

## Podium Suite – Licensing Terms

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These licensing terms (**Terms of Use**) govern the licensing of the Podium Suite and the tests and assessments thereby provided by us under licence from Podium and, together with any Order, constitute the valid, complete and binding contract between AFM Solutions and the Customer. If there is any conflict between the Terms of Use and an Order, the Order and any additional provisions within such Order shall prevail for the products and services in that Order. All capitalised terms are defined in the Definitions section below.

### 1. ORDERS, CREDITS AND CHARGES

- 1.1. **Order:** Each Order will contain details of: (i) the Credits purchased by you; (ii) the charges due for such Credits; (iii) the Term; and (iv) any other transaction-specific terms and conditions. An Order is binding upon the earliest to occur of the date that: (a) you are provided access to and use of the Podium Suite; (b) we issue a written acknowledgment to you; or (c) the Order is signed by both parties.
- 1.2. **Credits:** The recommended retail price for Credits may be changed by AFM Solutions at any time after the date falling 18 months after the Commencement Date, subject to not less than 90 days' notice, including due to the following reasons beyond Podium's control:
  - a) changes in applicable currency exchange rates (unless by prior agreement);
  - b) an increase in the price paid by Podium to its suppliers for operating the Podium Suite.
- 1.3. **Charges.** The Customer shall pay all Charges as specified in the Order together with VAT at the prevailing rate. Unless otherwise stated in the Order:
  - a) Charges are based on the number of Credits purchased; and
  - b) Credits are non-cancellable and Charges non-refundable; and
  - c) Charges are payable within thirty (30) days of the date of invoice. If any part of an invoice is disputed, you will pay the undisputed amounts in full and the parties will reconcile the disputed amount in good faith as soon as possible. Late payments will bear interest at the higher of 2% per month, or the maximum rate allowed by law and may result in the withholding or suspension of the Podium Suite and/or related products and services.
- 1.4. **Invoicing.** AFM Solutions shall invoice the Customer in advance for the Charges due in respect of Credits ordered, together with all VAT due at the rates applicable at the time of invoicing.

### 2. OWNERSHIP AND GRANT OF LICENCE

- 2.1. **Ownership:** The Podium Suite is and shall remain a proprietary product of Podium Systems Limited. Podium Systems Limited shall retain ownership of all patents, copyrights, trademarks, trade names, trade secrets and other proprietary rights relating to or residing in the Podium Suite. Except as provided in clause 3.2, the Customer shall have no right, title or interest in or to the Podium Suite. The Podium Suite is licensed, not sold, to the Customer for use only under the terms of these Terms of Use. If the Customer agrees to be bound by all of the provisions of these Terms of Use, it will only own the media on which the Podium Suite has been provided and not the Podium Suite itself.
- 2.2. **Grant of Licence:** Subject to the remaining provisions of these Terms of Use and for the duration of the Term, AFM Solutions grants the Customer a personal, non-exclusive, restricted right to use the Podium Suite in the country in which it acquired the Podium Suite for its own business purposes. The Podium Suite is "in use" on a computer or device when it is being accessed through a browser on that computer or device. AFM Solutions' right to license the Podium Suite are granted by Podium whose rights to do so are further granted under the terms of a head licence between Podium and Podium Systems Limited.
- 2.3. **Restrictions:** AFM Solutions reserves all rights in the Podium Suite not expressly granted to the Customer. The Customer may not use, copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, deliver or otherwise transfer the Podium Suite, nor permit any other party to do so. Except as expressly permitted by applicable law, the Customer may not derive or attempt to derive the source code of the Podium Suite by any means, nor permit any other party to derive or attempt to derive such source code. The Customer may not reverse engineer, decompile, disassemble, or translate the Podium Suite or any part of it.
- 2.4. **Third Party Software:** If Podium should incur any liability to any third party caused by the non-performance by the Customer of any of its obligations hereunder or resulting from any defect in any component of the Podium Suite supplied by the Customer, the Customer shall, subject to clause 2.7 below, indemnify and hold Podium harmless from any such liability, and from all claims, costs, demands, debits and causes of action in connection therewith.

