

Podium API Terms of Use

These Podium API Terms of Use (these "**Terms**") are a binding contract between you ("**you**" or "**your**") and Podium Corporation, Inc. ("**Podium**," "**we**," or "**us**"). These Terms includes all applicable Podium policies and guidelines, including but not limited to our [Privacy Policy](#) and our [Acceptable Use Policy](#), (together, this "**Agreement**") and governs your access to and use of the Podium API (as defined below). If you are entering into this Agreement on behalf of a company or other entity, then "you" means that entity, and you are binding that entity to this Agreement.

This Agreement governs your use of and interaction with the Podium API and the Podium Marketplace, both Beta Services (as defined in the Partner Terms). TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, YOU AGREE THAT THESE BETA SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY, SUPPORT, MAINTENANCE, STORAGE, SLA, OR INDEMNITY OBLIGATIONS OF ANY KIND FROM PODIUM. WITH RESPECT TO BETA SERVICES, YOU FURTHER ACKNOWLEDGE AND AGREE THAT BETA SERVICES 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 THE BETA SERVICES IS AT YOUR SOLE RISK.

BY ACCESSING OR USING THE PODIUM API, OR BY SIGNING OR CLICKING TO ACCEPT THIS AGREEMENT, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE PODIUM API.

PODIUM MAY UPDATE OR MODIFY THE PODIUM API AND THIS AGREEMENT FROM TIME TO TIME BY POSTING THE CHANGES ON THIS SITE OR NOTIFYING YOU VIA EMAIL. THESE CHANGES MAY AFFECT YOUR USE OF THE PODIUM API OR THE WAY YOUR APPLICATION INTERACTS WITH THE PODIUM API. IF PODIUM MAKES A CHANGE THAT'S UNACCEPTABLE TO YOU, YOU SHOULD STOP USING THE PODIUM API.

IN THE EVENT OF ANY CONFLICT BETWEEN THIS AGREEMENT, THE PODIUM PARTNER TERMS, ANY OTHER PARTNER OR DEVELOPER AGREEMENT, OR THE [PODIUM TERMS OF SERVICE](#) (OR, WITH RESPECT TO CLIENTS LOCATED IN AUSTRALIA, THE [PODIUM TERMS OF SERVICE \(AU\)](#)), THE TERMS OF THIS AGREEMENT WILL GOVERN BUT ONLY TO THE EXTENT NECESSARY TO RESOLVE THE CONFLICT.

1. Definitions.

- a. "**API Documentation**" means the API documentation described at <https://docs.podium.com/docs>, as updated from time to time.
- b. "**API Credentials**" means the secure keys, passwords, tokens, or other credentials Podium makes available to you to allow you to access the API.
- c. "**Application**" means any application developed by you to interact with the Podium API in compliance with the terms and conditions of this Agreement.
- d. "**Client**" means a business or entity, including their Authorized Users (as that term is defined in the Podium TOS) that is a user of the Podium Platform and/or Podium Services (as that term is defined in the Podium Terms of Service). If you are a Podium Client using the Podium API on your own behalf, "Client" means you.
- e. "**Client Agreement**" means the terms or agreement entered into between you and a Client, which govern the Client's access to and use of your Application and services if you are acting as a Developer Partner on behalf of a Client or end user and not on your own behalf.

