of 12%, compounded monthly, or the maximum lawful amounts, whichever is less. Additionally, after payment becomes overdue, Podium shall have the right to immediately suspend Client's access to the Services and/or seek to enforce Client's payment obligations including through the use of third-party services.

7.3. Taxes. Podium's Fees are exclusive of all taxes, and Client must pay any applicable taxes or levies, whether domestic or foreign, other than taxes based on the income of Podium. Client will make tax payments to Podium to the extent amounts are included on Podium's invoices.

7.4. Annual Fee Increase. Podium reserves the right to increase Fees for any Services, upon sixty (60) days' prior written notice, effective on the start date of your subsequent Subscription Term.

## 8. TERM AND TERMINATION.

8.1. Term. This Agreement is effective until the applicable Subscription Term for the Services has expired or the Subscription is terminated as expressly permitted herein. Unless otherwise stated in Client's Subscription Documentation, the initial term for any Subscription to the Services is twelve (12) months and will automatically renew for subsequent periods of equal duration (the "Subscription Term"), unless either party gives written notice of non-renewal at least thirty (30) days before the end of the then-current Subscription Term. Client may give notice of non-renewal by sending an email to support@podium.com. If no Subscription start date is specified on the applicable Subscription Documentation, the Subscription starts when Client first obtains access to the Services ("Subscription Start Date"). By agreeing to any Subscription Documentation, Client is agreeing to pay applicable fees for the entire Subscription Term. Client cannot cancel or terminate a Subscription Term except as expressly permitted by Section 8.3 (Termination for Cause).

8.2. Suspension of Services. Podium may suspend Client's access to the Services if: (a) Client's account is overdue or (b) Client has exceeded its Scope of Use limits. Podium may also suspend Client's access to the Services, remove Client Data or disable Third-Party Products if it determines that: (i) Client has breached Sections 3 (Use Rights; Restrictions) or 5 (Client Obligations); or (ii) suspension is necessary to prevent harm or liability to other Clients or third parties or to preserve the security, stability, availability or integrity of the Services. Podium will have no liability for taking action as permitted above. For avoidance of doubt, Client will remain responsible for payment of Fees during any suspension period. Unless this Agreement has been terminated, Podium will cooperate with Client to restore access to the Services once it verifies that Client has resolved the condition requiring suspension.

8.3. Termination for Cause. Either party may terminate this Agreement, including any related Subscription Documentation, if the other party: (a) fails to cure any material breach of this Agreement



(including a failure to pay fees) within thirty (30) days after written notice detailing the breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter). If Client terminates during the Subscription Term for any reason other than the foregoing, Client will be responsible for the Fees due for the entire Subscription Term. Podium may also terminate this Agreement or any related Subscription Documentation immediately if Client breaches Sections 3 (Use Rights; Restrictions) or 5 (Client Obligations), for repeated violations of other Sections of this Agreement, or if applicable, a breach of the parties' BAA.

**8.4. Effect of Termination.** Upon any expiration or termination of this Agreement or any Subscription Documentation: (a) Client's license rights will terminate and it must immediately cease use of the Services (including any related Podium Technology) and delete (or, at Podium's request, return) any and all copies of any Podium documentation, scripts, passwords or access codes and any other Podium Confidential Information in Client's possession, custody or control and (b) Client's right to access any Client Data in the applicable Services will cease, and unless otherwise precluded by a BAA, Podium may delete any such data in its possession at any time. If Podium terminates this Agreement for cause as provided in Section 8.3 (Termination for Cause), any payments for the remaining portion of the Subscription Term will become due and must be paid immediately by Client. Except where this Agreement specifies an exclusive remedy, all remedies under this Agreement, including termination or suspension, are cumulative and not exclusive of any other rights or remedies that may be available to a party.

**8.5. Survival.** The following Sections survive any expiration or termination of this Agreement: 1 (Definitions); 3 (Use Rights; Restrictions); 4 (Client Data); 7 (Fees and Payment); 8 (Term and Termination); 9 (Confidential Information); 10 (Podium Technology); 11 (Third-Party Products and Integrations); 12 (Indemnification); 13 (Disclaimers); 14 (Limitations of Liability); 15 (Dispute Resolution); and 16 (General).

