

# Podium Partner Program Terms and Conditions

This is an agreement between you ("Partner" or "you") and Podium Corporation, Inc. ("Podium," "we," or "us"). By clicking to accept these terms, by enrolling in the Podium Partner Program (as defined herein), by marketing or offering Podium Product(s) or Service(s) to Leads or End User(s) (as defined below) under these terms, or by signing or clicking to accept any agreement referencing these Terms, you agree to all the applicable terms and conditions of these Podium Partner Terms of Service ("Terms" or "Agreement").

By accepting this Agreement you represent and warrant that you have the legal power and authority to enter into this Agreement. If Partner is an entity, this Agreement is entered into by an employee or agent with all necessary authority to bind that entity to this Agreement.

We may periodically update these Terms. We might also choose to replace these Terms in their entirety if, for example, the Podium Partner Program ends or becomes part of another partner program. If we update or replace the Terms we will notify you in accordance with Section 15.7 below. If you don't agree to any material update or replacement, you may choose to terminate as we describe below.

This Agreement addresses different types of Partner activities. Part A applies to all Partners. Part B applies to Wholesaler Partners; Part C applies to Referral Partners; and Part D applies to Reseller Partners, each as defined below. If you do not participate in partner activities described in Parts B, C, or D then these Parts of the Agreement do not apply to you.

If you have entered into another agreement with Podium concerning your role as a Podium Partner (as further defined below), the terms of that agreement control in the event of any conflict with these Terms.

## PART A – TERMS APPLICABLE TO ALL PARTNERS

### 1. Definitions

1.1 "**Content**" means text, images or other content that the Partner or End User selects or submits for use or incorporation with the Service (including without limitation, chat and message logs).

1.2 "**End User**" means any person or entity that is a client or customer of Partner or Podium, or that is a potential client or customer of Partner or Podium, and that accesses or uses a Podium Service or Product for its own use, but not for resale or further distribution. An End User shall be a "Lead" of a party, where such party introduces such Lead to the other party for purposes of entering into an End User Subscription Agreement.

1.3 "**End User Subscription**" means the agreed upon duration of an End User's contract term for Podium Services, as specified in the applicable Podium Partner Agreement and End User Subscription Agreement. If no specific End User contract term requirements are specified in Partner's Podium Partner Agreement, the End User Subscription shall mean 12 months.

1.4 "**End User Subscription Agreement**" means a quote, services or purchase agreement, order form, statement of work, online registration form, or other similar documentation which details the Podium Services purchased by an End User and by which an End User agrees to a Subscription for Podium Services.

1.5 "**End User Transaction**" means the execution of an End User Subscription Agreement, whereby an End User contracts with a Partner, or with Podium directly, for Podium Services.

1.6 "**Partner**" means any entity, individual or otherwise, participating in the Podium Partner Program as a wholesaler partner who is

authorized under the Agreement to distribute, sell, and/or service the Podium Products and to contract with and bill End Users directly for purchased Podium Products ("Wholesaler Partner," as further defined below), as a referral partner who is authorized to market to, solicit, and refer potential customers to the Podium Products ("Referral Partner," as further defined below), or as a reseller partner who is authorized to under the Agreement to distribute, sell, and/or service the Podium Products to customers, provided that any End User Transactions and all applicable billing occur directly between End User(s) and Podium for all purchased Podium Products ("Reseller Partner," as further defined below).

1.7 "**Podium Partner Agreement**" means a signed agreement, including all attachments and/or exhibits, between Podium and Partner, referencing these Terms and authorizing Partner to participate in the Podium Partner Program.

1.8 "**Podium Technology**" means the Service(s), Product(s), any and all related or underlying documentation, technology, code, know-how, logos and templates (including in any reports or output obtained from the Service), anything delivered as part of support or other services, and any updates, modifications or derivative works of any of the foregoing, including as may incorporate any feedback. Podium Technology includes [Podium.com \(https://www.podium.com/\)](https://www.podium.com/), including all of its related applications, dashboards or platforms (individually and collectively, the "Website").

1.9 "**Product(s)**" means the Podium products and/or Services specified herein or on any applicable Podium Partner Agreement, which Partner is authorized to sell, market, or promote, as applicable, but in no event shall any "Podium Product" include any source code or object code.

1.10 "**Partner Portal**" means the website Podium assigns Partner access to in order for Partner to register a Referral, track the progress of Lead submissions, and monitor Wholesaler, Referral, or Reseller Payments, as applicable.

1.11 "**Referral**" means a person, business, or entity submitted and accepted through the Partner Portal by a Podium Referral Partner that has the potential to purchase Podium Services and that is not otherwise a Podium client or has cancelled Podium within the last 60 days.

1.12 "Service(s)" means the specific proprietary product of Podium provided to Partner and/or End User for End User's use during an End User Subscription. The "Service(s)" also includes the Website, as defined herein. The "Service" does not include any Third-Party Product.

1.13 "**Support Services**" means the support and maintenance services related to the Podium Product.

1.14 "**Territory**" means the specific territory listed on Partner's Podium Partner Agreement. If no territory is listed on Partner's Podium Partner Agreement, "Territory" means the United States, Canada, and Australia.

1.15 "**Third-Party Product**" means any add-on, applications, integrations, software, code, online services, systems and other products not developed by Podium.

Other terms are defined in other Sections of this Agreement

## 2. PODIUM TECHNOLOGY

2.1 Podium Services. Podium provides a proprietary multi-product platform which includes without limitation reviews, messaging, payment processing, and automation, and any other services Podium may offer from time to time. To the extent that Partner will have direct access to the Podium Services for reporting purposes or otherwise, Partner will be subject to, and must agree to, the applicable provisions of the Podium Master Terms of Service, currently available at <https://legal.podium.com/#termsofservice-us>, as amended from time to time ("Podium Master Terms of Service").

2.2 Modifications of the Services/Products. Podium may modify the Product(s) set forth in the applicable Podium Partner Agreement to include or remove any Services, provided that Podium provides Partner with at least thirty (30) days advance written notice of any material change.

2.3 Beta Releases. From time to time, Podium may, in its sole discretion, invite Partner to use, resell, or offer for referral, on a trial basis, potential new services or features that are in development and not yet available to all Partners or Podium clients ("Beta Services"). Beta Services may be subject to additional terms and conditions, which Podium will provide to Partner prior to Partner's

use of the Beta Services. Such Beta Services and all associated conversations and materials relating thereto will be considered Confidential Information of Podium and subject to the confidentiality provisions of this Agreement. Podium makes no guarantees or promises with respect to the continued availability of any Beta Services or that future versions of a Beta Services will be released or will be available under the same commercial or other terms. Notwithstanding anything to the contrary herein, Podium may discontinue the Beta Services at any time for any reason or no reason in Podium's sole discretion, without liability.

### **3. PODIUM PARTNER PROGRAM**

3.1 Overview. Subject to these Terms and the applicable Podium Partner Agreement, Podium will provide you the opportunity to market, promote, and/or sell certain Podium Products, and, as applicable, onboard and support customers for those Products through the partner program as set forth herein (the "Podium Partner Program"). Partners may participate in multiple partner activities as set forth in Partner's Podium Partner Agreement.