- f. **"Client Data"** means any data, content, or other information, including but not limited to any personal information or sensitive personal information, owned by or relating to a Client or their Customers. Client Data may include Customer Data.
- g. **"Customer"** means any individual or entity that is a client, customer, or patient of a Client, or that is a potential client, customer, or patient of a Client.
- h. **"Customer Data"** means data related to the identity, characteristics, and activities of Customers, collected or submitted to or via the Podium Platform by Client or by Customer(s).
- i. **"Developer Partner"** means a partner who develops an Application or otherwise accesses, connects to, or uses the Podium APIs.
- j. **"Developer Portal"** means portal, available at <https://developer.podium.com/>, by which a partner may sign up to become a Developer Partner and access related materials and documentation.
- k. **"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.
- l. **"Partner Terms"** means the [Podium Partner Program Terms and Conditions](#).
- m. **"Podium API"** means the Podium public application programming interface and any API Documentation or other API materials made available by Podium via Podium.com (<https://www.podium.com/>) including all of its related applications, dashboards, platforms, or other web locations (individually and collectively, the **"Website"**) or otherwise in writing. The Podium API is a Beta Service as defined in the Partner Terms.
- n. **"Podium Data"** means any data, content, or other information owned by or relating to Podium.
- o. **"Podium Marks"** means Podium's proprietary trademarks, trade names, branding, or logos made available for use in connection with the API pursuant to this Agreement.
- p. **"Podium Platform"** means Podium's software-as-a-service and Payments platform as described on the Website or other written documentation provided to you by Podium, and all related services, applications, and technology.
- q. **"Podium Marketplace"** means the mechanism by which Clients can view, access, install, and purchase (as applicable) your Application. The Podium Marketplace is currently a Beta Service (as defined in the Partner Terms).
- r. **"Podium TOS"** means the [Podium Terms of Service](#) or, with respect to Clients located in Australia, the [Podium Terms of Service \(AU\)](#).
- s. **"Territory"** means the United States, Canada, and Australia.

2. Access to and use of the Podium API Access.

a. Podium API License.

(i) Subject to and conditioned on your compliance with this Agreement, Podium grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the term of the Agreement to access and use the Podium API solely to develop, implement, and provide your Application that will communicate and interoperate with the Podium Platform. You acknowledge that there are no implied licenses granted under this Agreement. We reserve all rights that are not expressly granted. You may not use the Podium API or any Podium Marks for any other purpose without our prior written consent.

b. Access to the Podium API.

(i) Approval and API Credentials. In order to access and use the Podium API, you must receive express approval from Podium and you must obtain API Credentials through the registration process set in Podium's sole discretion. Podium may deny you access to the Podium API for any reason. You may not share your API Credentials with any third party (other than a subcontractor as expressly authorized in this Agreement), you must keep your API Credentials and all log-in information secure at all times, and you must use the API Credentials as your sole means of accessing the Podium API. Your API access and API Credentials may be revoked at any time by Podium.

(ii) Compliance with Laws. In accessing or using the Podium API, or in developing, implementing, or distributing your Application, you will comply with all terms and conditions of this Agreement and all guidelines, standards, and requirements that may be posted on the Website or which Podium communicates to you in writing from time to time. You will also, at all times, comply with all applicable state, federal, and international laws, rules, and regulations, 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, Canada's Anti-Spam Legislation ("CASL"), the California Consumer Privacy Act, the California Privacy Rights Act, and other data privacy laws. To the extent the Podium API is subject to US export control laws, including the Export Control Reform Act and its associated regulations, you will not, directly or indirectly, export, re-export, or release the Podium API to, or make the Podium API accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You will comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Podium API available outside the US.

(iii) API Limits. Podium may, in its own discretion, set and enforce limits applicable to your use of the Podium API, which it may communicate to you via the API Documentation or otherwise in writing. You must not attempt to circumvent any such limits. Any use above the standard limits set by Podium must be expressly approved by Podium in writing in advance.

(iv) Use of a Subcontractor. You may not use a subcontractor in developing, implementing, or providing your Application unless such subcontractor has agreed in writing to comply with terms at least as restrictive as the provisions of this Agreement. You are responsible for ensuring that any subcontractor you use in relation to the Podium API complies with the terms of this Agreement, and you will remain fully liable to Podium and Clients for any breach of this Agreement by your subcontractor. You will provide a complete list of your subcontractors upon request by Podium or Client(s), as applicable.

