

Podium Developer Terms

Thank you for choosing to develop on the Podium Developer Platform.

Podium.com (<https://www.podium.com>), including all of its related applications, dashboards, or platforms (individually and collectively, the “**Website**”), is owned and operated by Podium Corporation, Inc. (“**Podium**”, “**we**” or “**us**”). The Podium Developer Platform (defined below) allows you to build Apps (as defined herein) for users of the Podium Services (as defined in Podium’s Terms of Service located at <https://legal.podium.com/#termsofservice-us>). By clicking on “I agree” (or a similar button) or by using or developing on the Podium Developer Platform, you agree to be bound by these Terms, so please read them carefully.

These Podium Developer Terms (the “**Developer Terms**” or “**Terms**”) are a binding agreement between Podium and the individual or entity registering as a developer on the Podium Developer Platform (“**you**” or “**Developer**”). If you are using the Podium Developer Platform on behalf of a company, organization, or other entity, then “**Developer**” or “**you**” means that entity, and you are binding that entity to these Terms. You represent and warrant that you have the legal power and authority to enter into these Terms and that, if the Developer is an entity, these Terms are entered into by an employee, agent, or other authorized representative with all necessary authority to bind that entity to these Terms. The Podium Developer Platform is not intended for and may not be used by anyone under the age of 18.

Podium may modify these Terms from time to time, subject to Section 19.7 (Amendments; Waiver).

1. Program Overview. The Podium marketplace is an online marketplace (the “**Marketplace**”) for cloud and downloadable software applications, plugins, and extensions that are designed to operate in connection with Podium’s Services (“**Apps**”). Pursuant to these Terms, you may develop Apps to be listed on the Marketplace where Podium clients subscribed to Podium’s Services (“**Podium Clients**”) may access and use your Apps. The Podium Marketplace is intended only to be used and accessed in the United States, Canada, and Australia (the “**Territory**”). “**Podium Developer Platform**” means Podium’s developer platform, including the Podium API (as defined in the [Podium API Terms of Use](https://docs.podium.com/docs) (the “**API Terms**”), API keys, CLIs, sample code, access tokens, SDKs, and other tools described at <https://docs.podium.com/docs>. Your use of the Podium Developer Platform, the ecosystem of Apps, and the Marketplace, and your interaction with Podium Clients is governed by these Terms (the “**Podium Developer Program**”).

2. Eligibility.

2.1. In order to develop to the Marketplace, you must be in good standing and not previously suspended or removed from the Podium Developer Program in the past.

2.2. The following use cases for developing Apps are permitted under these Terms. Any other use cases must be expressly approved in writing by Podium in advance:

2.2.1. A Podium Client developing an App solely for its own personal and private use (a “**Private App**”);

2.2.2. A third-party developer developing an App for a single Podium Client that intends to submit Apps to the Marketplace for use solely by such Podium Client (a “**Third-Party Private App**”); or

2.2.3. A third-party developer developing an App for use by any Podium Client via the Marketplace (a “**Public App**”).

2.3. Prior to developing and/or hosting an App on the Marketplace, Podium must validate that you are an established company or individual developer. If Developer is an individual, you must be 18 years or older.

3. Use Rights. You may use the Podium Developer Platform to develop and use Apps in connection with Podium Services, but only as permitted by these Terms and the [API Terms](#). Failure to comply with the requirements listed in these Terms may result in Podium, in its sole discretion, removing your App from the Marketplace and suspending your access to the Marketplace, the Sandbox, the Podium

API, and the Podium Developer Platform. All of your use rights in these Terms (including your rights to use Podium Marks below) are limited, non-exclusive, non-sublicensable, and non-transferable. You may, however, permit your agents and contractors to exercise your use rights on your behalf, provided that you remain responsible for their compliance with these Terms. You agree to comply as follows:

3.1. Compliance with Podium Policies. Subject to all terms and conditions of these Terms, including any Additional Terms, Podium grants Developer a non-exclusive, non-transferable, non-sublicensable, revocable, limited right and license within the Territory (to the extent available in the Territory) to use the Podium Developer Platform to develop Apps, but only in accordance with these Terms (including the [API Terms](#)), Podium's Acceptable Use Policy ("**Acceptable Use Policy**") (currently available at <https://legal.podium.com/#aup-us>), and all applicable scope of use descriptions provided to Developer by Podium. Although the Podium Services, the Podium Developer Platform, and the Marketplace may be accessible worldwide, Podium makes no representation that the Podium Services, the Podium Developer Platform, Apps, or the Marketplace are appropriate or available for use in locations outside the Territory (or that all products or features of the Podium Services, Podium Developer Platform, Apps, or the Marketplace are available throughout the Territory). Furthermore, accessing the Podium Services, Podium Developer Platform, Apps, or the Marketplace from territories where their content or use is illegal is prohibited. Those who choose to access the Podium Services, Podium Developer Platform, Apps, or the Marketplace from other locations do so at their own initiative and are responsible for compliance with local laws and any costs associated with access or use outside the Territory. You may not use or export the Podium Services, Podium Developer Platform, Apps, or the Marketplace in violation of U.S. export laws and regulations.

3.2. Compliance with Laws. You warrant and represent that you will fully comply with all applicable local, state, federal, and international laws, rules, and regulations, or amendments thereto, including but not limited to the Federal Trade Commission's Telemarketing Sales Rule, the Telephone Consumer Protection Act of 1991, the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Gramm-Leach-Bliley Act of 1999, the CAN-SPAM Act, Do Not Call rules and prohibitions, and Canada's Anti-Spam Legislation ("**CASL**") (individually a "**Law**" and collectively, "**Laws**") and that you will not develop Apps in a manner that would violate or cause Podium or any Podium Clients to violate any obligation with respect to any Laws. You also warrant and represent that: (a) You have a license to use any Podium End-User Data provided that is used in connection with an App or the Marketplace and any Podium End-User Data and Podium's use thereof will not violate third-party rights, including intellectual property, privacy, and publicity rights and (b) You have authorization to provide Podium with any Podium Client information you provide in connection with the Podium Services, your App, or the Marketplace, including but not limited to any End-User Data and any personally identifying information. If you receive any take-down requests or infringement notices related to Podium End-User Data, your App, or your use of third-party products or data, you will promptly stop using these items with the Podium Services, your App, and the Marketplace and notify Podium immediately.

3.3. HIPAA Compliance. If you are a Covered Entity or Business Associate, as defined in HIPAA, and are operating as a subcontractor to Podium, you agree to the terms of Podium's Subcontractor BAA (currently available at <https://www.podium.com/#subcontractor-business-associate-agreement/>) (the "**Subcontractor BAA**"), which may be amended from time to time, and to secure and utilize Protected Health Information (as that term is defined in HIPAA) in accordance with the Subcontractor BAA.

4. Permissions, and Limitations. Podium may place limits on access to the Podium Developer Platform and Marketplace and on use of the Podium API (e.g., limits on numbers of calls or requests). Podium may also monitor your usage of the Podium Developer Platform and Marketplace and limit the number of calls or requests you may make if Podium believes, in its sole discretion, that your usage violates these Terms or may negatively affect the Podium Developer Platform, the Marketplace, or any Podium Clients (or otherwise impose liability on Podium). You agree to take all reasonable efforts to limit the use of the Podium API and to use only the minimum necessary calls, requests, pushes, integrations, Podium API, endpoints, or webhooks to make your App function. Each App should request the fewest number of authorization or permission scopes required to function.

5. Marketing Activities. You will bear all costs and expenses related to your marketing or promotion of Podium, any Podium Services, the Marketplace, and, as applicable, your Apps or your other products or services associated with your participation in the Podium Developer Program (collectively, "**Partner Marketing Activities**"). Partner Marketing Activities are limited to the Territory. Podium may promote your App as it sees fit in its sole discretion.