#### **3.2 Partner Obligations.**

(a) Eligibility. To be eligible to participate as a Partner in the Podium Partner Program, you must agree to and comply with all the applicable terms and conditions of this Agreement, including but not limited to the applicable eligibility criteria set forth herein ("Eligibility Criteria") and any applicable Podium Partner Agreement for the duration of the Term. Podium may terminate this Agreement and/or discontinue Partner payments if you fail to meet any of the applicable Eligibility Criteria set forth in this Agreement at any time.

(b) Compliance with Applicable Laws. Partner shall comply, and shall ensure that any third parties performing sales, marketing or referral activities on its behalf comply, with all applicable foreign and domestic laws (including without limitation export laws, privacy regulations and laws applicable to sending of unsolicited email), governmental regulations, ordinances, and judicial administrative orders. Partner shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to Podium, Podium's customers, or to the public. Export laws and regulations of the United States and any other relevant local export laws and regulations may apply to the Podium Products. Partner will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury. Partner will not directly or indirectly export, re-export, or transfer the Podium Products to prohibited countries or individuals or permit use of the Podium Products by prohibited countries or individuals.

(c) Partner Rights and Permissions. Partner represents and warrants that: (i) Partner has all sufficient rights and permissions to provide the lead or End User data to us for our use in sales and marketing efforts or as otherwise set forth in this Agreement, (ii) Partner's participation in this Program will not conflict with any of its existing agreements or arrangements; and (iii) Partner owns or has sufficient rights to use and to grant to us our right to use Partner trademarks as set forth herein.

(d) Sales and Marketing Practices. In selling, marketing, and/or promoting the Podium Products and otherwise performing under this Agreement, Partner will (i) not make any representations, warranties, or guarantees concerning the Podium Products that are inconsistent with or in addition to those made by Podium in this Agreement; or (ii) not advertise the Podium Product(s) at retail prices less than those set forth in the applicable Podium Partner Agreement or as otherwise communicated to you in writing by your assigned Partner Manager.

(e) Cost of Marketing Activities. Unless otherwise set forth in the applicable Podium Partner Agreement, Partner will bear all costs and expenses related to Partner's marketing or promotion of Podium or the Podium Products under this Agreement.

(f) Duty to inform. Partner shall promptly notify Podium of any information known to Partner that could reasonably lead to a claim, demand, or liability of or against Podium by any third party.

(g) Partner Manager. Each party will designate a single point of contact within its organization to manage the relationship established by this Agreement ("Partner Manager"). Either party may change its Partner Manager by providing written notice to the other party. The Partner Managers will meet as necessary to discuss the business relationship and manage the activities contemplated by this Agreement. Disputes that cannot be resolved by the Partner Managers will be escalated to more senior executives for resolution.

### **4. PRICING, PAYMENTS, AND REPORTING**

4.1 Payments. Each party will make applicable payments of fees, commissions, revenue shares, and any other payment according to the terms of this Agreement and any applicable Podium Partner Agreement, including any exhibits attached thereto.

4.2 Taxes. Other than net income taxes imposed on Podium, Partner will bear responsibility for all applicable taxes, duties, and other governmental charges (collectively, "taxes") resulting from Partner's activities under this Agreement. Partner will pay any additional taxes as are necessary to ensure that the net amounts received by Podium after all such taxes are paid are equal to the amounts that Podium would have been entitled to in accordance with this Agreement as if the taxes did not exist.

4.3 Records. During the Term of this Agreement and for two years after, Partner will maintain at its primary place of business full, true, and accurate books of account (kept in accordance with generally accepted accounting principles) and records concerning all transactions and activities under this Agreement. Such books and records will include and record, without limitation, all data that Partner is required to provide with respect to Podium Product purchases (including End User contact information) executed by Partner and any applicable Referrals.

4.4 Audit of Records. Podium, or its authorized agent, shall have the right to examine and audit the books and records set forth in Section 4.3 at its own expense and upon reasonable prior notice during normal business hours. In the event of any dispute as to the sufficiency or accuracy of such records, Podium may have an independent auditor examine and certify such records at Podium's expense, provided that Partner shall be required to pay for such expenses if it is determined that Podium was underpaid amounts due to it, or that Partner was overpaid by Podium, by more than 5% for any annual period. Partner shall make prompt adjustment to compensate for any errors or omissions disclosed by any such examination and certification of Partner's records.

## 5. TERM AND TERMINATION

5.1 Term. Unless otherwise set forth in your Podium Partner Agreement, this Agreement will commence upon the Effective Date of the applicable Podium Partner Agreement, and continue for 12 months (the "Initial Term"). This Agreement shall automatically, and without further action by the parties hereto, renew for additional terms of 12 months (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either party hereto provides written notice of non-renewal to the other party no later than 30 days prior to the end of the then-current Term or this Agreement is terminated as otherwise set forth herein.

5.2 Termination without Cause. Unless otherwise specified in any Podium Partner Agreement applicable to you, Podium may terminate this Agreement without cause by giving you 30 days prior written notice. No refunds will be given for termination pursuant to this section.

5.3 Termination for Cause. If either party fails to perform any of its material obligations under this Agreement, the other party may terminate this Agreement by giving 30 days prior written notice if the matters set forth in such notice are not cured to the other party's reasonable satisfaction within the 30-day period. Additionally, Partner may terminate this Agreement upon 30 days prior written notice, in the event Podium makes material changes to these Terms to which Partner does not agree.

5.4 No Liability for Termination. Except as expressly required by law, if either party terminates this Agreement in accordance with any of the provisions of this Agreement, neither party will be liable to the other because of such termination for compensation, reimbursement, or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases, or commitments in connection with the business or goodwill of Podium or Partner. Termination will not, however, relieve either party of obligations incurred prior to the effective date of the termination.

5.5 Effects of Termination. If this Agreement is terminated for any reason, (a) Partner will pay to Podium any fees, reimbursable expenses, compensation, and other amounts that have accrued prior to the effective date of the termination, (b) any and all liabilities accrued prior to the effective date of the termination will survive, (c) Partner will immediately cease use of and cease providing access to the Podium Products; and (d) Partner will immediately cease to use all Podium Trademarks and any listing by Partner of Podium's name in any website, directory, public record, or elsewhere, must be removed by Partner as soon as possible, but in any event not later than the subsequent issue of such publication. If Podium terminates this Agreement under Section 5.3, all Podium's payment obligations under this Agreement shall immediately cease. If Podium terminates this Agreement under Section 5.2 above, Podium will continue to make payment to Partner as set forth in Part D, Section 4 below, if applicable, for up to 12 months from the date of termination. The following provisions will survive any expiration or termination of this Agreement: Sections 4, 5, 8, 9, 10, 11, 13, 14, and 15. End User Subscription Agreements will survive in accordance with their terms.

## **6. PODIUM NAME AND TRADEMARK USAGE**

6.1 Use of Company Names. Podium may identify Partner in Podium advertising and marketing materials as a Podium Partner. Podium will not use any Partner trademarks to identify Partner without Partner's prior written approval, which approval will not be unreasonably withheld. Partner may identify Podium as the supplier of the Podium Products in Partner's advertising and marketing materials if such materials are approved in writing in advance by Podium, which approval will not be unreasonably withheld.