(v) Developer Partners. To the extent you are accessing or using the Podium API as a Developer Partner, and not for your own personal benefit as a Podium Client, you are also subject to and hereby agree to the applicable provisions of the Partner Terms.

c. Podium API Use Restrictions. Except as expressly authorized under this Agreement or otherwise in writing by Podium, you will not:

- (i) access or use the Podium API to distribute data, develop content, or develop an Application except for your use or a Client's use in connection with the Podium Platform;
- (ii) copy, modify, or create derivative works of the Podium API, in whole or in part;
- (iii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Podium API;
- (iv) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Podium API, in whole or in part;
- (v) remove any proprietary notices from the Podium API;
- (vi) use the Podium API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law or would cause Podium or our Client(s), as applicable, to violate any applicable law;
- (vii) combine or integrate the Podium API with any software, technology, services, or materials not authorized by Podium;
- (viii) design or permit your Application to disable, override, or otherwise interfere with any Podium-implemented communications to end users, consent screens, user settings, alerts, warning, or the like;
- (ix) use the Podium API in any of your Application to replicate or attempt to replace the user experience of the Podium Platform;
- (x) use the Podium API in any way that would violate [Podium's Terms of Service](#), if used by a Podium Client, or develop, implement, or distribute any Application that would cause or permit a Client to use the Podium Platform in a manner that would violate Podium's Master Terms of Service;
- (xi) offer or distribute the Application outside the Territory;
- (xii) process or transmit any Podium Data or Client Data outside the Territory, or outside any limited scope of the Territory as you have otherwise been authorized by Podium or the Client, as applicable;
- (xiii) attempt to cloak or conceal your identity of Your Applications when requesting authorization to use the Podium API; or
- (xiv) use the Podium API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware, or other malicious programs or code, counterfeit goods, items

subject to U.S. embargo, unsolicited mass distribution of email ("spam"), multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities or that would otherwise violate Podium's [Acceptable Use Policy](#).

3. Your Application.

a. Obligation to Monitor. You agree to monitor the use of your Application for any activity that violates applicable laws, rules, and regulations or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior, and promptly restrict any offending users of your Application from further use of your Application. You agree to provide a resource for users of your Application to report abuse of your Application.

b. Responsibility for Users. As between you and us, you are responsible for all acts and omissions of your Client or other end users in connection with your Application and their use of the Podium API, if any. You agree that you are solely responsible for posting any privacy notices and obtaining any consents and authorizations from your Client or other end users required under applicable laws, rules, regulations, and Section 7(a)(ii) of this Agreement for their use of your Application. You are further responsible to provide the terms of use of your Application, which are applicable to your Client or other end users, pursuant to Section 7(a)(i) of this Agreement.

c. Podium Marketplace.

(i) Your Application will not be published or otherwise made available in the Podium Marketplace unless and until you have submitted to Podium all documentation requested by Podium and Podium has reviewed such documentation and provided you written notice that your Application has been approved for addition to the Podium Marketplace. Your Application may be approved or denied for addition to the Podium Marketplace in Podium's sole discretion. Once approved and listed on the Podium Marketplace you will be subject to the applicable terms of the Podium Marketplace Terms of Service then in effect.

4. No Support; Updates.

This Agreement does not entitle you to any support from Podium for the Podium API. You acknowledge that we may update or modify the Podium API from time to time and at our sole discretion (in each instance, an "**Update**"), and may require you to obtain and use the most recent version of the Podium API. Updates may adversely affect how your Application communicates with the Podium Platform. You are required to make any changes to the Application that are required for integration as a result of such Update at your sole cost and expense. Your continued use of the Podium API following an Update constitutes binding acceptance of the Update.

5. Podium Rights.

a. Collection and Use of Your Information. We may collect certain information through the Podium API or the Podium Platform about you or any of your employees, contractors, agents, or users. By accessing, using, or providing information to or through the Podium API or the Podium Platform, you consent to all actions taken by us with respect to your information in compliance with this Agreement, the then-current version of our Privacy Policy, and applicable data protection requirements, available at Podium.com. You also agree that Podium may send you emails and text messages, including transactional, operational, and marketing messages, possibly using automated technology, to the email or phone number you provide. Message and/or data rates may apply to such messages, and you may opt out at any time. You will keep your contact information up to date and will notify Podium immediately in the event that your contact information changes.

b. Monitoring; Auditing. You agree that Podium may monitor your use of the Podium API to confirm your compliance with your obligations under this Agreement and to improve the Podium API, the Podium Platform, and the user experience of the Podium API and Podium Platform. You also understand and agree that Podium will have the right to audit your Application, systems, and associated records to confirm your compliance with this Agreement. Upon our request, you will provide reasonable assistance to Podium to allow us to perform these monitoring and auditing functions. You will also ensure that if you use a subcontractor in relation to the Podium API or to develop, implement, or provide your Application, that the subcontractor agrees in writing to this same obligation.