## **9. CONFIDENTIAL INFORMATION.**

**9.1. Obligation of Confidentiality.** Except as otherwise expressly permitted in this Agreement, each party (as the receiving party) must: (a) hold in confidence and not disclose the other party's Confidential Information to third parties; and (b) use the other party's Confidential Information only as necessary to fulfill its obligations and exercise its rights under this Agreement. Each party may share the other party's Confidential Information with its employees, agents, contractors or subcontractors having a legitimate need to know (which, for Podium, includes the subcontractors referenced in Section 16.4), provided that such party remains responsible for any recipient's compliance with the terms of this Section 9 and these recipients are bound to confidentiality obligations no less protective than this Section.

**9.2. Exclusions.** These confidentiality obligations do not apply to (and Confidential Information does not include) information that: (a) is or becomes public knowledge through no fault of the receiving party; (b) was known by the receiving party prior to receipt of the Confidential Information; (c) is rightfully obtained by the receiving party from a third party without breach of any confidentiality obligation; or (d) is independently developed by the receiving party without using the disclosing party's Confidential Information. A party may also disclose the other party's Confidential Information to the extent required

by law or court order, provided it gives advance notice (if permitted by law) and cooperates in any effort by the other party to obtain confidential treatment for the information.

9.3. Remedies. The parties acknowledge that disclosure of Confidential Information may cause substantial harm for which damages alone may be an insufficient remedy, and so upon breach of this Section each party is entitled to seek appropriate equitable relief in addition to any other remedies it may have at law.

## 10. PODIUM TECHNOLOGY.

10.1. Ownership and Updates. By accepting this Agreement, Client acknowledges that it is obtaining only a limited right to use the Services and irrespective of any use of the words "purchase", "sale" or similar terms, no ownership rights are transferred to Client under this Agreement and, except as expressly permitted by such limited right, Client may not make any use of Podium Technology. Client agrees that Podium (or its suppliers) exclusively retains all rights, title and interest (including all intellectual property rights) in and to all Services, products, any and all related documentation, software, technology, code, know-how, logos, trademarks, service marks, and templates (including in any reports or output obtained from the Services), anything delivered as part of support, materials or other services, and any updates, modifications or derivative works of any of the foregoing, including as may incorporate any Feedback (as defined below) ("Podium Technology") provided by Podium (which is deemed Podium's Confidential Information) and reserves any licenses not specifically granted herein. Furthermore, Podium exclusively owns and reserves all right, title, and interest in and to Podium's Confidential Information and any data, in anonymized or aggregated form that does not identify you, any end users, or any natural person, generated or derived from the use or operation of the Services, including volumes, frequencies, bounce rates, and performance results for the Services. The Services are offered as an on-line, hosted product. Accordingly, Client acknowledges and agrees that it has no right to obtain a copy of the software behind any Services and that Podium at its option may make updates, bug fixes, modifications or improvements to the Services from time-to-time.

10.2. Feedback. If Client elects to provide any suggestions, comments, improvements, information, ideas or other feedback or related materials to Podium (collectively, "Feedback"), Client hereby grants Podium a worldwide, perpetual, non-revocable, sublicensable, royalty-free right and license to use, copy, disclose, license, distribute and exploit any such Feedback in any manner without any obligation, payment or restriction based on intellectual property rights or otherwise. Nothing in this Agreement limits Podium's right to independently use, develop, evaluate or market products, whether incorporating Feedback or otherwise.

## 11. THIRD-PARTY PRODUCTS AND INTEGRATIONS

Podium may make arrangements with third-party providers, or facilitate Client making arrangements with third-party providers, that provide products or services in connection with the Services described in this Agreement. If Client elects to use applications, integrations, add-ons, software, code, online services, systems and other products not developed by Podium ("Third-Party Products") in connection with or otherwise made available through the Services, those products may make Third-Party Content available to Client and may access Client's instance of the Services, including Client Data. Client agrees and acknowledges that use of such Third-Party Products may require Client to enter into separate terms and conditions with such third-party. Podium is not a party to any such terms and will not be liable

thereunder. Podium does not warrant or support Third-Party Products or Third-Party Content (whether or not these items are designated by Podium as "powered", "verified" or otherwise) and disclaims all responsibility and liability for these items and their access to the Services, including their modification, deletion, disclosure or collection of Client Data. Podium is not responsible in any way for Client Data once it is transmitted, copied or removed from the Services.