5.1. App Listing. Apps will be listed in the Marketplace once approved by Podium. App listing content will be provided by you and

approved by Podium. Public Apps will be listed for all users of the Marketplace to view, access, and use. If your App is a Private App or a Third-Party Private App, it will not be listed publicly in the Marketplace, but will be accessible by you or the Podium Client who hired you to develop the App.

5.2. No commission, fees, revenue sharing, or profit sharing will be exchanged unless noted expressly in additional terms between you and Podium.

6. Onboarding/Offboarding. The documented authentication path specified at <https://docs.podium.com/docs/oauth> is currently the only supported method for customer onboarding. Your App will require no manual onboarding (meaning it requires a person to integrate, set up, or install the App) by Podium. If your App requires manual onboarding, you must provide such services directly to the Podium Client(s). Podium will not manually generate tokens, access, or integrations. If your App requires manual onboarding, upon receipt of an order notification, you will be required to onboard and assist the Podium Client so that they can fully use your App within 5 days. Additionally, if your App requires manual onboarding, specific details must be added to the Marketplace listing for your App to clearly notify Podium Clients of this requirement. Fulfillment and onboarding costs will solely be your responsibility.

7. Required Documentation. The following documentation is required between you and any Podium Client who uses your App and must be provided for review by Podium as part of each App approval and listing process:

7.1. End User Terms ("**End User Terms**") between you and any Podium Client who uses your App. You must 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 App, and Services. You must ensure anyone who uses your App agrees to your End User Terms, which must comply with all Laws. The End User Terms for each Client must include provisions that are at least as protective as those contained in these Terms. The End User Terms must also include provisions informing the Client that:

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

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

7.1.3. The provisions of your End User Terms govern the scope of your access and use rights with respect to the Client's Data and account.

7.2. Privacy Policy between you and any Podium Client who uses your App ("**End User Privacy Policy**"). The Privacy Policy must be a legally compliant privacy policy detailing the data and information you'll collect from any Client or user when they use your App, and you agree that you will only use such data and information as expressly authorized by the Client in each case

7.3. Business Associate Agreement ("**End User BAA**") between you and any Podium Client who uses your App if your App is subject to HIPAA. You will only use Client Protected Health Information ("**PHI**") as that term is defined under HIPAA, as authorized under the BAA and HIPAA and will remain fully liable for any violations with respect to PHI.

7.4. List of software licenses currently in use.

8. Developer Approval Process for Sandbox Access. In order to access the developer test platform (the "**Sandbox**"), you must: (a) agree to the [API Terms](#); (b) have a valid Developer Account; (c) request Sandbox access from Podium; and (d) not use Sandbox for any purpose other than the development of an App intended to operate in conjunction with the Podium API and which will be listed on the Marketplace. Developer Accounts and Sandbox use may be monitored and throttled at Podium's discretion. Sandbox functionality and features may vary over time. Sandbox access can be revoked at any time at Podium's sole discretion.

9. App Approval Process. Your App will generally be reviewed by Podium within 2 weeks of submission of the documentation and information described in Section 9 and Section 10 ("**App Approval Requirements**"). If your App is rejected, you will be notified with reasons and requirements to resubmit, if applicable. Once approved you will receive a notification of your App's approval. Podium reserves the right to reject any App for any reason. Your App may only permit session cookies to have the following attributes set: Secure, HTTPOnly. Prior to Podium approving your App, you must submit the following information:

9.1. Submit your App with listing content including:

9.1.1. App name;

9.1.2. App description;

9.1.3. App Logo;

9.1.4. API scope access needed;

9.1.5. API scope access reasoning;

9.1.6. the documentation listed in Section 9; and

9.1.7. emergency engineering contact email

9.2. You must provide additional App solution documentation outlining App functionality, Podium API used, screen shots, user flow, feature set, install instructions, setup time, pricing (if applicable), industries served, and general customer expectations.