6. Intellectual Property Ownership; Feedback.

a. IP Ownership. You acknowledge that, as between you and us, (a) we own all right, title, and interest, including all intellectual property rights, in and to the Podium API, the Podium Platform, and the Podium Marks; and (b) you own all right, title, and interest, including all intellectual property rights, in and to your Applications, except to the extent the Application is built by or for Podium or as otherwise stated in this Agreement or another writing mutually agreed to by and between you and Podium. Additionally, to the extent applicable, as between you and Podium, Podium will own all right, title, and interest in any Client Data that Podium receives as a result of a Client's use of an Application, subject to the applicable terms between Podium and the Client, including Podium's Privacy Policy. You will use commercially reasonable efforts to safeguard the Podium API and Podium Marks (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. You will promptly notify us if you become

aware of any infringement of any intellectual property rights in the Podium API and Podium Marks and will fully cooperate with us, in any legal action taken by us to enforce our intellectual property rights.

b. Your Marks. You hereby grant Podium a non-exclusive, royalty free license during the term of the Agreement to use your trademarks, service marks, and trade names for the purposes of advertising, promoting, merchandising, marketing, and otherwise communicating to Clients, Customers, and other third parties regarding your Application and/or services.

c. Podium Marks. Podium hereby grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the term of the Agreement to display the Podium Marks solely in connection with the use of the Podium API and your Application. You may not use the Podium Marks: (a) in any way that is misleading or disparaging; (b) in a way that implies that Podium endorses, sponsors, approves, or is in any way responsible for your Application or the services you provide (unless otherwise expressly authorized by Podium in writing); (c) in violation of any provision of this Agreement or any applicable law; or (d) in a manner that does not comply with any branding guidelines we post on our Website or otherwise notify you of in writing. You must stop using the Podium Marks immediately upon termination or otherwise upon our request. You agree that your use of the Podium Marks in connection with this Agreement will not create any right, title, or interest in or to the Podium Marks in favor of you, and all goodwill associated with the use of the Podium Marks will inure to the benefit of Podium.

d. Feedback. If you or any of your employees, contractors, or agents sends or transmits any communications or materials to us by mail, email, telephone, or otherwise, suggesting or recommending changes to the Podium API, the Podium Platform, or the Podium Marks, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), all such Feedback is and will be treated as non-confidential. You hereby assign to us on your behalf, and on behalf of your employees, contractors, and agents, all right, title, and interest in, and we are free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

e. Competitive or Similar Materials. In no event will Podium be precluded from discussing, reviewing, developing for itself, having developed, acquiring, licensing or developing for third parties, or marketing and distributing, materials which are competitive with an Application or other products or services provided by you, irrespective of their similarity to your current products or products that you may develop.

7. Privacy and Security.

a. Client Agreement and Privacy Policy.

(i) Client Agreement. Before you access or use any Client Data or any Client Account (other than your own if you are a Client using the Podium API on your own behalf), you must, by way of a legally valid Client Agreement, obtain all necessary permissions, authorizations, and consents from each Client or end user, as the case may be, to access and use their Client Account and Client Data via the Podium API, your Application, and services. The Client Agreement for each Client must include provisions that are at least as protective as those contained in this Agreement. The Client Agreement must also include provisions informing the Client that:

(A) Podium will not be responsible for any support or assistance relating to your Application or services (unless Podium has expressly stated otherwise in writing);

(B) You, not Podium, are solely responsible for your Application, your related services, and for any liability or damages that arise out of a Client's authorized use of the Application; and

(C) The provisions of your Client Agreement govern the scope of your access and use rights with respect to the Client's Data and Account.