## 12. INDEMNIFICATION

12.1. Indemnification by Client. Client will indemnify and hold harmless Podium and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the "Podium Entities") from and against any third-party claims and related costs, damages, liabilities and expenses (including reasonable attorney's fees) arising from or pertaining to: (a) your unauthorized use of, or misuse of, the Services; (b) your violation of any applicable law or third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; (c) any dispute or issue between you and any third party (including your Customers); (d) any demand, dispute or issue (including without limitation fee disputes) between you and your Payment Processor (as defined in the applicable Additional Terms); (e) any Client Data; (f) Podium's use, as contemplated in this Agreement, of any information provided to Podium by you or your Customers; (g) breach or alleged breach of this Agreement, including Client's Warranties and Obligations; (h) any claim of a governmental entity or other party that you have violated any law, rule, or regulation; or, (i) if applicable, alleged breach or breach of Client's obligations contained in the BAA. Client also agrees to defend the Podium Entities against these claims at Podium's request, but Podium may participate in any claim through counsel of its own choosing and the parties will reasonably cooperate on any defense. In the event Podium assumes exclusive defense of such claims, Client agrees to cooperate with our defense of any such claims. Client must not settle any claim without Podium's prior written consent if the settlement does not fully release Podium from liability or would require Podium to admit fault, pay any amounts or take or refrain from taking any action.

12.2. Indemnification by Podium. Podium will indemnify and hold Client harmless from and against any third-party claims and related costs, damages, liabilities and expenses (including reasonable attorney's fees) arising from or pertaining to (i) Podium's gross negligence or willful misconduct; or (ii) Podium's infringement, misappropriation or violation of a third party's intellectual property rights. Podium also agrees to defend Client against these claims at Client's request, but Client may participate in any claim through counsel of its own choosing and the Parties will reasonably cooperate on any defense. Podium must not settle any claim without Client's prior written consent if the settlement does not fully release Client from liability or would require Client to admit fault, pay any amounts or take or refrain from taking any action.

## 13. DISCLAIMERS

13.1. EXCEPT AS PROVIDED EXPRESSLY HEREIN, ALL PODIUM TECHNOLOGY AND RELATED SERVICES, MATERIALS AND CONTENT AVAILABLE THROUGH THE PODIUM TECHNOLOGY ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. NEITHER PODIUM NOR ITS SUPPLIERS MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. PODIUM MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT PODIUM TECHNOLOGY WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, THAT CLIENT DATA WILL BE ACCURATE, COMPLETE OR

PRESERVED WITHOUT LOSS, OR THAT PODIUM TECHNOLOGY WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE, AND PODIUM DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED. PODIUM WILL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY CLIENT PROPERTIES, THIRD-PARTY PRODUCTS, THIRD-PARTY CONTENT, OR NON-PODIUM SERVICES (INCLUDING FOR ANY DELAYS, INTERRUPTIONS, TRANSMISSION ERRORS, SECURITY FAILURES, AND OTHER PROBLEMS CAUSED BY THESE ITEMS), FOR THE COLLECTION, USE AND DISCLOSURE OF CLIENT DATA AUTHORIZED BY THIS AGREEMENT, OR FOR DECISIONS OR ACTIONS TAKEN (OR NOT TAKEN) BY CLIENT BASED UPON PODIUM TECHNOLOGY OR PODIUM'S RELATED SERVICES (INCLUDING CHANGES TO CLIENT PROPERTIES). THE DISCLAIMERS IN THIS SECTION WILL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN. CLIENT MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, ANY STATUTORILY REQUIRED WARRANTIES UNDER APPLICABLE LAW, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD AND MAXIMUM EXTENT PERMITTED BY LAW.

13.2. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICES OR PODIUM ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICES WILL CREATE ANY WARRANTY REGARDING ANY OF THE PODIUM ENTITIES OR THE SERVICES THAT IS NOT EXPRESSLY STATED IN THESE TERMS. PODIUM DOES NOT PROVIDE ITS CLIENTS WITH LEGAL ADVICE REGARDING DATA PRIVACY OR COMPLIANCE WITH RELEVANT LAW IN ANY JURISDICTION, AND ANY STATEMENTS MADE BY PODIUM TO ITS CLIENT(S) DOES NOT CONSTITUTE LEGAL ADVICE. USE OF THE SERVICES DOES NOT GUARANTEE COMPLIANCE WITH APPLICABLE LAWS IN ANY JURISDICTION.