9.3. App testing instructions must be provided to Podium for review purposes, including but not limited to, steps, credentials, and any other pertinent information to reproduce the end-user experience.

9.4. You must certify that your App does not sell data, collect personally identifiable data without valid authorization or consent, send data outside the Territory, perform functions not outlined in the App description, or mislead Podium Clients in any way.

9.5. You must verify and certify to Podium that your App complies with the requirements of Section 10.

10. Security Certification. Your App must comply with the requirements listed in the Developer Security and SLA Requirements document located at (<https://partner-terms.podium.com/#DSSR>) (the "**Security SLA Documentation**") [Currently available at <https://docs.google.com/document/d/1RomvY79rnqi3Mg8HOcW7xJh6miKvNfJJYCxov41MZrM/edit?usp=sharing>]. Podium may revoke your access to the Marketplace and remove or disable your App if you violate any of the security or service level requirements contained in the Security/SLA Documentation. If your App breaches any of the security or service level requirements contained in the Security/SLA Documentation, you may apply for recertification by following the steps outlined in these Terms for an App approval and by documenting how your resubmission cures the violations.

11. Data Use and Ownership.

11.1. Podium End-User Data. For purposes of these Terms, "**End-User Data**" means any data, content, or information of an end user or Podium Client that is accessed, collected, or otherwise processed by you or your App in connection with use of the Podium Developer Platform, Podium API, or Podium Services. Podium Clients may enable you or your Apps to access End-User Data. Based on the activities under these Terms, Podium may provide you with access to End-User Data.

11.2. Collection and Use. You must obtain all necessary rights, permissions, and consents from Podium Clients and any end users for your access, collection, storage, transmission, treatment, use, disclosure, sharing, and other processing of any End-User Data, and you must ensure that all such processing complies with your End User Terms, your End User Privacy Policy, your End User BAA (if applicable), and all Laws. If you use the Podium API to retrieve End-User Data directly from Podium, you must limit your access and processing of such information to that (a) authorized by the Podium Client or (b) necessary for the purposes of providing the functionality of your App. You may not sell any End-User Data. Podium will not be liable for, or have any responsibility in connection with, End-User Data processed by you or your App, and such activities with regard to End-User Data are not in any way by or on behalf of Podium.

11.3. Ownership of Apps and Marketplace. Unless otherwise expressly agreed in writing, including under these terms, Podium claims no ownership of your Apps. You may reserve all rights not expressly granted in these Terms, including any goodwill associated with Your Marks. Podium retains all ownership and other rights (including all intellectual property rights) in the Podium Developer Platform, the Services, the Podium Marks (including associated goodwill), and the Marketplace. Providing feedback, comments or suggestions about the Podium Developer Platform, the Services, or the Marketplace ("**Feedback**") to Podium is completely voluntary, and Podium may freely use Feedback for any purpose.

11.4. End User Communications. You may use End-User Data to communicate directly with Podium Clients or any third parties only

where the communication is with technical or billing contacts, required by Laws, or as consented to or requested by the end user. You also agree that you will not send advertisements, marketing, telemarketing, or promotional messages, as such are defined in applicable Laws (hereinafter, collectively "**Marketing Messages**"), and that you may not use the Services, the Podium APIs, or the Marketplace to send Marketing Messages to Podium Clients unless you have valid consent from such Podium Client.

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

12.1. Obligation of Confidentiality. Except as otherwise expressly permitted in these Terms, 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 these Terms. 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 19.5), provided that such party remains responsible for any recipient's compliance with the terms of this Section 12 and these recipients are bound to confidentiality obligations no less protective than this Section 12.