6.2 Podium Trademarks. Subject to the provisions of this Section 6, during the Term of this Agreement, Partner will have the right to advertise the Podium Products with Podium trademarks, trade names, service marks, and logos of Podium ("Podium Trademarks"), subject to Podium's prior inspection and written approval of all materials bearing Podium Trademarks. All representations of Podium Trademarks that Partner intends to use will first be submitted to Podium for approval (which will not be unreasonably withheld) of design, color, and other details, or will be exact copies of those used by Podium. Partner will fully comply with all guidelines, if any, communicated by Podium concerning the use of Podium Trademarks. Podium may modify any of Podium Trademarks, or substitute an alternative mark for any of Podium Trademarks, upon 30 days prior notice to Partner.

6.3 Use of Podium Trademarks. Partner will not alter or remove any of Podium Trademarks contained on or within the Podium Products. Except as set forth in this Section 6, nothing contained in this Agreement will grant or will be deemed to grant to Partner any right, title, or interest in or to Podium Trademarks. All uses of Podium Trademarks and related goodwill will inure solely to Podium and Partner will obtain no rights or goodwill with respect to any of Podium Trademarks, other than as expressly set forth in this Agreement, and Partner irrevocably assigns to Podium all such right, title, interest, and goodwill, if any, in any of Podium Trademarks. At no time during or after the Term of this Agreement will Partner challenge or assist others to challenge Podium Trademarks (except to the extent expressly required by applicable law) or the registration thereof or attempt to register any of Podium Trademarks or marks or trade names that are confusingly similar to those of Podium. Additionally, Partner will not: (a) use the Podium Trademarks or variations or misspellings thereof in Partner's business name, logo, branding, advertising, social media or domain name (including without limitation top-level domains, sub-domains and page URLs), products or services (including without limitation, in the name or design of any Application or Theme), unless granted express written permission by Podium in advance of each use; or (b) purchase or register search engine or other pay-per-click keywords (such as Google Ads), trademarks, email addresses or domain names that use the Podium Trademarks or any variations or misspellings thereof that may be deceptively or confusingly similar to the Podium Trademarks.

## **7. PROPRIETARY RIGHTS AND NOTICES**

7.1 Proprietary Rights. Podium will own all right, title, and interest in and to the Podium Services, Product(s) and Podium Technology. Partner will not act to jeopardize, limit, or interfere in any manner with Podium's ownership of and rights with respect to the Podium Products. Partner will have only those rights in or to the Podium Services or Products and documentation granted to it pursuant to this Agreement.

7.2 Proprietary Rights Notices. Partner and its employees and agents will not remove or alter any trademark, trade name, copyright, patent, patent pending, or other proprietary notices, legends, symbols, or labels appearing on the Podium Products or related documentation delivered by Podium.

## **8. DATA & OWNERSHIP**

8.1 Data Ownership. The parties agree that each party shall retain all right, title, and interest worldwide in its inventions and all applicable intellectual property rights, as of the Effective Date or discovered, conceived, or reduced to practice by such party during the Term. The parties further agree that data transmitted under this Agreement (including, but not limited to, reports, structured data, and visual representations of data), together with all intellectual property rights in such data ("Data"), shall be owned as follows: (a) Data transferred by Partner to Podium (excluding any Data provided to Podium to which Partner would not otherwise have any ownership rights) shall be owned by Partner; (b) Data stored in Podium's platform shall be owned by Podium (excluding any Data provided by Partner to which Podium would not otherwise have any ownership rights).

8.2 Monitoring. Partner understands and agrees that Podium, and any third-party platform(s) Partner or its End User(s) uses or accesses in connection with the Service(s), may monitor and analyze Content submitted by Partner or End User (including but not limited to reviews, surveys, messages, chats, etc.) to improve the Website, Products, Services or third-party platform; to improve

Partner's or End User's experience using the Website, Products, Services or third-party platform; to customize and communicate informational or product offerings and promotions to Partner or End User; and/or to make the Website, Products, Services, or third-party Platform more helpful or useful to Partner, End User and other users.

8.3 Feedback. If Partner elects to provide any suggestions, comments, improvements, information, ideas or other feedback or related materials to Podium (collectively, "Feedback"), Partner 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.

## **9. LIMITED WARRANTY AND DISCLAIMER**

9.1 Limited Warranty. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

### **9.2 WARRANTY DISCLAIMER.**

(a) EXCEPT FOR THE EXPRESS WARRANTY provided in section 9.1, ALL PODIUM PRODUCTS AND RELATED SERVICES 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 NON-INFRINGEMENT. PODIUM MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT PODIUM PRODUCT AND PODIUM TECHNOLOGY WILL MEET PARTNER OR END USER'S REQUIREMENTS OR EXPECTATIONS, THAT END USER DATA WILL BE ACCURATE, COMPLETE OR PRESERVED WITHOUT LOSS, OR THAT PODIUM TECHNOLOGY WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE. PODIUM WILL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY END USER 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 END USER DATA AUTHORIZED BY THIS AGREEMENT, OR FOR DECISIONS OR ACTIONS TAKEN (OR NOT TAKEN) BY END USER BASED UPON PODIUM TECHNOLOGY OR PODIUM'S RELATED PRODUCTS (INCLUDING CHANGES TO END USER PROPERTIES). THE DISCLAIMERS IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN. PARTNER OR END USER 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.

(b) 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 PARTNERS OR CLIENTS WITH LEGAL ADVICE REGARDING DATA PRIVACY OR COMPLIANCE WITH RELEVANT LAW IN ANY JURISDICTION, AND ANY STATEMENTS MADE BY PODIUM TO ITS PARTNERS OR CLIENT(S) SHALL NOT CONSTITUTE LEGAL ADVICE. USE OF THE SERVICES DOES NOT GUARANTEE COMPLIANCE WITH APPLICABLE LAWS IN ANY JURISDICTION.

## **10. PODIUM INDEMNIFICATION**

10.1 Infringement Indemnification. Podium will indemnify Partner against any third-party claims and related out-of-pocket costs, damages, liabilities and out-of-pocket expenses arising from or pertaining to a claim that the Podium Services infringe upon any intellectual property rights of any third party if: (a) Partner gives Podium prompt written notice of the claim; (b) Podium has full and complete control over the defense and settlement of the claim; (c) Partner provides assistance in connection with the defense and settlement of the claim as Podium may reasonably request; and (d) Partner complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

10.2 Mitigation of Infringement Action. If permitted use of the Podium Products are, or in Podium's reasonable opinion are likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 10.1, then Podium will either: (a) procure the continuing right to use of the Podium Products; (b) replace or modify the Podium Products in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, Podium is unable to do either (a) or (b), Podium will (c) terminate the licenses with respect to the Podium Products subject to the infringement claim and refund to Partner all unused fees pre-paid by Partner (if any).

10.3 Exceptions. Podium will have no obligation under this Section 10 for any alleged infringement or misappropriation to the extent that it arises out of or is based upon (a) use of the Podium Products in combination with other products if such alleged infringement or misappropriation would not have arisen but for such combination; (b) Podium Products that are provided to comply with designs, requirements, or specifications required by or provided by Partner, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications; (c) use of Podium Products for purposes not intended; (d) failure to use Podium Products in accordance with instructions provided by Podium, if the alleged infringement or misappropriation would not have occurred but for such failure; or (e) any modification of the Podium Products not made or authorized in writing by Podium where such alleged infringement or misappropriation would not have occurred absent such modification. Partner is responsible for any costs or damages that result from these actions.