- 2.5. **No Other Warranties:** The Podium Suite is being licensed to the Customer "as is," without warranty or condition of any kind. AFM Solutions and AFM Solutions' suppliers (including Podium Systems Limited) disclaim all other warranties, express or implied, including without limitation the warranties of quality, merchantability, fitness for a particular purpose, title and non-infringement of third-party rights. Some jurisdictions do not allow the disclaimer of implied warranties, so the above disclaimer may not apply to the Customer, in which case the duration of any such implied warranties is limited to 30 days from the date the Podium Suite is received by the Customer. This warranty gives the Customer specific legal rights. The Customer may have other legal rights which vary from jurisdiction to jurisdiction.
- 2.6. **Guidance.** For the avoidance of doubt, the assessments and tests and their respective reports are a guide solely as to the suitability and aptitude of End Users as part of an overall recruitment or development process. The Output represents SHL's professional opinions based on information provided to SHL by, or on behalf of Company, its agents and Candidates, together with any applicable assessment responses. The Output must not be relied upon as statements of fact or as the sole basis for any employment related decisions. SHL does not recruit or select candidates and is not operating as a recruitment agency. SHL is not responsible for the acts or omissions of the Company, including but not limited to: (i) Company's selection or modification of Assessments without SHL's specific written recommendation; and/or (ii) Company's use of Assessments, interpretation of the Output or resulting decisions. Company is not entitled to receive any raw data, including item-level responses, collected as part of the Products or Services. Company agrees that compliance with any applicable employment or applicant records retention requirement, or any applicable governmental authority or regulatory body of any country is Company's responsibility.
- 2.7. **Limitation of Liability:** No supplier of AFM Solutions (including Podium Systems Limited) shall have any liability whatsoever under these Terms of Use. In no event, including without limitation any breach of a fundamental provision or a fundamental breach of these Terms of Use, shall AFM Solutions or Podium be liable for any indirect, exemplary, special, consequential or incidental damages of any kind (including without limitation lost profits), even if AFM Solutions or Podium have been advised of the possibility of such damages. Some jurisdictions do not allow the limitation or exclusion of liability for consequential or incidental damages so the above limitation or exclusion may not apply to you. Neither AFM Solutions nor Podium shall be liable for any claims of third parties (including the Customer) relating to the Podium Suite. The Customer irrevocably and unconditionally acknowledges that its legal relationship is with AFM Solutions under its sub-license from Podium and it may only make any claims or take any actions against either AFM Solutions or Podium under these Terms of Use.
- 2.8. **Suspension of Performance:** Podium shall be permitted to suspend performance of its obligations under the Agreement until all undisputed payments, including interest and costs of collection, have been paid by the Customer.

### 3. SUPPORT AND MAINTENANCE OF THE PODIUM SUITE

- 3.1. **Support:** AFM Solutions shall provide first line technical support to its Customers. Podium or another affiliate of Podium, will provide the Customer such second and third line technical support regarding the Podium Suite in accordance with the provisions set out in the Schedule 2.
- 3.2. **Revision Updates:** Podium shall make available to the Customer any Revision Updates which Podium makes generally available, subject to the terms and conditions set out in these Terms of Use. AFM Solutions shall inform the Customer as early as possible in advance of any Revision Updates and their potential implications on the Documentation.
- 3.3. **Technical Assistance and Training:** Podium agrees to provide such technical assistance and training to the Customer's personnel as may be reasonably requested in order for the Customer to resell the Podium Suite as contemplated in this Agreement. The location and cost of any such training will be mutually agreed to by the parties, prior to the provision of such training. For the avoidance of doubt, all support services shall be provided, and this clause shall only apply to technical assistance and training to assist the Customer in the sale of the Podium Suite.
- 3.4. **Role of Podium:** Podium may facilitate the delivery and implementation of such Updates to the Customer as it considers appropriate.

### 4. CONFIDENTIALITY

- 4.1. During the Term of an Agreement, both parties agree and acknowledge that they may disclose or receive or obtain access to Confidential Information of the other party, whether oral or written, for the sole purpose of performing their obligations under a particular Agreement and, in consideration for the disclosure of this Confidential Information, the parties agree to maintain the following standards of non-disclosure and non-use:
- 4.1.1. Each party expressly agrees not to disclose, directly or indirectly, the Confidential Information to any third party (individual or entity) other than its duly authorised representatives, employees,

distributors, or agents, without the express and previous written consent and knowledge of the discloser of such Confidential Information.