12.2. Exclusions. These confidentiality obligations do not apply to (and Confidential Information does not include) information that: (a) is or becomes public knowledge through no fault of the receiving party; (b) was known by the receiving party prior to receipt of the Confidential Information; (c) is rightfully obtained by the receiving party from a third party without breach of any confidentiality obligation; or (d) is independently developed by the receiving party without using the disclosing party's Confidential Information. A party may also disclose the other party's Confidential Information to the extent required by law or court order, provided it gives advance notice (if permitted by law) and cooperates in any effort by the other party to obtain confidential treatment for the information.

12.3. Remedies. The parties acknowledge that disclosure of Confidential Information may cause substantial harm for which damages alone may be an insufficient remedy, and so upon breach of this Section 12 each party is entitled to seek appropriate equitable relief in addition to any other remedies it may have at law.

13. Intellectual Property

13.1. Use of Marks. Subject to these Terms, you may use the Podium's name, logos, or trademarks (collectively the "**Podium Marks**") to promote your Application(s) as compatible with the relevant Podium Products. Your use of Podium Marks must be approved by Podium, and (without limiting Podium's other termination rights) you must promptly cease any use of Podium Marks identified by Podium as problematic. You may not register any domain name containing Podium Marks, the word "Podium" or the name of any Podium Product (or anything confusingly similar) and if you have done so you agree to transfer ownership of the domain name to Podium at no charge. You also agree not to contest the validity of ownership of any Podium Marks. You receive no other rights to Podium Marks under these Terms. All goodwill arising from use of Podium Marks inures to Podium.

13.2. Your Marks. If you make your Apps available to Podium Clients (or other end users), Podium may (but is not obligated to) use Your Marks to identify you as a Podium developer and to promote your Apps and Podium's Services and the Marketplace.

14. Term; Termination. These Terms will remain in effect until terminated, as set forth below (the "**Term**").

14.1. Termination by You. You may terminate these Terms at any time by ceasing all use of the Podium Developer Platform, the Podium API, the Marketplace, and any relevant developer credentials, and by notifying Podium of your intent to terminate this Agreement and use of the Podium Developer Platform.

14.2. Termination by Podium. Podium may terminate these Terms at any time in Podium's sole discretion.

14.3. Effect of Termination. Upon any suspension or termination, you must cease using the Podium Developer Platform, the Podium API, the Marketplace, and any Podium Marks and, at Podium's request, return or destroy all Confidential Information. Section 3 (Use Rights), Section 10 (Security Certification), Section 11 (Data Use and Ownership), Section 13.2 (Your Marks), Section 12 (Confidential Information) and Section 19 (General) will survive any termination of these Terms. After termination, you will have no

further access to any Podium developer website or portal or to any data or content that you submitted to Podium relating to the Podium Developer Platform or Marketplace. Podium may delete any of your data at its sole discretion. Podium will have no obligation or liability resulting from termination or suspension of these Terms as permitted above.

15. Indemnification.

15.1. Indemnification by User. You will indemnify and hold harmless Podium and its officers, directors, employees, consultants, affiliates, subsidiaries, and agents (together, the "**Podium Entities**") from and against any third-party claims and related costs, damages, liabilities, and expenses (including reasonable attorney's fees) arising from or pertaining to: (a) your unauthorized use of, or misuse of, the Marketplace and/or any App; (b) your violation of, or any claim that you have violated, any applicable Law or third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; (c) any dispute or issue between you and any third party (including but not limited to your end user(s), customers, any Developer, and any Third-Party Service Providers); (d) misuse of any customer data; (e) Podium's use, as contemplated in these Terms, of any information provided to Podium by you or your end users or customers; (f) breach or alleged breach of these Terms; or (g) any claim of a governmental entity or other party that you have violated any Law. You also agree to defend the Podium Entities against these claims at Podium's request, but Podium may participate in any claim through counsel of its own choosing and the parties will reasonably cooperate on any defense. In the event Podium assumes exclusive defense of such claims, you agree to cooperate with our defense of any such claims. You may 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. Developer will promptly inform Podium of any information known to Developer that could reasonably lead to a claim, demand, or liability of or against Podium by any third party.