10.4 Exclusive Remedy. This Section 10 states Podium's sole and exclusive liability, and Partner's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by the Podium Products.

## **11. PARTNER INDEMNIFICATION**

11.1 Partner will indemnify and hold Podium 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 (a) breach or alleged breach of Partner's obligations under this Agreement, including but not limited to Podium's use, as contemplated in this Agreement, of any End User information provided to Podium by Partner, (b) Partner's negligence or willful misconduct, and (c) any claim of a governmental entity or other party that Partner has violated any law, rule, or regulation. Partner also agrees to defend Podium 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. Partner 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. INSURANCE**

12.1 Required Coverage. During the Term of this Agreement, Partner, at its sole cost and expense, will carry and maintain insurance with a reputable company or companies insuring such party, its agents, employees, and associates from general liability, specifically covering personal and bodily injury and property damage. Partner must obtain insurance with limits reasonable for a company such as Partner.

12.2 Proof of Insurance. Upon written request, Partner will provide Podium with a Certificate of Insurance stating that the foregoing insurance policies are in full force and effect. Partner will require each insurer to give Partner 30 days' written notice before the policy or policies are canceled or materially altered.

## **13. CONFIDENTIAL INFORMATION**

13.1 Definition. Confidential Information" means any trade secrets or other information of a party, whether of a technical, business, or other nature (including, without limitation, information relating to a party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects, or other affairs), that is disclosed to a party during the Term of this Agreement and that such party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party. Confidential Information does not include any information that: (a) was known to the receiving party prior to receiving the same from the disclosing party in connection with this Agreement; (b) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party; (c) is acquired by the receiving party from another source without restriction as to use or disclosure; or (d) is or becomes part of the public domain through no fault or action of the receiving party.

13.2 Restricted Use and Nondisclosure. During and after the Term of this Agreement, each party will: (a) use the other party's Confidential Information solely for the purpose for which it is provided; (b) not disclose the other party's Confidential Information to a third party unless the third party must access the Confidential Information to perform in accordance with this Agreement, and the third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this Section 13; and (c) maintain the secrecy of, and protect from unauthorized use and disclosure, the other party's Confidential Information to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

13.3 Required Disclosure. If either party is required by law to disclose the Confidential Information or the Terms of this Agreement, the disclosing party must give prompt written notice of such requirement before such disclosure, to the extent permitted by law, and assist the non-disclosing party in obtaining an order protecting the Confidential Information from public disclosure.

13.4 Return of Materials. Upon the termination or expiration of this Agreement, or upon earlier request, each party will deliver to the other or destroy all Confidential Information that it may have in its possession or control. Notwithstanding the foregoing, neither party will be required to return materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement.

#### **14. LIMITATION OF LIABILITY**

14.1 IN NO EVENT WILL PODIUM, ITS SHAREHOLDERS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY LOST PROFITS, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL PODIUM'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT AND USE OF THE SERVICES AND PRODUCTS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED IN AGGREGATE THE TOTAL AMOUNT PAID OR PAYABLE BY END USERS IN RELATION TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY. THE PARTIES AGREE THAT THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE SERVICES CAN BE MADE AVAILABLE FOR FREE OR AT REDUCED PRICES, ONLY BECAUSE OF PODIUM'S RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. SOME STATES LIMIT THE APPLICABILITY OF SUCH LIMITATIONS AND DISCLAIMERS. IN THOSE STATES, THE LIMITATIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT ALLOWED BY LAW.

#### **15. GENERAL**

15.1 Independent Contractors. Although the term "partner" is used throughout the Agreement, the relationship of the parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement should be construed to give either party the power to (a) act as an agent or (b) direct or control the day-to-day activities of the other. Financial and other obligations associated with each party's business are the sole responsibility of that party.

15.2 Non-Exclusivity. Nothing in this Agreement is intended to create, nor will it be construed as creating, any exclusive arrangement between the Parties to this Agreement. This Agreement will not restrict either Party from entering into similar arrangements with others, provided it does not breach its obligations under this Agreement by doing so, including without limitation, any confidentiality obligations. Additionally, Podium is not precluded from discussing, reviewing, developing for itself, having developed, acquiring, licensing, or developing for or by third parties, as well as marketing and distributing materials, products or services which are competitive with Partner's products or services, regardless of their similarity to Partner's products or services, provided that Podium does not violate its confidentiality obligations to do so.

15.3 Direct Sales by Podium. Podium reserves the unrestricted right to market, distribute, sell, and upsell licenses to the Podium Products worldwide, including without limitation through original equipment manufacturers, value added resellers, and other third-party intermediaries and directly to End Users.

15.4 Assignability. Partner may not assign its right, duties, or obligations under this Agreement without Podium's prior written consent, except in connection with a merger, acquisition or sale or exclusive license of all or substantially all of Partner's assets to



a party that could not reasonably be deemed a competitor of Podium. If consent is given, this Agreement will bind Partner's successors and assigns. Any attempt by Partner to transfer its rights, duties, or obligations under this Agreement except as expressly provided in this Agreement is void.

15.5 Non-Solicitation; Noncompetition. During the Term of this Agreement and for a period of six months thereafter, neither party hereto will solicit any End User of the other party to cease doing business with such other party; provided, however, that this provision shall not limit the ability of a party to continue servicing such End User(s) with respect to services performed by such party during the Term of this Agreement. Additionally, during the Term of this Agreement and for a period of one year thereafter, Partner will not, directly or indirectly, (a) employ or solicit the employment or services of an employee or independent contractor of Podium; or (b) develop or offer for sale or license to any End User or other third-party tools or services that directly competes with or is substantially similar to any Podium Product(s) without the prior express written consent of Podium.

15.6 Notices. Any notice or communication to Podium under this Agreement must be in writing. Partner 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 listed on Partner's Podium Partner Agreement or, at Podium's option, to Partner's last-known postal address.

15.7 Amendments; Waivers. Podium may update or modify these Terms (including referenced policies and other documents) from time to time by posting a revised version on the Website, Service, or Partner Portal, or by notification via the email associated with your Podium Partner 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 Renewal Term. Immaterial modifications will become effective upon posting or notification, and continued activity as a Partner, following the update, shall constitute acceptance of the updated Terms. If you do not agree to the updated Terms, you will no longer have access to the Services and/or Partner Portal. 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 shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall 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.

15.8 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. Each party will use reasonable efforts to mitigate the effect of any force majeure event.

15.9 Governing Law. 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 shall 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.

15.10 Severability; Binding Effect. If any provision of the Terms shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of the terms shall not be impaired. The Terms shall be binding on and inure to the benefit of the Parties and their heirs, personal representatives, successors, and assigns.

15.11 Interpretation. The parties have had an equal opportunity to participate in the drafting of this Agreement and the attached exhibits, if any. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language. The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders.

15.12 Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts will be construed as and constitute the same agreement. This Agreement may also be executed and delivered by facsimile or other electronic transmission and such execution and delivery will have the same force and effect of an original document with original signatures.

15.13 Entire Agreement. This Agreement, including all exhibits and the applicable Podium Partner Agreement, is the final and complete expression of the agreement between these parties regarding the licensing of the Products. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No employee, agent, or other representative of Podium has any authority to bind Podium with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.