4.1.2. In this regard, each party agrees to maintain the Confidential Information in confidence and shall take at least the same precautions to avoid disclosure of the Confidential Information that it would take with its own Confidential Information.

4.1.3. It is also agreed between the parties that all Confidential Information shall remain the sole and exclusive property of the party which has originally disclosed it.

4.2. **Survival:** The confidentiality and non-use obligations of the parties as set out in this clause 3 shall survive termination of any Agreement and shall continue in full force and effect until such information is no longer Confidential Information.

## 5. TERMINATION

5.1. **General.** Except for termination for cause below, or as otherwise stated in an Order, Company may not terminate the Order and any Fees paid or payable by Company are non-refundable and non-cancellable.

5.2. **Termination for Cause.** Either party may terminate an Order for cause if the other party: (a) becomes or is likely to become insolvent or enters into administration or bankruptcy; or (b) materially breaches any provision of an Agreement (including failure to timely pay undisputed Credits in full) and: (i) the breach is not capable of cure; or (ii) if capable of being cured, the breach is not cured within thirty (30) days after the breaching party's receipt of notice of breach stating the specific nature of the breach. Such termination will be without prejudice to any rights or remedies either party may have accrued up to the termination date.

5.3. **Effect of Termination.** Except as otherwise provided in an Agreement, upon expiration of the applicable Term, or termination of an Order, or portion thereof: (i) all licenses granted by AFM Solutions under the Order or these Terms shall immediately terminate; and (ii) the Customer shall immediately cease use of the applicable Podium Tests under the applicable Order. AFM solutions reserves the right to charge the Customer for any continued use of Podium Tests after expiration or termination of an Order.

## 6. MISCELLANEOUS

6.1. **Personal Data:** Podium's commitment in respect of personal data is that it should be processed lawfully, fairly and in a transparent manner. This commitment is set out in statements on Podiums website (see [https://www.podium365.com/about/privacy\\_policy](https://www.podium365.com/about/privacy_policy)) and in its various policy and procedures documents covering Data Protection, ISMS Information Security and Incident Management, all of which can be supplied upon request.

6.2. **Governing Law:** These Terms of Use shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute arising therefrom.

## 7. DEFINITIONS

In this Agreement, capitalised words have the following meaning, unless the context otherwise requires:

**AFM Solutions, "us", "we"** means Asset Finance & Management Ltd (company number 1725456) whose registered office is at 155 - 157 High St, Aldershot, Hampshire, GU11 1TT

**Agreement** means these terms, including any schedules, together with a relevant Order.

**Business Day** means 9am-5pm Monday through Friday, excluding public holidays, in UK.

**Commencement Date** shall have the meaning stated in the relevant Order.

**Confidential Information** means any data or information disclosed by one party to the other in connection with an Agreement that is not generally known to the public, and is clearly identified as confidential or, by its nature, should be reasonably considered confidential, including:

- (a) the terms and conditions of this Agreement (excluding the existence of this Agreement);
- (b) information about product plans, marketing strategies, finance, operations, customer relationships, customer profiles, sales estimates or financial performance of either Party;
- (c) any computer software or computer database (including the Podium Suite, Third Party Software, Documentation or any portion thereof), including the source code or object code thereof, and any specifications, data, reports, formulae, data models, data formats, field or record layouts, or improvements related thereto; and
- (d) any personal information regarding a person that would personally identify a person;

but does not include information that:

- (a) was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of the recipient;
- (b) was lawfully received by the recipient from a third party free of any obligation of confidence;
- (c) was already in the lawful possession of the recipient prior to receipt from the other Party;
- (d) is required to be disclosed by law, provided that all reasonable legal remedies for maintaining such information in confidence have been exhausted; or
- (e) the recipient can show by a preponderance of documentary evidence was subsequently and independently developed by its employees, consultants or agents without reference to the Confidential Information of the other Party.

**Credits** means the units which must be purchased by the Customer in consideration of the Charges set out in an Order and paid by the Customer to enable it to access and use the Podium Suite or particular components of it, such Credits to be consumed only upon the scoring by Podium of a relevant Podium Test.