16. Limited Warranty of the Marketplace and Disclaimers.

16.1. EXCEPT AS PROVIDED EXPRESSLY HEREIN, THE PODIUM DEVELOPER PLATFORM, PODIUM API, THE MARKETPLACE, THE SERVICES, AND ANY RELATED SERVICES, MATERIALS, AND CONTENT AVAILABLE THROUGH THE PODIUM DEVELOPER PLATFORM, PODIUM API, AND MARKETPLACE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. NEITHER PODIUM NOR ITS SUPPLIERS MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. PODIUM MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT THE PODIUM DEVELOPER PLATFORM, PODIUM API, OR MARKETPLACE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, THAT YOUR DATA OR END-USER DATA END USER DATA WILL BE ACCURATE, COMPLETE, OR PRESERVED WITHOUT LOSS, OR THAT THE PODIUM DEVELOPER PLATFORM, PODIUM API, THE MARKETPLACE, OR THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE, AND PODIUM DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED. PODIUM WILL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY YOUR 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 YOUR DATA OR END-USER DATA END USER DATA AUTHORIZED BY THESE TERMS, OR FOR DECISIONS OR ACTIONS TAKEN (OR NOT TAKEN) BY YOU BASED UPON THE PODIUM DEVELOPER PLATFORM, PODIUM APIS, THE MARKETPLACE, THE SERVICES, OR PODIUM'S RELATED SERVICES (INCLUDING CHANGES TO YOUR PROPERTIES). THE DISCLAIMERS IN THIS SECTION 16.1 WILL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN. DEVELOPER 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.

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

17. Limitation of Liability. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL PODIUM OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, LOST PROFITS, COSTS OF DELAY, REPUTATIONAL HARM, OR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PODIUM'S OR ITS SUPPLIERS' TOTAL LIABILITY EXCEED IN AGGREGATE FIFTY THOUSAND U.S. DOLLARS (\$50,000.00). FOR FREE ACCESS SUBSCRIPTIONS OR BETA RELEASES, PODIUM'S TOTAL LIABILITY WILL NOT EXCEED IN AGGREGATE FIFTY U.S. DOLLARS (\$50.00 US). NOTWITHSTANDING THE FOREGOING, NONE OF THE LIMITATIONS IN THIS SECTION 17 EXCLUDES EITHER PARTY'S LIABILITY FOR FRAUD OR FOR DEATH OR PERSONAL INJURY TO THE EXTENT CAUSED BY A PARTY'S NEGLIGENCE. IN ADDITION, THE LAWS IN SOME JURISDICTIONS MAY NOT ALLOW SOME OF THE LIMITATIONS OF LIABILITY IN THIS SECTION 17. IF ANY OF THESE LAWS IS FOUND TO APPLY TO THESE TERMS, THIS SECTION 17 WILL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY SUCH LAW. EACH PARTY ACKNOWLEDGES AND AGREES THAT THIS SECTION 17 IS A FUNDAMENTAL BASIS OF THE BARGAIN AND A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES AND WILL SURVIVE AND APPLY TO ANY CLAIMS ARISING OUT OF OR RELATED TO THESE TERMS, ANY PODIUM TECHNOLOGY, OR ANY RELATED SERVICES, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE), EVEN IF ANY LIMITED REMEDY IN THESE TERMS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 17 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

18. Dispute Resolution. If a dispute arises between the parties related to these Terms, and the dispute cannot be settled through informal negotiations, the parties agree to resolve their dispute (referred to herein as "**Claim(s)**") as follows:

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

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

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

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

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

18.4. Disputes Not Subject to the Mediation Process. The following claims or actions are not subject to the mandatory mediation provisions of this Section 18:

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

18.4.2. A request for an order to prevent the disclosure of or misuse of Confidential Information or trade secrets.

19. GENERAL

19.1. Assignment. These Terms will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign these Terms without the advance written consent of the other party, except that Podium may assign these Terms 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 these Terms except as expressly authorized under this Section 19.1 will be null and void.