## **PART B- ADDITIONAL TERMS APPLICABLE TO WHOLESALER PARTNERS**

In addition to the terms and conditions set forth in Part A above, this Part B applies to all Partners designated as Wholesaler Partners in the applicable Podium Partner Agreement.

### **1. WHOLESALER PARTNER ELIGIBILITY, APPOINTMENT AND RESPONSIBILITIES**

1.1 Eligibility Criteria. To be eligible for appointment and ongoing participation in the Podium Partner Program as a Wholesaler Partner, Partner must agree to and comply with the following Eligibility Criteria:

- (a) Enrollment and Acceptance. Partner must enroll as a Podium Wholesaler Partner by: (i) executing a Podium Partner Agreement; or (ii) completing enrollment via the Podium Partner Portal. Partner's enrollment must be accepted by Podium, and Podium may reject Partner's enrollment for any reason.
- (b) Payment of Enrollment Fees. Partner must pay to Podium any applicable enrollment fees ("Enrollment Fee(s)") to the extent they are specified and agreed to during Partner's enrollment process.
- (c) Completion of necessary training/certification. To the extent applicable, Partner must complete all necessary training and/or certifications, as reasonably required by Podium from time to time.
- (d) Acceptance of and compliance with applicable terms. Partner must accept and comply with all applicable terms set forth in the Podium Partner Agreement and this Agreement, all as amended from time to time.
- (e) End User Product Usage. During the Term, Partner will be accountable for its End Users' usage of the Podium Products. In order to remain eligible participate in the Podium Partner Program Partner must ensure that its End Users meet the following usage-based thresholds throughout the Term:
  - (i) New End Users must, on average, send 25 messages using the Podium Services within their first 30 days; and
  - (ii) At least 80% of Partner's End Users must remain above 25 inbound messages per month via the Podium Products.

If the Partner's End User(s) fail to meet the threshold set forth in 1.1(a)(i) at any time or, in the case of the threshold set forth in 1.1(a)(ii), for two consecutive months, Partner may be suspended from the Podium Partner Program and any underperforming Partner End User(s) may lose access to Podium Services. During any period of suspension, Partner will not be permitted to register any new Leads or End User accounts.

1.2 Authorization and Appointment. Subject to Partner's acceptance of and ongoing compliance with these Terms and any applicable Podium Partner Agreement, Podium hereby authorizes and appoints Partner as a non-exclusive reseller and distributor of the Podium Products listed specifically in Partner's Podium Partner Agreement. Although the terms "distribute", "sell", and "sale" are used throughout this Agreement, the parties recognize and agree that the Podium Products are only licensed and/or sublicensed, not sold.

### 1.3 License Grants and Restrictions

(a) License to Podium Products. Subject to the terms and conditions of this Agreement, Podium grants to Partner a limited, non-exclusive, non-transferable, non-sublicensable right to (i) resell the Podium Products to End Users in the Territory; (ii) make the Podium Products available to End Users; and (iii) unless otherwise specified in Partner's Podium Partner Agreement, internally use the Podium Products solely to support Partner's rights and obligations under this Agreement.

(b) End User Sublicensing. Subject to the terms and conditions of this Agreement, Partner may allow End Users to access and use the Podium Products. Prior to accessing or using the Podium Products, Partner must require each End User to accept Podium Master Terms of Service and Privacy Policy (currently available at <https://legal.podium.com/#termsofservice-us>) (the "End User Terms"), as set forth on Podium's website. Partner will promptly notify Podium of any breach of a material obligation under the End User Terms". Any terms and conditions of any End User Subscription Agreement executed between Partner and End User in connection with a purchase of the Podium Products that are different from or in addition to the terms and conditions of the End User Terms are not binding on Podium and are ineffective. Each End User Subscription added by Partner shall be contracted for a minimum of 12 months. If End User terminates all services with Partner, including Podium Products, Partner may submit a written early contract termination request.

(c) General Restrictions. Except as explicitly provided in this Agreement or expressly permitted by applicable law, Partner will not, and will not permit or authorize End Users or other third parties to (i) decompile, disassemble, reverse engineer, or otherwise attempt to discern the source code of the Podium Products; (ii) copy, modify, enhance, or otherwise create derivative works of the Podium Products; (iii) develop methods to enable unauthorized use of the Podium Products; (iv) develop product(s) or service(s) that are competitive or substantially similar to the Podium Product(s) or Service(s) in violation of Podium's proprietary or intellectual property rights or Partner's confidentiality obligations hereunder; or (v) white label any Podium Service(s) or Product(s).

(d) Export Restrictions. Partner will not distribute the Podium Products in any foreign territory where any of the End User Terms would be unenforceable, where the terms would not provide the protections to Podium and the Podium Products intended under this Agreement, or where there is a significant risk that the Podium Products would fall into the public domain. Partner will not directly or indirectly import, export, or re-export the Podium Products outside the United States without obtaining all permits and licenses as may be required by, and conforming with, all applicable laws and regulations of the governments of the United States and the foreign territory. Partner represents and warrants that Partner is not located in, under the control of, or a national or resident of any country on the United States Commerce Department's Table of Denial Orders.

## 2. LEAD & END USER TRANSACTION REGISTRATION

2.1 Requirements. Partner must identify and register Leads, and confirm all End User Transactions, through the Partner Portal, or other electronic delivery methods as designated by Podium in writing. Each Lead registration shall include at a minimum the information required in the Partner Portal registration form, including but not limited to name and contact details, which must be completed in full in order for the Lead to be accepted. Podium will provide Partner electronic or written confirmation of its acceptance (or denial) of a Lead. Each Lead submitted to Podium that Podium has given Partner electronic or written acceptance shall be referred to as a "Qualified Wholesaler Lead". The date on which such acceptance is given shall be referred to, with respect to such Qualified Wholesaler Lead, the "Qualified Wholesaler Lead Date". Following the Qualified Wholesaler Lead Date, Partner shall have a six- (6) month period of non-solicitation from Podium, unless Partner notifies Podium that they are no longer in an active sales process. Upon completion of an End User Transaction, Partner shall confirm such transaction by communicating it to Podium via the Partner Portal or in writing to Partner's assigned Podium Partner Manager.

2.2 Acceptance. In order for a Lead to be accepted as a Qualified Wholesaler Lead, Partner must meet the following conditions:

(a) At the time of submission, the Lead must meet the definition herein of a Qualified Wholesaler Lead.

(b) The Qualified Wholesaler Lead must purchase Podium Services within six (6) months of the initial Lead submission by Partner, unless extensions are granted by Podium in writing.

(c) Podium must receive a signed contract with payment information from the Qualified Wholesaler Lead.

(d) Information submitted as a Wholesaler Lead must be made in good faith based on Partner's actual contacts with the approval of the business owner or primary business operator.

(e) If two or more Podium Partners attempt to register the same Lead to Podium within a six-month period, the first partner to submit the Lead information will have rights to such Lead unless and until the Lead by the first partner is marked with a "closed lost" status in Podium's system due to inability to complete a sale.