#### 14. LIMITATIONS OF LIABILITY

TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL PODIUM OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, LOST PROFITS, COSTS OF DELAY, REPUTATIONAL HARM, OR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PODIUM'S OR ITS SUPPLIERS' TOTAL LIABILITY EXCEED IN AGGREGATE THE AMOUNT ACTUALLY PAID BY CLIENT TO PODIUM FOR THE APPLICABLE SERVICE(S) OR RELATED SERVICE(S) IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. FOR FREE ACCESS SUBSCRIPTIONS OR BETA RELEASES PROVIDED WITHOUT CHARGE, PODIUM'S TOTAL LIABILITY WILL NOT EXCEED IN AGGREGATE FIFTY U.S. DOLLARS (\$50.00 US). NOTWITHSTANDING THE FOREGOING, NONE OF THE LIMITATIONS IN THIS SECTION 14 EXCLUDES EITHER PARTY'S LIABILITY FOR FRAUD OR FOR DEATH OR PERSONAL INJURY TO THE EXTENT CAUSED BY A PARTY'S NEGLIGENCE. IN ADDITION, THE LAWS IN SOME JURISDICTIONS MAY NOT ALLOW SOME OF THE LIMITATIONS OF LIABILITY IN THIS SECTION. IF ANY OF THESE LAWS IS FOUND TO APPLY TO THIS AGREEMENT, THIS SECTION 14 WILL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY SUCH LAW. EACH PARTY ACKNOWLEDGES AND AGREES THAT THIS SECTION 14 IS A FUNDAMENTAL BASIS OF THE BARGAIN AND A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES AND WILL SURVIVE AND APPLY TO ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY PODIUM TECHNOLOGY OR ANY RELATED SERVICES, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF ANY LIMITED REMEDY IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL

ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 14 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 15. DISPUTE RESOLUTION.

If a dispute arises between the parties related to this Agreement or the Services provided therefrom, and the dispute cannot be settled through informal negotiations, the parties agree to resolve their dispute (referred to herein as "Claim(s)") as follows:

15.1. Mediation. The parties agree to participate in mediation to settle their Claims in accordance with the rules and procedures found in Utah Code § 78B-10-101 et seq. (Utah Uniform Mediation Act and referred to as "UUMA") and this Agreement before a party can file a judicial action, whether in a court of law, an administrative body, government agency, or otherwise. If there are any conflicting provisions between UUMA and this Agreement, the provisions in this Agreement will govern.

15.1.1. Notice. Mediation must be conducted within sixty (60) days from a party receiving written notice of Claims from a complaining party. The notice must contain a detailed description of the nature of the Claims and the requested relief sought.

15.1.2. Mediator Selection and Mediator Fees. A neutral mediator will be selected as mutually agreed upon by the parties. The mediator's fees and costs will be paid to the mediator at the end of mediation, with both parties equally sharing the mediation costs and paying their own legal fees and costs.

15.1.3. Location. Mediation will occur in Salt Lake City, Utah.

15.2. Judicial Action. If the parties are unable to resolve the Claim pursuant to the mandatory mediation referenced above (or if one of the parties refuses to participate in the mandatory mediation or fails to respond to a complaining party's request for mediation), the parties may subsequently file a judicial action.

15.3. Disputes Not Subject to the Mediation Process. The following claims or actions are not subject to the mandatory mediation provisions of this Section 15:

15.3.1. A request for an order of injunctive relief and any related incidental damages;

15.3.2. A request for an order to prevent the disclosure of or misuse of Confidential Information or Trade Secrets; and/or

15.3.3. Enforcement of Client's payment obligations as set forth under Section 7.

## 16. GENERAL.

16.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that Podium may assign this Agreement without consent to an affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 16.1 will be null and void.

16.2. Notices. Any notice or communication to Podium under this Agreement must be in writing. Client must send any notices under this Agreement (including breach notices) to [Podium Headquarters](#) and include "Attn. Legal Department" in the subject line. Podium may send notices to the e-mail addresses on Client's account or, at Podium's option, to Client's last-known postal address. Podium may also provide operational notices regarding the Services or other business-related notices through conspicuous posting of such notice on Podium's website or the Services. Each party hereby consents to receipt of electronic notices and agrees that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing. Podium is not responsible for any automatic filtering Client or its network provider may apply to email notifications.

16.3. Publicity. Unless otherwise specified in the applicable Subscription Documentation, Podium may use Client's name, logo and marks to identify Client as a Podium Client on Podium's website and other marketing materials.

16.4. Subcontractors. Podium may use subcontractors and permit them to exercise the rights granted to Podium in order to provide the Services and related services under this Agreement.