(ii) Privacy Policy. You must maintain, and your Application must display, a legally compliant privacy policy detailing the data and information you'll collect from any Client or user when they use your Application, and you agree that you will only use such data and information as expressly authorized by the Client in each case.

(iii) Protected Health Information. To the extent you or your Application or services will access or use any Client Protected Health Information ("PHI") as that term is defined under HIPAA, you represent and warrant that you will execute a legally valid Business Associate Agreement ("BAA") with each applicable Client prior to using or accessing their PHI via the Podium API and your Application. You will only use such data as authorized under the BAA and HIPAA and will remain fully liable for any violations with respect to PHI.

b. Security. You will implement and maintain a security program designed to prevent the unauthorized access, use, or disclosure of any of the data you access or use via the Podium API and in developing, implementing, and distributing your Application and related services. Your security program must include appropriate administrative, physical, and technical safeguards that meet or exceed industry standards, according to the nature and scope of the data you use or access via the Podium API, and which is. You will also ensure that any subcontractor you use in relation to the Podium API also agrees to comply with this provision. You also represent and warrant that any Applications you develop or distribute using the Podium API or Podium Marketplace will not contain any security vulnerabilities. If you are using the Podium API for security testing purposes, you also agree that you will adhere to Podium's testing policy outlined in our [Vulnerability Disclosure Policy](#).

(i) Data Breach and Notification. In the event of any actual or suspected unauthorized access, use, disclosure, loss, or processing of Podium Data or Client Data ("Data Breach") you will notify Podium in writing immediately (but no later than

twenty-four (24) hours) upon discovering the Data Breach. Upon becoming aware of any Data Breach, you will, at your own expense, work to immediately mitigate the effects of the Data Breach, correct any flaws or deficiencies that contributed to the Data Breach, and cooperate fully with Podium, including providing any and all information Podium requests relating to the Data Breach. You will also, at your own expense, provide all notifications to Clients, end users, and any other parties affected by the Data Breach as required by law and your contractual obligations to the affected parties.

(ii) Deletion. Except as necessary to comply with your obligations under applicable law, you must immediately delete all Client Data: (a) upon request from the Client; and (b) upon termination of this Agreement or revocation of your access to the Podium API.

8. Confidentiality

a. 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 14(f)), provided that such party remains responsible for any recipient's compliance with the terms of this Section 8 and these recipients are bound to confidentiality obligations no less protective than this Section.

b. 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.

c. 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.

9. Disclaimer of Warranties

THE PODIUM API, THE PODIUM PLATFORM, AND PODIUM MARKS ARE PROVIDED "AS IS" AND PODIUM SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PODIUM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PODIUM MAKES NO WARRANTY OF ANY KIND THAT THE PODIUM API, THE PODIUM PLATFORM, OR PODIUM MARKS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

10. Indemnification

You agree to indemnify, defend, and hold harmless Podium and its officers, directors, employees, consultants, affiliates, agents, successors, and assigns (together, the "**Podium Entities**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to: (a) your access to and use or misuse of the Podium API, Podium Platform, or Podium Trademarks; (b) your breach of this Agreement; (c) your Application, including any Client's or other end user's use thereof; (d) any third party claim that your product or services, including any Application infringe the intellectual property or other rights of a third party; (e) a violation of applicable laws, rules, or regulations; (f) a Data Breach; and (g) any gross negligence or willful misconduct. In the event we seek indemnification or defense from you under this provision, we will promptly notify you in writing of the claim(s) brought against us for which we seek indemnification or defense. We reserve the right, at our option and in our sole discretion, to assume full control of the defense of claims with legal counsel of our choice. You may not enter into any third-party agreement that would, in any manner whatsoever, constitute an admission of fault by us or bind us in any manner, without our prior written consent. In the event we assume control of the defense of such claim, we will not settle any such claim requiring payment from you without your prior written approval.

11. Limitations of Liability

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL PODIUM ENTITIES BE LIABLE TO YOU OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (a) ANY LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS,

OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE PODIUM API; OR (b) ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIVE HUNDRED DOLLARS EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR PODIUM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWELVE MONTHS AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM.