2.3 Refusal. Podium may decline a Lead submission for any of the following reasons:

(a) Such Lead is:

- (i) a current client of Podium,
- (ii) a former client that has cancelled Podium within the last 60 days,
- (iii) a former or current reseller or strategic partner of Podium,
- (iv) an active Podium sales opportunity with contact in the past 30 days, or
- (v) a marketing lead of Podium at the time the applicable Lead is submitted to Podium by Partner;

(b) Such Lead has already been submitted to Podium by another partner or other strategic partnership arrangement or other Podium Partner program (though Podium may, in its sole discretion, accept the same Lead from multiple partners, subject to Section 2.2(e) above);

(c) Such Lead does not meet Podium's qualifications for its clients for reasons of credit worthiness, type of business, or location;

(d) Partner fails to comply with the process for submitting the Lead in accordance with the procedures designated by Podium in this Agreement or Partner's failure to comply with any other procedure or policy set forth in the Partner Portal; or

(e) Such Lead is identified as a competitor or reseller.

### **3. PRODUCT ONBOARDING AND SUPPORT SERVICES**

3.1 Delivery of Products and API. Subject to Partner's and, as applicable, each End User's performance of its duties and obligations under this Agreement, including but not limited to timely payment of all applicable payments to Podium, Podium shall use commercially reasonable efforts to make the Podium Products available to End Users following new signup. Upon Partner's written request, Podium will deliver to Partner, at Podium's option, either an application program interface (API) or defined user interface for transferring data to and from the Podium Products. If Partner accesses or uses any Podium API, Partner must comply with Podium's applicable API policies.

3.2 Tiered Support. Unless otherwise specified in Partner's Podium Partner Agreement, Partner will provide primary support for the Podium Products and the components thereof. Podium will offer secondary support on technical issues, troubleshooting, and system integrations.

3.3 Technical Contacts. The individuals listed as Partner in Podium Partner Agreement will be the primary contacts for each party with regard to the Support Services. Each party will provide the other party with written notice if its technical contact is changed. The parties will select technical contacts that have been trained in the operation of the Podium Products.

### **4. PRICING & PAYMENTS**

4.1 Pricing. Partner shall pay Podium the applicable fees for all End User Subscriptions according to the Wholesaler pricing specified in Partner's Podium Partner Agreement, including any exhibits attached thereto.

4.2 Payment. Partner will pay the applicable fees for each End User license beginning on the day the End User Transaction is confirmed in the Partner Portal and on a prorated basis for the remainder of the first month of each End User Subscription. Thereafter, Partner will pay the applicable End User fee(s) at the beginning of each month of the End User Subscription, except as otherwise agreed to by the parties in writing. Partner is responsible to keep an active credit card on file with Podium for payment of all active End User Subscriptions. Credit card information may be updated through Accounts Receivable. Partner bears sole responsibility to pay for accepted End User Subscriptions of Podium Products regardless of any non-payments by any of its End

Users.

4.3 Currency and Late Payment. In the event Partner does not pay the End User fees due for any End User's account within fifteen (15) days after notice of non-payment from Podium: (a) the unpaid fees will incur a late fee equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law, and (b) Podium may suspend the End User's access to the Podium Services while any payment is delinquent and Podium will communicate directly with End User if communication with Partner cannot be established. Unless otherwise specified in Partner's Podium Partner Agreement, all amounts payable under this Agreement are denominated in United States dollars, and Partner will pay all such amounts in United States dollars.

## **PART C- ADDITIONAL TERMS APPLICABLE TO REFERRAL PARTNER**

In addition to the terms and conditions set forth in Part A above, this Part C applies to all Partners designated as Referral Partners in the applicable Podium Partner Agreement.

### **1. REFERRAL PARTNER ELIGIBILITY, APPOINTMENT AND RESPONSIBILITIES**

1.1 Eligibility Criteria. To be eligible for appointment and ongoing participation in the Podium Partner Program as a Referral Partner, Partner must agree to and comply with the following Eligibility Criteria:

- (a) Enrollment and Acceptance. Partner must enroll as a Podium Referral Partner by: (a) by executing a Podium Partner Agreement or (b) completing enrollment via the Podium Partner Portal. Partner's enrollment must be accepted by Podium, and Podium may reject Partner's enrollment for any reason.
- (b) Payment of Enrollment Fees. Partner must pay to Podium any applicable enrollment fees ("Enrollment Fee(s)") to the extent they are specified and agreed to during Partner's enrollment process.
- (c) Completion of training/certification. To the extent applicable, Partner must complete all necessary training and/or certifications, as reasonably required by Podium from time to time and
- (d) Acceptance of and compliance with applicable terms. Partner must accept and comply with all applicable terms set forth in the Podium Partner Agreement and this Agreement, all as amended from time to time.

1.2 Appointment. Subject to the terms of this Agreement, including the applicable Podium Partner Agreement, Podium hereby appoints Partner as a non-exclusive representative in the Territory identified in Partner's Podium Partner Agreement to market to, solicit and/or refer potential customers for the Podium Products. Partner will not have the authority, express or implied, to make any commitment or incur any obligations on behalf of Podium other than making referrals as set forth in this Agreement.

1.3 Referral Partner Responsibilities. Partner shall prospect, identify, and promote Podium to Referrals interested in the Podium Products. Partner shall register each Referral Lead as set forth in Part C, Section 2 below. Partner shall conduct all business under Partner's own name and in accordance with the highest business standards, acting in good faith and in compliance with all laws and not perform any act which would or might reflect adversely upon Podium's business, products, or brand integrity.

1.4 General Restrictions. Except as explicitly provided in this Agreement or expressly permitted by applicable law, Partner will not, and will not permit or authorize its employees or other third parties to (a) decompile, disassemble, reverse engineer, or otherwise attempt to discern the source code of the Podium Products; (b) copy, modify, enhance, or otherwise create derivative works of the Podium Products; (c) develop product(s) or service(s) that are competitive or substantially similar to the Podium Product(s) or Service(s) in violation of Podium's proprietary or intellectual property rights or Partner's confidentiality obligations hereunder; or (d) develop methods to enable unauthorized use of the Podium Products.

### **2. LEAD REGISTRATION**

2.1 Requirements. Partner must identify and register Referrals through the Partner Portal, or other electronic delivery methods as designated by Podium in writing. Each Referral shall include at a minimum the information required in the Partner Portal registration form, or otherwise specified by Podium, including but not limited to name and contact details, which must be completed in full in order for the Referral to be accepted. Podium will provide Partner electronic or written confirmation of its acceptance (or denial) of a Referral. Each Referral submitted to Podium that Podium has given Partner electronic or written

acceptance shall be referred to as a "Qualified Referral Lead". The date on which such acceptance is given shall be referred to, with respect to such Qualified Referral Lead, the "Qualified Referral Lead Date". Following the Qualified Referral Lead Date, Partner shall have a six- (6) month period of non-solicitation from Podium, unless Partner notifies Podium that they are no longer in an active sales process. To the extent Podium shares affiliate links with Partner for use with Referrals, Partner shall not share such affiliate links publicly in any manner.