16.5. Subpoenas. Nothing in this Agreement prevents Podium from disclosing Client Data to the extent required by law, subpoenas, or court orders, but Podium will use commercially reasonable efforts to notify Client where permitted to do so.

16.6. Independent Contractors. The parties to this Agreement are independent contractors, and this Agreement does not create a partnership, joint venture, employment, franchise or agency relationship. Neither party has the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

16.7. Force Majeure. Neither party will be liable for any delay or failure to perform its obligations under this Agreement (except payment obligations) if the delay or failure is due to causes beyond its reasonable control, such as a strike, blockade, war, act of terrorism, riot, natural disaster, disruption in transportation systems, disruption of labor force, national or state emergency, epidemic, pandemic, communicable disease outbreak, failure or reduction of power or telecommunications or data networks or services, or government act or order.

16.8. Amendments; Waivers. Podium may update or modify these Terms (including the Additional Terms and any referenced policies and other documents) from time to time by posting a revised version on the Website or Services or by notification via the email associated with your account. If a change to these Terms materially modifies your rights or obligations, you may be required to click through the updated Terms to show acceptance and to continue to use the Services. Material modifications are effective upon the earlier of your acceptance of the modified Terms or upon your next subsequent Subscription Term. Immaterial modifications will become effective upon posting or notification, and continued use of the Services or Website, following the update, will constitute acceptance of the updated Terms. If Client does not agree to the updated Terms, Client will no longer have the right to use the Services. Except as otherwise described in this Section, any modification or amendment to this Agreement must be made in writing and signed by a duly authorized representative of each party (each in its discretion). No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement. No waiver of any provision of this Agreement will constitute a waiver of any other provision, whether or not similar,

nor will any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement will not operate as a waiver of such provision or any other provision or of the right to enforce such provision or any other provision. Waivers must be made in writing and executed by a duly authorized representative of the waiving party.

16.9. Headings. The headings used in this Agreement are for ease of reference only. They are not intended as a complete re-statement of the matters contained under each heading, and you acknowledge that you have read and understand all the text of this Agreement, and not just the headings.

16.10. Severability. If any provision of this Agreement is found by any court of competent jurisdiction to be unenforceable, void or invalid, that provision will be limited to the minimum extent necessary so that this Agreement may otherwise remain in effect, and all other provisions remain in full effect.

16.11. No Third-Party Rights. Nothing in this Agreement confers on any third party the right to enforce any provision of this Agreement. Client acknowledges that each Subscription only permits use by and for the legal entity or entities identified in the Subscription Documentation and not any affiliates. Furthermore, Client's affiliates are not permitted to use the Services under these Terms unless an affiliate agrees to these Terms individually and creates its own account.

16.12. Attorneys' Fees and Costs. The substantially prevailing party in any action to enforce this Agreement will be entitled to recover its reasonable attorneys' fees and costs for the action.

16.13. Entire Agreement. This Agreement, including these Terms and any applicable Subscription Documentation, represents the parties' complete and exclusive understanding relating to the Agreement's subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Podium Technology or any other subject matter covered by this Agreement. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) will not apply to this Agreement regardless of when or where adopted. Any terms provided by Client (including as part of any purchase order or other business form used by Client) are for administrative purposes only, and have no legal effect.

16.14. Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one and the same instrument. A facsimile or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties hereto by facsimile or similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery will be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute an original of this Agreement as well as any facsimile or other reproduction hereof.

16.15. Governing Law; Jurisdiction and Venue. This Agreement is governed by the laws of the State of Utah and the United States, without regard to choice or conflict of law rules thereof. The exclusive jurisdiction and venue for actions related to the subject matter of this Agreement will be the state courts located in Salt Lake County or Utah County, Utah or the United States District Court for the District of Utah, and both parties submit to the personal jurisdiction of these courts.

16.16. Notice to California Residents. If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Services or to receive further information regarding use of the Services.

16.17. Notice Regarding Apple. This Section 16.17 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and Podium only, not with Apple Inc. ("Apple"), and Apple is not responsible for the Services or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Services. If the Services fail to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Services. Apple is not responsible for addressing any claims by you or any third party relating to the Services or your possession and/or use of the Services, including: (a) product liability claims; (b) any claim that the Services fails to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third-party claim that the Services and/or your possession and use of the Services infringe a third party's intellectual property rights. You agree to comply with any applicable third-party terms when using the Services. Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms. You hereby represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

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