12. Term and Termination.

a. Term. The term of this Agreement will begin when you access the Podium API or when you otherwise sign or click to accept this Agreement and will continue in effect until terminated as set forth in this Section.

b. Termination. We may immediately terminate or suspend this Agreement, any rights granted herein, and/or your licenses under this Agreement, in our sole discretion at any time and for any reason, by providing notice to you or revoking access to the Podium API and the Podium Marks. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement. You may terminate this Agreement at any time by ceasing your access to and use of the Podium API and Podium Marks.

c. Effect of Termination. Upon termination of this Agreement for any reason all licenses and rights granted to you under this Agreement will also terminate and you must cease using, destroy, and permanently erase from all devices and systems you directly or indirectly control all copies of the Podium API, Podium Marks, and other Podium Confidential Information, as well as any and all Client Data or Customer Data then in your possession or control. You must also immediately cease: (a) your use and access to the Podium API, Podium Marks, and Podium Platform; and (b) your distribution and/or provision your Application. Upon request from Podium or a Client, as applicable, you will also provide written certification of your compliance with this section. Any terms that by their nature are intended to continue beyond the termination or expiration of this Agreement will survive termination. Termination will not limit any of Podium's rights or remedies at law or in equity.

13. Non-Exclusivity; Competitive or Similar Products or Materials.

a. Non-Exclusivity. The arrangements under this Agreement are non-exclusive, and nothing in this Agreement is intended, nor should it be construed, to create any form of exclusive relationship between you and Podium. Unless the parties expressly agree otherwise in writing, each party is free to enter into similar arrangements with other parties, provided that doing so will not cause the party to violate any of its obligations under this Agreement.

b. Competitive or Similar Products or Materials. Nothing in this Agreement will be deemed or construed to preclude or otherwise limit Podium's ability to discuss, develop, or distribute, either on its own or by a third-party subcontractor, any products, services, or other materials that are similar or competitive to your products, services, or materials, including your Application. Notwithstanding the foregoing, Podium may not use your Confidential Information in discussing, developing, or distributing any such products, services, or other materials.

14. General.

a. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. You may not assign this Agreement without the advance written consent of Podium, which will not be unreasonably withheld. 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 14(a) will be null and void.

b. No Third-Party Rights. Nothing in this Agreement confers on any third party the right to enforce any provision of this Agreement. You acknowledge that this Agreement only permits use by you and the legal entity or entities you represent and are binding to this Agreement and not any affiliates. Furthermore, your affiliates are not permitted to use the Podium API under this Agreement unless that affiliate agrees to this Agreement individually and receives its own access to the Podium API.

c. Notices. Any notice or communication to Podium under this Agreement must be in writing. You 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 email address(es) on record for your account or as otherwise provided by you to Podium. Podium may also provide operational notices regarding the Podium API or other business-related notices through conspicuous posting of such notice on Podium's Website. You hereby consent to receipt of electronic notices and agree 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 you or your network provider may apply to email notifications.

d. Modifications. Podium may update or modify these Terms 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 and 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 you do not agree to the updated Terms, you will no longer have the right to use the API. 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. Waiver must be made in writing and executed by a duly authorized representative of the waiving party.

e. 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.

f. Subcontractors. Podium may use subcontractors and permit them to exercise the rights granted to Podium fulfilling its obligations or exercising its rights under this Agreement.

g. 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.

h. Force Majeure. Neither party will be liable for any delay or failure to perform its obligations under this Agreement (except applicable 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.

i. 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.

j. Injunctive Relief. You understand and agree that the unauthorized use or disclosure of any Podium or Client Data you access or use via the Podium API or Podium Platform may cause irreparable harm to Podium or our Clients. You therefore agree that Podium will have the right to obtain an immediate injunction against any breach or threatened breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

k. Non-Waiver. 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.

l. Entire Agreement. This Agreement, including any terms, policies, or documents referenced or linked to herein, 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 API 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 you provide to Podium are for administrative purposes only, and have no legal effect.