2.2 Acceptance. In order for a Referral to be accepted as a Qualified Referral Lead, Partner must meet the following conditions:

- (a) At the time of submission, the Referral must meet the definition herein of a Qualified Referral Lead.
- (b) The Qualified Referral Lead must purchase Podium Services within six (6) months of the initial Referral submission by Partner, unless extensions are granted by Podium in writing.
- (c) The Qualified Referral Lead must purchase Podium Services within six (6) months of the initial Referral submission by Partner, unless extensions are granted by Podium in writing.
- (d) Information submitted as a Referral must be made in good faith based on Partner's actual contacts with the approval of the business owner or primary business operator.
- (e) If two or more Podium Referral Partners refer the same Referral to Podium within a six-month period, the first partner to submit the Referral information will earn the Referral Payment unless the referral by the first partner is marked with a "closed lost" status in Podium's system due to inability to complete a sale.

2.3 Refusal. Podium may decline a Referral submission for any of the following reasons:

- (a) Such Referral is:
  - (i) a current client of Podium,
  - (ii) a former client that has cancelled Podium within the last 60 days,
  - (iii) a former or current partner of Podium,
  - (iv) an active Podium sales opportunity with contact in the past 30 days, or
  - (v) a marketing lead of Podium at the time the applicable Referral is made to Podium by Partner;
- (b) Such Referral has already been submitted to Podium by another partner or other strategic partnership arrangement or other Podium program (though Podium may, in its sole discretion, accept the same Referral from multiple partners, subject to Section 2.2(e) above);
- (c) Such Referral does not meet Podium's qualifications for its clients for reasons of credit worthiness, type of business, or location;
- (d) Partner fails to comply with the process for submitting the Referral in accordance with the procedures designated by Podium in this Agreement or Partner's failure to comply with any other procedure or policy set forth in the Partner Portal; or
- (e) Such Referral is identified as a competitor or reseller.

### 3. REFERRAL PAYMENT

3.1 Calculation. Subject to the terms of this Agreement, Podium shall pay Partner a one-time single commission solely with respect to each Qualified Referral Lead (the "Referral Payment"). The Referral Payment is Partner's applicable percentage (set forth in Partner's Podium Partner Agreement or the applicable Partner Portal commission report) of each Qualified Referral Lead's Annual Contract Value (ACV).

3.2 Referral Payment Schedule. Referral Payments will be calculated within the first week of the month following the purchase of a Subscription by a Qualified Referral Lead. The Referral Payment will be issued within forty (40) days after the end of the month in which the Referral Payment accrued.

3.3 Requirements. In order to receive payment under this Agreement, Partner must:\

- (a) Not be in breach of any of the terms and conditions of this Agreement;
- (b) Provide all necessary information for payment including but not limited to banking account information and/or mailing address; and
- (c) Prior to commencing Partner activities, Partner must submit to Podium the necessary tax documents (i.e., a fully completed Form W-9 including Partner's Tax Identification Number for U.S.-based Partners, or Form W-8BEN or W-8BEN-E for non-U.S.-based Partners)

3.4 Delays. Referral Payments will be paid based on the current banking information provided to Podium through the payment processing software as designated by Podium. Partner is required to notify and update Podium promptly when any changes happen to Partner's address or banking information. Failure to submit Form W-9 (or Form W-8BEN or W-8BEN-E tax forms, where applicable) before the first payout of the Referral Payment may result in delay of payment. All Referral Payments by Podium will be made by bank transfer or check and it is Partner's responsibility to ensure that Partner has provided Podium with the most up-to-date and correct bank information or mailing address to facilitate payment.

3.5 Forfeiture. Notwithstanding the forgoing or anything to the contrary in this Agreement, if: (a) any of the requirements set forth in Section 3.3 above remain outstanding for six (6) months immediately following the close of a Qualified Referral Lead, or (b) Podium has attempted to pay Partner a Referral Payment by bank transfer or by check at least twice and both attempts have been unsuccessful, then Partner's right to receive a Referral Payment for a Qualified Referral Lead will be forever forfeited ("Forfeited Payment"). Podium assumes no obligation or responsibility to pay Partner a Referral Payment once it has been designated a Forfeited Payment.

## **PART D**

In addition to the terms and conditions set forth in Part A above, this Part D applies to all Partners designated as Reseller Partners in the applicable Podium Partner Agreement.

### **1. RESELLER PARTNER ELIGIBILITY, APPOINTMENT AND RESPONSIBILITIES**

1.1 Eligibility Criteria. To be eligible for appointment and ongoing participation in the Podium Partner Program as a Solution Partner, Partner must agree to and comply with the following Eligibility Criteria:

- (a) Enrollment and Acceptance. Partner must enroll as a Podium Solution Partner by: (i) executing a Podium Partner Agreement; or (ii) completing enrollment via the Podium Partner Portal. Partner's enrollment must be accepted by Podium, and Podium may reject Partner's enrollment for any reason.
- (b) Payment of Enrollment Fees. Partner must pay to Podium any applicable enrollment fees ("Enrollment Fee(s)") to the extent they are specified and agreed to during Partner's enrollment process.
- (c) Completion of necessary training/certification. To the extent applicable, Partner must complete all necessary training and/or certifications, as reasonably required by Podium from time to time.
- (d) Acceptance of and compliance with applicable terms. Partner must accept and comply with all applicable terms set forth in the Podium Partner Agreement and this Agreement, including any Additional Terms, all as amended from time to time.
- (e) End User Product Usage. During the Term, Partner will be accountable for its End Users' usage of the Podium Products. In order to remain eligible to receive the Reseller Payment (as defined below), Partner's End Users must meet the following usage-based thresholds throughout the Term:
  - (i) New End Users must, on average, send 25 messages using the Podium Products within their first 30 days; and
  - (ii) At least 80% of Partner's End Users must remain above 25 inbound messages per month via the Podium Products.

If Partner fails to meet the threshold set forth in 1.1(a)(i) or the threshold set forth in 1.1(a)(ii) for two consecutive months, Partner may be suspended from the Podium Partner Program and will forfeit applicable Reseller Payments. Additionally, underperforming

Partner End Users may lose access to Podium Products. During any period of suspension, Partner will not be permitted to register any new Leads or End User accounts or receive any Reseller Payments.

1.2 Authorization and Appointment. Subject to Partner's acceptance of and ongoing compliance with these Terms and any applicable Podium Partner Agreement, Podium hereby authorizes and appoints Partner as a non-exclusive reseller and distributor of the Podium Products listed specifically in Partner's Podium Partner Agreement. Although the terms "distribute", "sell", and "sale" are used throughout this Agreement, the parties recognize and agree that the Podium Products are only licensed and/or sublicensed, not sold.

### 1.3 License Grants and Restrictions

(a) License to Podium Products. Subject to the terms and conditions of this Agreement, Podium grants to Partner a limited, non-exclusive, non-transferable, non-sublicensable right to (i) resell the Podium Products to End Users in the Territory; (ii) make the Podium Products available to End Users; and (iii) unless otherwise specified in Partner's Podium Partner Agreement, internally use the Podium Products solely to support Partner's rights and obligations under this Agreement.

(b) End User Sublicensing. Subject to the terms and conditions of this Agreement, Partner may allow End Users to access and use the Podium Products. Prior to accessing or using the Podium Products, Partner must require each End User to accept Podium Master Terms of Service and Privacy Policy (currently available at <https://legal.podium.com/#termsofservice-us>) (the "End User Terms"), as set forth on Podium's website. Partner will promptly notify Podium of any breach of a material obligation under the End User Terms". Any terms and conditions of any End User Subscription Agreement executed between Partner and End User in connection with a purchase of the Podium Products that are different from or in addition to the terms and conditions of the End User Terms are not binding on Podium and are ineffective.