19.2. Independent Contractors. The parties to these Terms are independent contractors, and these Terms do 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.

19.3. Non-Exclusivity. Nothing in these Terms is intended to create, nor will it be construed as creating, any exclusive arrangement between the parties to these Terms. These Terms will not restrict either Party from entering into similar arrangements with others, provided it does not breach its obligations under these Terms 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 Developer's products or services, regardless of their similarity to Developer's products or services, provided that Podium does not violate its confidentiality obligations to do so.

19.4. Non-Solicitation; Noncompetition. During the Term and for a period of six months thereafter, Developer will not solicit any Client(s) or end user of Podium to cease doing business with Podium; provided, however, that this provision shall not limit the ability of Developer to continue servicing such end user(s) with respect to services performed by Developer during the Term. Additionally, during the Term and for a period of one year thereafter, Developer 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 products (including but not limited to the Services, the Marketplace, and the Podium Developer Platform) without the prior express written consent of Podium.

19.5. Subcontractors. Podium may use subcontractors and permit them to exercise the rights granted to Podium in order to provide the Podium Developer Platform, the Marketplace, and related services under these Terms. Unless Podium expressly states otherwise in writing, third-party providers are not "subcontractors" under these Terms, and Podium disclaims all responsibility and liability for the actions or omissions of any third-party providers.

19.6. Notices. Any notice or communication to Podium under these Terms must be in writing. You must send any notices under these Terms (including breach notices) to Podium Headquarters (and include "Attn. Legal Department" in the subject line) or by email to legal@podium.com. Podium may send notices to the e-mail addresses on your account or, at Podium's option, to your last-known postal address. Podium may also provide operational notices regarding the Podium Developer Platform, the Marketplace, or other business-related notices through conspicuous posting of such notice on Podium's Website or the Podium Developer Platform. Each party hereby consents to receipt of electronic notices and agrees that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing. Podium is not responsible for any automatic filtering you or your network provider may apply to email notifications.

19.7. Amendments; Waivers. Podium may update or modify these Terms (including any referenced policies and other documents) from time to time by posting a revised version on the Website or the Podium Developer Platform or by notification via the email associated with your account. If a change to these Terms materially modifies your rights or obligations, you may be required to click through the updated Terms to show acceptance and to continue to use the Podium Developer Platform. Modifications will become effective upon posting or notification, and continued use of the Podium Developer Platform 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 Podium Developer Platform or the Marketplace. No waiver will be implied from conduct or failure to enforce or exercise rights under these Terms. No waiver of any provision of these Terms 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 these Terms 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.

19.8. Force Majeure. Neither party will be liable for any delay or failure to perform its obligations under these Terms 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.

19.9. Governing Law; Jurisdiction and Venue. These Terms are 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 these Terms 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.

19.10. Headings. The headings used in these Terms are for ease of reference only. They are not intended as a complete restatement of the matters contained under each heading, and you acknowledge that you have read and understand all the text of these Terms, and not just the headings.

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

19.12. No Third-Party Rights. Nothing in these Terms confers on any third party the right to enforce any provision of these Terms. Severability. If any provision of these Terms is found by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that these Terms may otherwise remain in effect, and all other provisions remain in full effect.

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

19.14. Entire Agreement. These Terms represent the parties' complete and exclusive understanding relating to these Terms' subject matter. These Terms supersedes\ all prior or contemporaneous oral or written communications, proposals, and representations with respect to the Podium Developer Platform, the Marketplace, or any other subject matter covered by these Terms. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to these Terms. The Uniform Computer Information Transactions Act (UCITA) will not apply to these Terms regardless of when or where adopted. Any terms provided by you are for administrative purposes only, and have no legal effect.