**Customer** means an entity who contracts with AFM Solutions under these Terms of Use to take on licence the Podium Suite.

**Documentation** means the end-user manuals and operating guides, whether in print or electronic media, provided by Podium to the Distributor for use and on-licensing with the Podium Suite.

**End Users** means the Customer's employees or candidates who may be invited by the Customer to access the Podium Suite and its Products.

**Podium** means Clear Profiling Limited (company number 08123840) whose registered offices are C/O Golder Baqa, Ground Flr., 1 Baker's Row, London, EC1R 3DB, trading as Podium Systems UK.

**Podium Suite** means the Podium Tests and the associated portal, as more particularly described in Schedule 1, together with all Updates and the Documentation.

**Podium Service Ltd** is a company registered in New Zealand with company number 5479882 and registered address at Gilligan Rowe & Associates LP, Level 6, 135 Broadway, Newmarket, Auckland, 1023 New Zealand.

**Podium Tests** means the range of personality, ability, interest, motivation, and judgement assessments accessed via the Podium Suite portal.

**Revision Update** means any Revision of the Podium Suite that is for the purpose of correcting errors or creating minor improvements or minor enhancements of existing features.

**Term** shall have the meaning set out in an Order.

**Third Party Software** means any third-party software that is bundled with, or embedded in, the Podium Suite.

**Trademarks** means all names, marks, logos, designs, trade dress and other brand designations used by Podium in connection with Podium Suite.

**Update** means a Revision Update and/or a Version Update, as the context may require.

**Version Update** means any Revision Update of the Podium Suite that provides substantial performance improvements, architectural changes, new features, or additional functionality, and which Podium generally licenses to its customers for an additional fee.

**Warranty Period** means the period of 90 days from the date of delivery of the Podium Suite and/or Documentation (as the context may require) to the Customer.

## SCHEDULE 1

### Podium Suite

1. The Podium Suite is the online assessment solution in cloud-accessible form and includes:
  - (a) Podium Assessments and Reports;
  - (b) the Podium Management System;
  - (c) the Podium Control Panel;
  - (d) the Podium API;
  - (e) the Podium Questionnaire Engine and Landing Pages;
  - (f) relevant third-party integrated solutions;
  - (g) the Documentation; and
  - (h) Third-Party Software.
  
2. Podium reserves the right to withdraw from the components of the Podium Suite, set out in Schedule 1, any component which:
  - (a) Podium ceases to develop, maintain or supply subject to 6-month written notice to the Customer regarding this;
  - (b) is subject to the rights of third parties where such rights prevent Podium from licensing such Podium Suite with such change to be effective upon AFM Solutions' written notice to the Customer; or
  - (c) AFM Solutions or Podium reasonably believe that there is a conflict of interest or other similar constraint and the situation has not been cured within 3 months after written notice to the Customer.
  
2. Minimum system requirements for the Podium Suite:
  - (a) Appropriate hardware (desktop or notebook preferred; tablet allowed);
  - (b) A modern browser, including Internet Explorer 10+, Chrome, Safari, Firefox, Edge, Opera;
  - (c) Appropriate internet connectivity; and
  - (d) A working email address that allows receipt of emails.
  
3. Documentation included in the Podium Suite:
  - (a) Podium Assessment Technical Manuals
  - (b) Psychometric Training Materials (at additional cost)

## SCHEDULE 2

### Maintenance and Support

#### 1. Maintenance

The Podium platform systems aim is to be available 24 hours per day, throughout the year. Routine maintenance is performed as required and the maintenance schedule may be published in advance.

Under normal conditions Podium will use its best efforts to give at least 1 week's notice of significant downtime.

Podium provides on-going maintenance and monitoring services so that all assessments and related services are provided as trouble free as possible. Podium will remain responsive to all issues and be agile in resolving them.

#### 2. Help Desk Services

Podium will maintain a help desk service which will accept, log, respond to, and manage the resolution of any support requests raised by the Customer. The help desk will generally be available to the Customer by telephone and e-mail.

In the first instance, any concerns or issues related to support or maintenance should be raised with AFM Solutions who will investigate and attempt to assist the Customer in their resolution.