(c) General Restrictions. Except as explicitly provided in this Agreement or expressly permitted by applicable law, Partner will not, and will not permit or authorize End Users or other third parties to (i) decompile, disassemble, reverse engineer, or otherwise attempt to discern the source code of the Podium Products; (ii) copy, modify, enhance, or otherwise create derivative works of the Podium Products; (iii) develop methods to enable unauthorized use of the Podium Products; (iv) develop product(s) or service(s) that are competitive or substantially similar to the Podium Product(s) or Service(s) in violation of Podium's proprietary or intellectual property rights or Partner's confidentiality obligations hereunder; or (v) white label any Podium Service(s) or Product(s).

(d) Export Restrictions. Partner will not distribute the Podium Products in any foreign territory where any of the End User Terms would be unenforceable, where the terms would not provide the protections to Podium and the Podium Products intended under this Agreement, or where there is a significant risk that the Podium Products would fall into the public domain. Partner will not directly or indirectly import, export, or re-export the Podium Products outside the United States without obtaining all permits and licenses as may be required by, and conforming with, all applicable laws and regulations of the governments of the United States and the foreign territory. Partner represents and warrants that Partner is not located in, under the control of, or a national or resident of any country on the United States Commerce Department's Table of Denial Orders.

## 2. LEAD & END USER TRANSACTION REGISTRATION

2.1 Requirements. Partner must identify and register Leads, and confirm and/or complete, if applicable, all End User Transactions through the Partner Portal, or other electronic delivery methods as designated by Podium in writing. Each Lead registration shall include at a minimum the information required in the Partner Portal registration form, including but not limited to name and contact details, which must be completed in full in order for the Lead to be accepted. Podium will provide Partner electronic or written confirmation of its acceptance (or denial) of a Lead. Each Lead submitted to Podium that Podium has given Partner electronic or written acceptance shall be referred to as a "Qualified Reseller Lead". The date on which such acceptance is given shall be referred to, with respect to such Qualified Reseller Lead, the "Qualified Reseller Lead Date". Following the Qualified Reseller Lead Date, Partner shall have a six- (6) month period of non-solicitation from Podium, unless Partner notifies Podium that they are no longer in an active sales process. For End User Transactions, Partner must submit the following information.....

2.2 Acceptance. In order for a Lead to be accepted as a Qualified Reseller Lead, Partner must meet the following conditions:



- (a) At the time of submission, the Lead must meet the definition herein of a Qualified Reseller Lead.
- (b) The Qualified Reseller Lead must purchase Podium Services within six (6) months of the initial Lead submission by Partner, unless extensions are granted by Podium in writing.
- (c) Podium must receive a signed contract with payment information from the Qualified Reseller Lead.
- (d) Information submitted as a Reseller Lead must be made in good faith based on Partner's actual contacts with the approval of the business owner or primary business operator.
- (e) If two or more Podium Partners attempt to register the same Lead to Podium within a six-month period, the first partner to submit the Lead information will earn the Reseller Payment unless the Lead by the first partner is marked with a "closed lost" status in Podium's system due to inability to complete a sale.

2.3 Refusal. Podium may decline a Lead submission for any of the following reasons:

- (a) Such Lead is:
  - (i) a current client of Podium,
  - (ii) a former client that has cancelled Podium within the last 60 days,
  - (iii) a former or current reseller or strategic partner of Podium,
  - (iv) an active Podium sales opportunity with contact in the past 30 days, or
  - (v) a marketing lead of Podium at the time the applicable Lead is submitted to Podium by Partner;
- (b) Such Lead has already been submitted to Podium by another partner or other strategic partnership arrangement or other Podium Partner program (though Podium may, in its sole discretion, accept the same Lead from multiple partners, subject to Section 2.2(e) above);
- (c) Such Lead does not meet Podium's qualifications for its clients for reasons of credit worthiness, type of business, or location;
- (d) Partner fails to comply with the process for submitting the Lead in accordance with the procedures designated by Podium in this Agreement or Partner's failure to comply with any other procedure or policy set forth in the Partner Portal: or
- (e) Such Lead is identified as a competitor or reseller.

### **3. PRODUCT ONBOARDING AND SUPPORT SERVICES**

3.1 Tiered Support. Unless otherwise specified in Partner's Podium Partner Agreement, Partner will provide primary support for the Podium Products and the components thereof. Podium will offer secondary support on technical issues, troubleshooting, and system integrations.

3.2 Technical Contacts. The individuals listed as Partner in Podium Partner Agreement will be the primary contacts for each party with regard to the Support Services. Each party will provide the other party with written notice if its technical contact is changed. The parties will select technical contacts that have been trained in the operation of the Podium Products.

### **4. RESELLER PAYMENTS**

4.1 Reseller Payment Calculation. Subject to the terms of this Agreement, if Podium is responsible for billing and collecting fees directly from End Users for any End User Subscriptions that resulted from Partner's authorized activities hereunder, as specified in applicable Podium Partner Agreement and End User Subscription Agreement (s), Partner will receive a commission calculated as a percentage of the total amount of Subscription fees actually paid to Podium by Partner's End User(s) for Podium Products (the "Reseller Payment"). The applicable Reseller Payment percentage rate will be specified in Partner's Podium Partner Agreement and will correspond to the Partner obligations expressly specified in Partner's Podium Partner Agreement.

4.2 Payment Schedule. Podium will calculate and pay Reseller Payments on a monthly basis, with payment being issued to Partner within forty (40) days after the end of the month in which the Reseller Payment accrued.

4.3 Requirements. In order to receive payment under this Agreement, Partner must:

- (a) Not be in breach of any of the terms and conditions of this Agreement;
- (b) Provide all necessary information for payment including but not limited to banking account information and/or mailing address; and
- (c) Prior to commencing Partner activities, Partner must submit to Podium the necessary tax documents (i.e., a fully completed Form W-9 including Partner's Tax Identification Number for U.S.-based Partners, or Form W-8BEN or W-8BEN-E for non-U.S.-based Partners)

4.4 Delays. Reseller Payments by Podium to Reseller will be paid based on the current banking information provided to Podium through the payment processing software as designated by Podium. Partner is required to notify and update Podium promptly when any changes happen to Partner's address or banking information. Failure to submit Form W-9 (or Form W-8BEN or W-8BEN-E tax forms, where applicable) before the first payout of the Reseller Payment may result in delay of payment. All Reseller Payments by Podium will be made by bank transfer or check and it is Partner's responsibility to ensure that Partner has provided Podium with the most up-to-date and correct bank information or mailing address to facilitate payment.

4.5 Forfeiture. Notwithstanding the forgoing or anything to the contrary in this Agreement, if: (a) any of the requirements set forth in Section 4.3 above remain outstanding for six (6) months immediately following the close of a Qualified Lead, or (b) Podium has attempted to pay Partner a Reseller Payment by bank transfer or by check at least twice and both attempts have been unsuccessful, then Partner's right to receive a Partner Payment for a Qualified Lead will be forever forfeited ("Forfeited Payment"). Podium assumes no obligation or responsibility to pay Partner a Reseller Payment once it has been designated a Forfeited Payment.